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

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| In the Matter of<br><br>Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules. | )<br>)<br>)<br>)<br>)<br>) | WC Docket No. 07-21 |

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**COMMENTS AND OPPOSITION OF THE**
**NEW JERSEY DIVISION OF RATE COUNSEL**

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On the Comments:
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June 26, 2008

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On April 24, 2008, the Federal Communications Commission ("FCC" or "Commission") conditionally granted AT&T's and BellSouth's (collectively AT&T) petitions for forbearance from 47 U.S.C. 220(a)(2) of the Act and various rules, including the following: 47 CFR 32.23 (nonregulated activities); 47 CFR 32.27 (transactions with affiliates); 47 CFR part 64, subpart I (allocation of costs); 47 CFR part 36 (jurisdictional separations procedures); 47 CFR part 69, subparts D and E (cost apportionment); and other related cost assignment rules. The Commission referred to the statutory provision and Commission rules from which AT&T sought forbearance collectively as the "Cost Assignment Rules." The grant was expressly conditioned on, among other things, the Wireline Competition Bureau's approval of a compliance plan to be filed by AT&T describing in detail how it will continue to fulfill its statutory and regulatory obligations.[1]

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[1]/ *In the Matter of Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the*

On May 23, 2008, Verizon filed a request with the Commission seeking comparable relief and stated, among other things:

> The Commission's rationale in granting AT&T forbearance compels extending the same relief to Verizon and Qwest. Like AT&T, Verizon and Qwest are federal price cap carriers, and thus on the federal level there is no link between Verizon and Qwest's costs and customer rates. Also like AT&T, Verizon and Qwest could file a compliance plan to address the forbearance conditions the Commission imposed in the AT&T Order.[2]

The *Verizon/Qwest Request* inappropriately seeks to "ride the coattails" of AT&T's petition and does not pass muster as a formal request for forbearance. Furthermore the *Verizon/Qwest Request* comes amidst significant regulatory and legal uncertainty about the *AT&T Order*. Last month, Sprint Nextel Corporation ("Sprint Nextel"), Ad Hoc Telecommunications Users Committee ("Ad Hoc"), Comptel, and Time Warner Telecom Inc. ("Time Warner") submitted a petition for reconsideration of the Commission's *AT&T Order*,[3] which is pending Commission review. Also, earlier this week, the National Association of State Utility Consumer Advocates ("NASUCA") appealed the Commission's *AT&T Order* in the United States Court of Appeals for the D.C.Circuit.[4] Furthermore, Time Warner, Comptel, and Sprint Nextel have recommended that the compliance plan that the Commission has required AT&T to

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*Commission's Cost Assignment Rules*, WC Docket No. 07-21, WC Docket No. 05-342, *Memorandum Opinion and Order*, rel. April 24, 2008 ("AT&T Order").

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

[3]/ In the Matter of Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21, WC Docket No. 05-342, Petition for Reconsideration filed by Sprint Nextel Corporation, Ad Hoc Telecommunications User's Committee, CompTel, and Time Warner Telecom Inc., May 27, 2008.

[4]/ *NASUCA v. FCC*, filed June 23, 2008, Case No. 08-1226.

submit be subject to public comment.[5] With this backdrop of regulatory and legal uncertainty about the Commission's AT&T forbearance order, the Commission now seeks comment on the issues raised by Verizon's request on behalf of itself and on behalf of Qwest that the Commission grant them the same forbearance as it granted on April 24, 2008 to AT&T.[6] The New Jersey Division of Rate Counsel ("Rate Counsel")[7] urges the Commission to deny Verizon's request.

The uncertain outcome of the pending motions, the fundamental departure from and jettisoning of cost assignment rules, which are of paramount importance to state and federal regulators and consumer advocates for protecting consumers from the exercise of market power, and the brevity of the *Verizon/Qwest Request* are compelling reasons for the Commission to deny the "me-too" request.[8] The existing process for forbearance petitions should not be short-circuited. Rate Counsel objects strenuously to extending the

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[5] / *Ex parte* letter from Time Warner Telecom, et al., Comptel, and Sprint Nextel, May 12, 2008. Rate Counsel concurs with the recommendation that the AT&T compliance plan should be subject to public comment.

[6] / Pursuant to notice in the *Federal Register*, initial comments are due June 26, 2008, and reply comments are due July 7, 2008. *Federal Register* Vol. 73, No. 114, Thursday, June 12, 2008, at 33430.

[7] / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996 ("Act" or "1996 Act"). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

[8] / Furthermore, the Commission has a pending proceeding regarding generic matters concerning its process for reviewing forbearance petitions, which further underscores the importance of rejecting Verizon's request. *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, FCC WC Docket No. 07-267, *Notice of Proposed Rulemaking*, FCC 07-202 (rel. November 30, 2007).

AT&T decision on a "me-too" basis to Verizon and to Qwest. Instead, the Commission should review the pending requests for forbearance based on the statutory time line.[9]

Verizon's "me-too" request is yet further evidence that forbearance requests often raise matters that potentially affect many incumbent local exchange carriers, and that, therefore, these matters would be aired more appropriately in a rulemaking informed by the recommendations of a federal-state joint board. Rate Counsel continues to urge the Commission to recognize the wide-reaching implications of forbearance petitions for consumers and for competitors in a broader forum than in a proceeding in which it examines the merits of single petitions.[10]

For the foregoing reasons, the Commission should deny the *Verizon/Qwest Request.*

Respectfully submitted,

RONALD K. CHEN
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Stefanie A. Brand
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By: *Christopher J. White*
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June 26, 2008

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[9] / 47 U.S.C. § 160(c).

[10] / Verizon's request is symptomatic of the importance of the Commission's forbearance rulemaking.