

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Petition of AT&T Inc. For Forbearance |) | WC Docket No. 07-21 |
| Under 47 U.S.C. § 160 From Enforcement |) | |
| Of Certain of the Commission’s Cost |) | |
| Assignment Rules |) | |
| |) | |
| 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 |) | |
| |) | |
| 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 |) | |
| |) | |
| Petition of Qwest Corporation for Forbearance |) | WC Docket No. 07-204 |
| From Enforcement of the Commission’s ARMIS |) | |
| And 492A Reporting Requirements Pursuant |) | |
| To 47 U.S.C. § 160 |) | |

COMMENTS OF VERIZON¹

I. INTRODUCTION AND SUMMARY

In its *Cost Assignment Forbearance Order* the Commission granted AT&T forbearance from its antiquated cost assignment rules.² Because AT&T, like Verizon, is subject to price cap regulation at the federal level, the Commission correctly found that there was “no current, federal need” for those rules, and thus they were unnecessary to ensure that charges and practices are

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications, Inc.

² *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules*, WC Docket No. 07-21, Memorandum Opinion and Order, ¶ 32 (rel. April 24, 2008) (“*Cost Assignment Forbearance Order*”), *pet. for recon. pending.*

just and reasonable and not unjustly discriminatory, to protect consumers, or to ensure the public interest. Under the circumstances, the Commission concluded “that it would be beyond our authority to maintain these onerous regulatory requirements for AT&T.” *Cost Assignment Forbearance Order* ¶ 32. This same reasoning holds true for Verizon and other federal price cap carriers, and as a result the Commission must, under the express terms of section 10, grant Verizon forbearance from continued application of the cost assignment rules.

With respect to the cost assignment rules, Verizon is similarly situated to AT&T in all material respects. Like AT&T, the cost assignment rules serve no current, federal purpose as applied to Verizon. Like AT&T, continuing to apply the cost assignment rules to Verizon is unnecessary to ensure that charges and practices are just and reasonable and not unjustly discriminatory, to protect consumers, or to serve the public interest. Like AT&T, Verizon could file a compliance plan to address the forbearance conditions imposed in the *Cost Assignment Forbearance Order*. Therefore, the Commission’s legal and policy analysis in the *Cost Assignment Forbearance Order* requires that the same forbearance be extended to Verizon, and there is no procedural basis for delay.

II. THE COST ASSIGNMENT RULES SERVE NO CURRENT, FEDERAL PURPOSE AS APPLIED TO VERIZON AND FORBEARANCE FROM THOSE RULES SATISFIES THE REQUIREMENTS OF SECTION 10.

A. The Cost Assignment Rules Are Unnecessary To Ensure That Verizon’s Rates Are Just And Reasonable And Not Unjustly Discriminatory.

The Commission concluded in the *Cost Assignment Forbearance Order* that the cost assignment rules were unnecessary to determine whether AT&T’s rates are just and reasonable and not unjustly discriminatory because AT&T’s “interstate rates are now generally regulated under price caps” *Id.* ¶ 16. As the Commission explained, the cost assignment rules were

developed “to standardize rate-of-return regulation” and were “designed to parallel the level of detail in the cost-of-service calculations that LECs performed to develop their rates for interstate access services” under rate-of-return regulation. *Id.* ¶¶ 10 & 17. However, because price caps regulate the prices a carrier may charge, “price cap regulation severs the direct link between regulated costs and prices.” *Id.* ¶ 17 (quoting *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, ¶ 55 (1991), *vacated in part and remanded*, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert denied*, 514 U.S. 1050 (1995); and *United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir. 1993) (“[Price cap regulation] reduces any BOC’s ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling”). As a result, price cap regulation eliminates the “need [for] the accounting data derived from the Cost Assignment Rules for rate regulation functions.” *Cost Assignment Forbearance Order* ¶ 19.

Like AT&T, Verizon’s interstate rates are regulated under price caps. Like AT&T, Verizon’s rates will remain subject to price cap regulation, which will “protect consumers from unjust, unreasonable, and justly or unreasonably discriminatory charges, practices, classification[s] and regulations.” *Id.* ¶ 18. Consequently, consistent with the Commission’s reasoning in the *Cost Assignment Forbearance Order*, the cost assignment rules are unnecessary to ensure that Verizon’s rates are just and reasonable and not unjustly discriminatory, and thus forbearance satisfies the first prong of the section 10 test.

That Verizon’s intrastate rates may be subject to rate-of-return regulation in a very small number of states is a distinction without a difference.³ In order to justify applying the cost

³ Only about 4 percent of Verizon’s access lines are subject to rate-of-return regulation, and these lines are concentrated in a few states where Verizon is not the legacy RBOC.

assignment rules to Verizon, there must be a “current, *federal* need” for such rules. *Id.* ¶ 32 (emphasis added). As the Commission explained in the *Cost Assignment Forbearance Order*, “we do not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely.” *Id.*

B. The Cost Assignment Rules Are Unnecessary To Protect Consumers.

In granting forbearance to AT&T from the cost assignment rules, the Commission found that the rules were unnecessary to protect consumers. The Commission reasoned that: (1) “there is no current, federal need” for the cost assignment rules; (2) the cost assignment rules “impose costs that outweigh their benefits”; and (3) the costs incurred in complying with the rules “likely distort the market for telecommunications services” to the detriment of consumers. *Id.* ¶ 36.

The Commission’s reasoning applies equally to Verizon. Like AT&T, consumers are protected from the possibility of Verizon charging unjust, unreasonable, or unfairly discriminatory interstate rates through continued price cap regulation of Verizon’s rates. Like AT&T, Verizon incurs significant costs in complying with the cost assignment rules for which there is no corresponding benefit.⁴ Like AT&T, the resources Verizon must devote to complying with outdated cost assignment rules could be better spent on activities that actually benefit consumers. Consequently, the second prong of the section 10 forbearance test is satisfied because applying the cost assignment rules to Verizon is not necessary to protect consumers and, on the contrary, is more likely to “hinder consumer welfare.” *Id.*

⁴ See *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, at 27-29 (filed Nov. 26, 2007) (providing examples of the time consuming and costly process required for Verizon to comply with Commission’s affiliate transaction rules).

C. Forbearance From The Cost Assignment Rules Is Consistent With The Public Interest.

In the *Cost Assignment Forbearance Order* the Commission found that forbearance was in the public interest because relief from the cost assignment rules would “promote competitive market conditions and enhance competition.” *Id.* ¶ 39. Specifically, according to the Commission, forbearance would: (1) eliminate unnecessary costs associated with the cost assignment rules that “exceed the likely benefits of maintaining the rules for AT&T”; and (2) permit AT&T to compete more effectively by being able to introduce and deliver innovative products and services that consumers demand. *Id.* ¶¶ 41-42.

The Commission’s findings are not unique to AT&T. Like AT&T, Verizon incurs costs in complying with the cost assignment rules, which are unnecessary and exceed any benefits of maintaining those rules for Verizon. Furthermore, like AT&T, Verizon’s compliance with the cost assignment rules, when applicable, can delay its ability to bring to market new and innovative products and services, in contrast to other competitors that are not subject to these rules. As a result, extending forbearance from the cost assignment rules to Verizon is in the public interest and satisfies the third prong of the section 10 forbearance test because it “will promote competitive market conditions and enhance competition.” *Id.* ¶ 39.

III. THE ACT REQUIRES THAT THE COMMISSION EXTEND TO VERIZON FORBEARANCE RELIEF FROM THE COST ASSIGNMENT RULES.

The Commission has not just the power but the *duty* under section 10 to forbear from enforcing regulatory requirements if the Commission determines that the three-prong forbearance test is satisfied. *See* 47 U.S.C. § 160(a) (“the Commission *shall forbear* ...”); *Sprint Nextel Corp. v. FCC*, 508 F.3d 1129, 1131 (D.C. Cir. 2007) (“The Commission must forbear if it determines that a petition meets the requirements of § 160(a)”); *Earthlink v. FCC*, 462 F.3d 1, 4

(D.C. Cir. 2006) (noting that the Commission “must forbear from applying a given provision of the Communications Act to a telecommunications carrier . . .,” if the three conditions for forbearance are met). Because the Commission found in the *Cost Assignment Forbearance Order* that the section 10 forbearance test was satisfied for AT&T – findings that apply with equal force to Verizon – the Commission must grant Verizon forbearance from the cost assignment rules as well.

Furthermore, the cost assignment rules are obsolete relics of a bygone regulatory era that have no place in today’s vibrantly competitive communications marketplace. Because these rules apply only to a limited number of competitors, they distort competition to the detriment of consumers and effectively favor certain classes of competitors and certain technologies over others. This asymmetric regulatory regime results from outdated regulatory traditions rather than the modern needs of communications consumers and is inconsistent with the Commission’s desire to level the competitive playing field by eliminating regulations that disparately impact only one group of competitors.⁵

⁵ See, e.g., *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, WC Docket No. 06-109, 42 CR 463, ¶¶ 129 (Aug. 20, 2007) (“disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers”); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4696 ¶ 21 (2005) (noting that “in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications” and could give one carrier “a competitive advantage over another type of carrier . . .”); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5920 ¶ 53 (2007) (noting that the “disparate treatment” of competitors “would introduce competitive distortions into the marketplace”).

Moreover, there is no question that the relief afforded to AT&T can and must be extended to Verizon.⁶ Under section 10, the Commission “shall forbear from applying any regulation or any provision of this Act to a *telecommunications carrier* or telecommunications service, or *class of telecommunications carriers* or telecommunications services . . .,” if the three-prong forbearance test is satisfied. 47 U.S.C. § 160(a) (emphasis added). Consistent with section 10, the Commission has previously extended grants of forbearance to include similarly situated carriers other than the individual petitioning party.

For example, the Commission recently granted AT&T’s request for forbearance from the equal access scripting requirement and extended forbearance relief to all BOCs. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007). The Commission reasoned that its analysis in forbearing from the scripting requirement “would not vary for any of the BOCs,” and because the BOCs were “similarly situated with regard to the factors relevant to forbearance,” the Commission exercised its authority to grant forbearance “to BOCs as a class.” *Id.* ¶ 125.⁷

⁶ On November 26, 2007, Verizon filed a petition seeking forbearance from certain Commission rules including some of the cost assignment rules, most notably the affiliate transaction rules. *See 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. In addition, Verizon since requested that the Commission extend to Verizon all of the same relief afforded to AT&T. *See Letter from Ann Berkowitz, Verizon, to Marlene Dortch, FCC, WC Docket Nos. 07-21, 07-273, 07-204 (May 23, 2008).*

⁷ Although AT&T’s petition did not expressly request relief from the equal access scripting requirement on behalf of all the BOCs, the Commission interpreted the petition to seek such relief, since it “was couched in general terms and addresses the effect of this requirement on all

Similarly, in *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) From Application of the ISP Remand Order*, Order, 19 FCC Rcd 20179 (2004), *petition for review denied, In re Core Communications, Inc.*, 455 F.3d 267 (D.C. Cir. 2006), the Commission granted Core’s petition for forbearance from the growth caps and new market rules under the Commission’s interim compensation regime for ISP traffic. Because the “rationale” for granting forbearance “applies with equal force to other telecommunications carriers,” the Commission, on its own motion “extend[ed] the grant of forbearance with respect to those rules to all telecommunications carriers.” *Id.* ¶ 27.⁸

As explained above, the Commission’s rationale in granting forbearance to AT&T from the cost assignment rules applies with equal force to Verizon and other federal price cap carriers, and Verizon is similarly situated with regard to the factors relevant to forbearance. Consequently, consistent with section 10 and Commission precedent, the Commission can and must extend forbearance from the cost assignment rules to Verizon.

BOCs” 22 FCC Rcd 16440, at ¶ 125, n.360. Nevertheless, according to the Commission, “even if the AT&T Petition were viewed more narrowly, as a request only on its own behalf, we believe that it is reasonable to grant AT&T’s request for forbearance from the [Equal Access] Scripting Requirement and extend forbearance to the class as discussed above, given that the reasoning applies equally to all BOCs.” *Id.*

⁸ See also *PCIA’s Broadband PCS Alliance’s Petition for Forbearance For Broadband PCS*, Memorandum Opinion and Order, 13 FCC Rcd 16857, ¶¶ 62-63 (1998) (although petitioning party requested that the Commission forbear from applying to broadband PCS providers the international tariffing requirement on unaffiliated routes, the Commission found “that the forbearance we adopt here should be applied equally to all CMRS providers”).

IV. CONCLUSION

For these reasons, the Commission must grant Verizon forbearance relief from the cost assignment rules.

Respectfully submitted,

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