

Before the
Federal Communications Commission
Washington, DC 20554

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)	

**COMMENTS ON THE ISSUE OF
COST ASSIGNMENT FORBEARANCE
FOR VERIZON AND QWEST**

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FOR VERIZON AND QWEST**

Sprint Nextel Corporation, COMPTTEL, One Communications Corp., and Time Warner Telecom Inc.¹ (together "Commenters"), pursuant to the Public Notice released on June 6, 2008 (DA 08-1361), submit the following comments opposing the May 23, 2008 *ex parte* request of Verizon and Qwest to receive the same relief that the Federal Communications Commission ("Commission") granted AT&T in the above-referenced proceeding ("*Verizon/Qwest Ex Parte*").²

¹ Time Warner Telecom Inc. amended its Certificate of Incorporation effective March 12, 2008 to change its name to tw telecom inc. in preparation for a broader name change that will be effective July 1, 2008. The company will continue to use and be known as Time Warner Telecom Inc., its trade name, until July 1, 2008.

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 and 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 Nos. 07-21 and 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Order*), *pet. for recon pending*. The statutory provisions, Commission rules, and related ARMIS reporting requirements from which AT&T, Verizon and Qwest seek forbearance collectively will be referred to herein as the "Cost Assignment Rules."

I. INTRODUCTION AND SUMMARY

Verizon and Qwest filed the *Verizon/Qwest Ex Parte* in hopes that they could capitalize on the Cost Assignment Rule forbearance that AT&T unjustifiably received in the *AT&T Order*. The Commission immediately must reject their request and refuse to let Verizon and Qwest exploit its error. Not only does the Commission have no obligation to rubber stamp AT&T's Cost Assignment Rule forbearance relief for Verizon and Qwest, but it has a duty not to do so. This is because the *Verizon/Qwest Ex Parte* fails as a petition for forbearance both procedurally and substantively, and neither Verizon nor Qwest is similarly situated with respect to AT&T. In any event, before even considering the *Verizon/Qwest Ex Parte*, the Commission must act on the pending *Petition for Reconsideration*, which raises serious questions about the legal and factual analysis of the *AT&T Order*, and it must remedy that order's numerous defects prior to making any decision to expand its application to Verizon and Qwest.

There is no basis for extending AT&T's Cost Assignment Rule forbearance relief to Verizon and Qwest. Doing so would merely further weaken the *Section 272 Sunset Order* nonstructural safeguard framework of which the Cost Assignment Rules were a critical element. In addition, such expansion would significantly diminish the Commission's ability to monitor the effectiveness of price caps, thus making the price cap regime more vulnerable to Bell Operating Company ("BOC") anticompetitive abuse. The Commission also would lose the ability to monitor whether its pricing flexibility regime is operating effectively. Moreover, allowing Verizon and Qwest to receive the benefit of Cost Assignment Rule forbearance would further jeopardize the Commission's ability to protect consumers and competition against cross-subsidization, a clear violation of Section 254(k) of the Communications Act of 1934, as

The data the Cost Assignment Rules generate will be referred to herein as "cost assignment data."

amended (“Act”).³ Finally, permitting Verizon and Qwest to adopt the AT&T compliance plan approach would substantially increase the Commission’s administrative burden, while significantly decreasing its ability to obtain the information it needs to fulfill its statutory mandate.

II. THE COMMISSION SHOULD NOT AUTOMATICALLY RUBBER STAMP AT&T’S COST ASSIGNMENT RELIEF FOR VERIZON AND QWEST.

Verizon and Qwest are not entitled to receive the identical Cost Assignment Rule forbearance relief AT&T received. The Verizon and Qwest “request” for forbearance relief is fatally flawed both procedurally and substantively. In all events, neither Verizon nor Qwest is similarly situated with respect to AT&T; therefore, neither is entitled to AT&T’s forbearance relief.

A. Verizon and Qwest’s Forbearance Request Is Flawed in Both Form and Substance.

The Commission must not grant Verizon and Qwest the same forbearance relief that it granted AT&T in the *AT&T Order* because the *Verizon/Qwest Ex Parte* request for such relief is flawed not only in terms of form, but also in terms of substance.

1. The *Verizon/Qwest Ex Parte* is Inconsistent with the Procedural Requirements of the Commission’s Rules.

Section 1.53 of the Commission’s Rules requires that all forbearance requests be filed as separate pleadings.⁴ Specifically, Section 1.53 states that,

“[i]n order to be considered as a petition for forbearance subject to the one-year deadline set forth in 47 U.S.C. 160(c), any petition requesting that the Commission exercise its forbearance authority under 47 U.S.C. 160 shall be filed as a *separate pleading* and *shall be identified in the caption of such pleading as a petition for forbearance under 47 U.S.C. 160(c)*. Any request which is not in

³ 47 U.S.C. § 254(k).

⁴ 47 C.F.R. § 1.53.

compliance with this rule is deemed not to constitute a petition pursuant to 47 U.S.C. § 160(c), and is not subject to the deadline set forth therein.”⁵

The *Verizon/Qwest Ex Parte* cannot possibly be deemed to be a valid petition for forbearance under this rule. The filing in question is clearly labeled an “**EX PARTE**.”⁶ An *ex parte* presentation is defined as a communication that goes to the merits or outcome of a pending proceeding, not a petition in and of itself.⁷ Indeed, there is nothing on the face of the filing expressly identifying it as a petition for forbearance under Section 160(c) of the Act as specifically required under Section 1.53 of the Commission’s rules. Although the caption of the *Verizon/Qwest Ex Parte* refers to the petitions Verizon and Qwest submitted in their own respective forbearance dockets, those petitions have not been incorporated into this docket, and in any event, do not seek the identical relief that AT&T received (as discussed in greater detail below). Given that the *Verizon/Qwest Ex Parte* is styled as an *ex parte* communication, not as a separate pleading identified as a petition for forbearance under 47 U.S.C. § 160(c) as Section 1.53 of the Commission’s rules explicitly stipulates, the request fails to constitute a petition for forbearance subject to the statutory deadline.

Since the *Verizon/Qwest Ex Parte* is not a valid petition for forbearance, the Commission has no statutory obligation to consider the relief requested at all, let alone under the substantive standards and time restrictions applicable to forbearance petitions. For example, in the *AT&T Order*, the Commission recognized the value of the deliberations that rulemaking proceedings offer, but found it was hamstrung by the forbearance provisions of the Act from denying the AT&T petition “in favor of referral to the Joint Board with presumably a rulemaking to follow.”⁸

⁵ *Id.* (emphasis added).

⁶ *Verizon/Qwest Ex Parte* at 1.

⁷ See 47 C.F.R. § 1.1202(a).

⁸ *AT&T Order* at ¶ 13.

In this case, the *Verizon/Qwest Ex Parte* does not trigger the forbearance review process. Therefore, the Commission is free to follow its own advice and consider the most appropriate procedural vehicle for examining, and possibly modifying, its rules. Accordingly, the Commission can now pay heed to the pleadings of the State Members of the Federal-State Joint Board on Separations who urged the Commission to allow the Joint Board to continue its efforts, as well as those of other parties that argued that a rulemaking proceeding was a more effective and appropriate mechanism for revising the Cost Assignment Rules.

2. The *Verizon/Qwest Ex Parte* Fails to Satisfy the Substantive Requirements of Section 10 of the Act.

The *Verizon/Qwest Ex Parte* is devoid of any Section 10 forbearance standard analysis. Congress prescribed three criteria that must be satisfied before the Commission may grant a carrier forbearance from any regulation or requirement. Specifically, Section 10(a) of the Act permits forbearance only if the Commission determines that: (1) enforcement is not necessary to ensure that telecommunications rates are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest.⁹ In reviewing the public interest prong, the Commission must consider whether forbearance will enhance competition.¹⁰

The *Verizon/Qwest Ex Parte*, however, merely states that, (1) “Verizon and Qwest requested that the Commission grant the same forbearance to them,” and (2) “[t]he Commission’s rationale in granting AT&T forbearance compels extending the same relief to Verizon and Qwest” given that like AT&T, Verizon and Qwest, are federal price cap carriers and could file compliance plans to address the forbearance conditions that the *AT&T Order*

⁹ 47 U.S.C. § 160(a).

¹⁰ 47 U.S.C. § 160(b).

imposed.¹¹ These few sentences clearly do not constitute a thorough and thoughtful analysis of each of the three prongs of the Section 10 forbearance test, let alone prove that the test is satisfied.

Even if the Commission credits the conclusory assertions Verizon and Qwest made in their prior petitions for forbearance when considering whether to approve the request in their *ex parte*, the Commission must deny their present request. Denial is required because: (1) the *Verizon Petition* and *Qwest Petition* failed to provide sufficient evidence to satisfy the Section 10 forbearance standard; and (2) the request in the *Verizon/Qwest Ex Parte* expands the original forbearance requests made in the *Verizon Petition* and the *Qwest Petition*.

With respect to the first point, several Commenters, state regulatory commissions, consumer groups and many other parties have already filed oppositions in the Verizon and Qwest forbearance dockets detailing how those petitions failed to satisfy the Section 10 statutory criteria.¹²

With respect to the second point, the Commission has acknowledged that,

“although a forbearance petitioner of course may clarify or narrow the scope of a forbearance request through subsequent submissions, *it would raise difficult questions if a forbearance petitioner's subsequent submissions could enlarge the scope of its initial section 10 forbearance petition* to include whole categories of additional services like special access if they were not encompassed in its initial petition.”¹³

¹¹ *Verizon/Qwest Ex Parte* at 1-2.

¹² See WC Docket Nos. 07-273 (Verizon) and 07-204 (Qwest).

¹³ See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, 22 FCC Rcd 16304, ¶ 24, n.71 (emphasis added).

Indeed, difficult questions are raised here. In asking for the identical relief AT&T received,¹⁴ the *Verizon/Qwest Ex Parte* effectively expands the scope of the forbearance Verizon and Qwest originally requested in their respective forbearance petitions. For instance, the scope of the forbearance request in the *Verizon Petition* did not include forbearance from the separations rules, as AT&T's petition did.¹⁵ Likewise, the *Verizon/Qwest Ex Parte* expands the forbearance request in the *Qwest Petition* to include the Cost Assignment Rules from which it had not originally requested forbearance.¹⁶ Such an expansion in scope is procedurally improper and must be rejected.

Even if such an expansion were appropriate, Verizon and Qwest failed to offer any additional evidence demonstrating how they have satisfied the three-prong Section 10 forbearance standard with respect to the relief they now seek for the first time. Accordingly, the Commission must immediately reject their deficient filing.

¹⁴ See *AT&T Order* at ¶1, n. 2.

¹⁵ *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 (filed Nov. 26, 2007) (*Verizon Petition*). The *Verizon Petition* requests forbearance from: (1) the Automated Reporting Management Information System ("ARMIS") reporting rules; (2) the Commission's affiliate transaction and related rules ("affiliate transaction rules"); (3) Part 65, Subpart E and Part 69, Subparts D and E ("rate-of-return reporting rules"); and (4) the Commission's property record and related rules ("property record rules"). In addition, the *Verizon Petition* seeks limited forbearance from 47 U.S.C. § 254(k) to the extent this provision contemplates the accounting methodology for assets and services transferred or provided between an incumbent local exchange carrier ("LEC") and any of its non-regulated affiliates embodied in the Commission's affiliate transactions rules. See *id.* at n. 2 and Attachment 1.

¹⁶ *Petition of Qwest Corporation For Forbearance From Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204 (filed Sept. 13, 2007) (*Qwest Petition*). The *Qwest Petition* seeks forbearance from the ARMIS and 492A reporting requirements, which are Section 43.21(a), (d)-(k) and Sections 65.1(b)(2) and 65.600(a) and (d) of the Commission's rules and associated ARMIS orders. Qwest also seeks forbearance from Sections 43.01, 43.21, generally, and Section 69.1(c) of the Commission's rules, and Sections 4(i), (j) and 220 of the Act and any other portion of the Act, Commission rule or order to the extent necessary to relieve Qwest of ARMIS and 492A reporting requirements. See *id.* at n. 17.

B. Verizon and Qwest Are Not Similarly Situated With Respect To AT&T.

Verizon and Qwest also are not entitled to the identical forbearance relief AT&T received because they are not similarly situated with respect to AT&T. The Commission must review the unique circumstances associated with each carrier. The forbearance process was never intended to ensure that all carriers are treated equally. Instead, the forbearance review process requires examination of the forbearance criteria as applied to each particular carrier to determine whether relief is warranted under the set of circumstances exclusive to that carrier.

While Verizon and Qwest are BOCs like AT&T, that is where the similarities end. They are each different in terms of the market conditions they face, scope of operations, geographical presence, and historical context, among many other things. For example, unlike AT&T, which is not subject to rate-of-return regulation in any state, Verizon and Qwest are subject to rate-of-return regulation at the state level. Specifically, Verizon is subject to rate-of-return regulation in Washington and Oregon, and Qwest is subject to rate-of-return regulation in Montana.¹⁷ The Commission cannot ignore Verizon's and Qwest's intrastate regulatory status. The states that regulate Verizon and Qwest on a rate-of-return basis rely on the cost assignment data that are the result of the separations rules (Part 36 of the Commission's rules) to set rates directly by reference to carriers' costs.¹⁸ This aspect of Verizon and Qwest's regulation marks a major difference between them and AT&T and, as discussed below, impacts federal regulation.

¹⁷ The Washington Utilities and Transportation Commission ("WUTC") filed comments opposing the Commission's grant of cost assignment forbearance for Verizon, in part, because Verizon is rate-of-return regulated in Washington. *See* Comments of WUTC in WC Docket No. 07-273 at 3.

¹⁸ As the states, consumer groups and other parties documented in both the Verizon and Qwest cost assignment forbearance proceedings, the states (including those that regulate Verizon and Qwest under price caps) rely on the data generated from the Cost Assignment Rules to perform a wide variety of state regulatory oversight functions, such as assessing the state of local market competition, determining intrastate universal service support, examining service quality levels and evaluating unbundled network element rates.

Accordingly, Verizon's and Qwest's intrastate regulatory status must be a factor that the Commission carefully weighs and considers separately for each carrier before making its decision.

In particular, the Commission must consider the impact of state rate-of-return regulation on the federal-state separations process. In the *AT&T Order*, the Commission acknowledged that *Smith v. Illinois Bell*¹⁹ requires jurisdictional separations and concluded that AT&T could cooperate with the states to develop methods of separating costs to satisfy state needs for jurisdictional separations information.²⁰ The need for such cost assignment data is even greater in states where Verizon and Qwest are rate-of-return regulated, since in those states costs have a direct impact on rates. Without an agreed-on split between the federal and state costs, state and federal accounting costs may exceed Qwest's and Verizon's actual total company costs. Verizon and Qwest would then be able to recover the same costs twice. The separations rules prevent this from occurring. In addition, if the states are allowed to set their own allocation of costs to the state jurisdiction without regard to the separations rules, nothing prevents a state from ruling that less cost should be allocated to its state. Verizon and Qwest could then argue that a "Separations" change had occurred that required recognition in the federal price cap, and could request an exogenous increase to their interstate price caps to reflect that increased assignment of costs to the interstate jurisdiction. Since separations changes are on the list of exogenous changes,²¹ the Commission would have to determine whether this change required an exogenous adjustment to the interstate price cap indexes, and if so, to which basket the exogenous adjustment would apply.

¹⁹ *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148-52 (1930) (*Smith v. Illinois Bell*).

²⁰ *AT&T Order* at ¶ 24-5.

²¹ See 47 C.F.R. § 61.45(d)(1)(iii).

The fact that the Commission adopted a separations freeze is irrelevant. The freeze merely preserves the current state-federal allocation pending separations reform.²² Accordingly, where an incumbent local exchange carrier (“ILEC”) is subject to state rate-of-return regulation, both the Commission and the states still need jurisdictional separations to protect against the very dangers that *Smith v. Illinois Bell* and the separations rules sought to address.

Furthermore, Verizon is not similarly situated with AT&T given that it has LEC affiliates that receive federal universal service high cost loop support. In the *AT&T Order*, the Commission relied on its belief that AT&T did not receive high cost loop support as one ground for its decision to grant forbearance to AT&T.²³ Several of Verizon’s affiliates, however, do in fact receive federal high cost loop support.²⁴ Accordingly, in the case of Verizon, the data generated from Part 64 of the Cost Assignment Rules are needed to help calculate the appropriate level of high cost loop support those affiliates should receive.

Even if the Commission were to conclude that Verizon and Qwest are similarly situated with AT&T, it is not required to impose regulatory parity.²⁵ In fact, in the *AT&T Order*, the Commission expressly concluded that regulatory parity is not necessary in the case of the Cost Assignment Rules in its statement that, “[a]lthough uniform regulatory treatment for similarly

²² The Commission determined that the freeze was a “reasonable and legally stable method by which to stabilize the separations process pending further reform.” See *Jurisdictional Separations and Referral to the Federal-State Joint Board*, 16 FCC Rcd 11382, ¶ 12 (2001). The Commission believed that the frozen separations process yields a reasonable allocation of costs between state and federal.

²³ *AT&T Order* at ¶ 37.

²⁴ See USAC report, Q1 2008 High cost support projected by state by study area, Appendix HC01 (<http://www.usac.org/about/governance/fcc-filings/2008/>).

²⁵ “We do not find, however, that concerns regarding regulatory parity, standing alone, are a sufficient basis to grant forbearance under section 10.” *In the Matters of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, 22 FCC Rcd 18705, n. 185 (2007).

situated carriers is sometimes preferable, we do not think that this is the case here with regard to the Cost Assignment Rules.”²⁶ As a result, the Commission had no problem acknowledging that its decision in the *AT&T Order* “will result in a different accounting regime for AT&T than the other BOCs.”²⁷ In sum, the Commission should reject the *Verizon/Qwest Ex Parte*’s feeble attempt to assume the *AT&T Order*’s forbearance relief because it fails to satisfy procedural and substantive forbearance requirements and fails to demonstrate how Verizon and Qwest are similarly situated in this case.

III. THE COMMISSION SHOULD ACT ON THE PETITION FOR RECONSIDERATION PRIOR TO MAKING ANY DECISION ON THE VERIZON/QWEST EX PARTE REQUEST.

The Commission would serve the public interest best by ruling on the issues raised in the pending *Petition for Reconsideration* of the *AT&T Order* before it considers extending the *AT&T Order*’s relief to Verizon and Qwest. On May 27, 2008, several parties filed a *Petition for Reconsideration* asking the Commission to reconsider its flawed decision granting AT&T forbearance from the Cost Assignment Rules.²⁸ The *Petition for Reconsideration* raises several serious questions about the *AT&T Order*, which challenge the Commission’s erroneous analysis and ultimate conclusion that AT&T satisfied the Section 10 forbearance standard, thus entitling it to forbearance from the Cost Assignment Rules. Until the Commission fully reviews, considers and resolves these significant issues, the Commission must refrain from extending the *AT&T Order*’s application to additional carriers. (Since the *Verizon/Qwest Ex Parte* is not a valid petition for forbearance, the normal time pressures for deciding a forbearance petition do not apply. See Part II.A above.) Maintaining the *status quo* is less disruptive to consumers and the

²⁶ *AT&T Order* at ¶ 23.

²⁷ *Id.*

²⁸ See *Petition for Reconsideration of Sprint Nextel et al.*, WC Docket Nos. 07-21 and 05-342, (filed May 27, 2008) (*Petition for Reconsideration*).

industry as a whole than expanding a flawed order before its outstanding issues are fully resolved.

IV. EXTENDING THE RELIEF GRANTED IN THE AT&T ORDER TO VERIZON AND QWEST WOULD EXACERBATE THE PROBLEMS DESCRIBED IN THE PETITION FOR RECONSIDERATION.

The Commission's decision in the *AT&T Order* contained numerous factual errors, violated the Administrative Procedures Act ("APA"), and failed to meet the requirements of Section 10 of the Act.²⁹ Extending the application of this flawed order to Verizon and Qwest would exacerbate the many issues raised in the *Petition for Reconsideration* of the *AT&T Order* with respect to the *Section 272 Sunset Order*, price cap regulation, Section 254(k) of the Act, and the AT&T compliance plan approach and thus significantly increase the magnitude of the harm consumers and competition will suffer as a result.

A. Granting the Verizon and Qwest Ex Parte Request Would Further Eviscerate the Critical Safeguards Established in the Section 272 Sunset Order.

Granting the *Verizon/Qwest Ex Parte* would further diminish the effectiveness of the critical protections the Commission established just months ago in the *Section 272 Sunset Order*.³⁰ In that order, the Commission determined that the three BOCs -- AT&T, Verizon and Qwest -- retain exclusionary market power. The Commission determined further that the Cost Assignment Rules were an integral part of the new nonstructural safeguard framework designed to protect consumers and competitors from the BOCs' exploitation of their market power. Specifically, the Commission concluded that the "new framework is based in part on the

²⁹ *See id.*

³⁰ *In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, *Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) with Regard for In-Region, Interexchange Services*, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16556 (2007) (*Section 272 Sunset Order*).

substantial legal obligations that continue to apply to the BOCs . . . [i]n particular, . . . the Commission's accounting and cost allocation rules and related reporting requirements"³¹

The Commission found Cost Assignment Rules, in combination with other requirements, necessary to address "concerns regarding the incentives and ability of the BOCs and BOC independent incumbent LEC affiliates to use their pricing of access services, including special access services, to impede competition in the provision of in-region, long distance services."³²

Less than one year later, however, with no demonstration by AT&T or finding by the Commission of any change in competitive market conditions or any other relevant circumstances, the FCC inexplicably granted AT&T forbearance from the Cost Assignment Rules, which eradicated an essential protection from the *Section 272 Sunset Order* safeguard framework with respect to AT&T. Verizon and Qwest are now lining up to receive the same forbearance through their *Verizon/Qwest Ex Parte* request which, if granted, will gut the *Section 272 Sunset Order* framework and significantly reduce its effectiveness with respect to their operations as well. Like AT&T, neither Verizon nor Qwest has offered a scintilla of evidence that market conditions in their respective markets have changed since the Commission's decision in the *Section 272 Sunset Order* in a way that warrants forbearance from the Cost Assignment Rules. The Commission cannot grant Verizon and Qwest forbearance from Cost Assignment Rules based on this record. Doing so would mean that the Commission determined that the Cost Assignment Rules were needed as an important consumer protection for the BOCs as a group, but no BOC individually. This is clearly an absurdity. Accordingly, the Commission has no choice but to deny Verizon and Qwest's request, as it should have done for AT&T.³³

³¹ *Id.* at ¶¶ 89-90.

³² *Id.* at ¶ 105.

³³ *See Petition for Reconsideration* at 12-16.

B. Grant of the *Verizon/Qwest Ex Parte* Request Would Severely Undermine the Effectiveness of Price Caps.

The *Verizon/Qwest Ex Parte* maintains that both Verizon and Qwest are entitled to receive the same forbearance AT&T received, given that they are subject to price caps at the federal level and could file a compliance plan like AT&T.³⁴ It is true that all three BOCs are subject to federal price cap regulation. Price cap regulation, however, is not deregulation.³⁵ Therefore, the Commission has statutory responsibility to oversee the price cap regime to ensure that rates generated under price caps are just, reasonable and not unduly discriminatory pursuant to Sections 201 and 202 of the Act. As discussed at length in the *Petition for Reconsideration*, the Cost Assignment Rules are essential for the Commission to obtain the data it needs to determine if federal price caps must be recalibrated as well as to evaluate other critical regulatory reforms that will shape the future of the industry.³⁶ Forbearance will eliminate the Commission's ability not only to gauge whether price caps are functioning properly, but also to recalibrate them if they are not. Forbearance thus will render the entire federal price cap regime ineffective.

C. Grant of the *Verizon and Qwest Ex Parte* Would Further Jeopardize the Commission's Ability to Ensure Compliance Under Section 254(k).

Extending AT&T's forbearance from the affiliate transactions rules (part of the Cost Assignment Rules) to Verizon and Qwest would further jeopardize the Commission's ability to

³⁴ See *Verizon/Qwest Ex Parte* at 2.

³⁵ Moreover, in those markets where prices have been deregulated pursuant to pricing flexibility, cost assignment data is necessary to determine whether the pricing flexibility regime is working appropriately.

³⁶ See *Petition for Reconsideration* at 5-12. For example, it would deny the Commission the current data it will need to make an informed decision in the special access proceeding. See *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*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).

ensure BOC compliance with Section 254(k) of the Act. Section 254(k) provides that, “[a] telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition.”³⁷ As noted in the *Petition for Reconsideration*, given the critical importance of the Cost Assignment Rules in guarding against unlawful Section 254(k) cross-subsidization, vague compliance conditions coupled with mere certification of compliance with such conditions are insufficient to safeguard consumers and the public interest.³⁸ This rationale applies not only to AT&T, but also to Verizon and Qwest. All three companies have the same incentive and ability to engage in unlawful cross-subsidization in their respective markets. In any event, the Commission’s requirement that AT&T maintain and provide cost assignment data to prove its compliance with Section 254(k) indicates that the Commission needs the data anyway.³⁹ Therefore, the Commission has no choice but to bar the application of the faulty *AT&T Order* to Verizon and Qwest.

D. Permitting Verizon and Qwest to Adopt the AT&T Compliance Plan Approach Would Further Endanger the Public Interest.

Extending AT&T’s relief to Verizon and Qwest would result in multiple BOC-designed compliance plans, all of which would likely fail to ensure just and reasonable rates, protect consumers, and safeguard the public interest. The Commission granted AT&T forbearance from the Cost Assignment Rules on the condition that AT&T files and receives approval of a compliance plan.⁴⁰ As the *Petition for Reconsideration* explained at length, the compliance plan

³⁷ 47 U.S.C. § 254(k).

³⁸ See *Petition for Reconsideration* at 16-18.

³⁹ See *id.* at 18.

⁴⁰ *AT&T Order* at ¶ 11. AT&T’s compliance plan must include: a description of how AT&T will continue to fulfill its statutory and regulatory obligations, including those under sections 272(3)(3) and 254(k) of the Act, and the conditions of the Order; proposed procedures to ensure such compliance; a description of AT&T’s imputation methodology; AT&T’s first annual Section 254(k) compliance certification; a proposal for how it will maintain its accounting

approach is a poor substitute for the Cost Assignment Rules.⁴¹ By failing to provide specific guidance and allowing AT&T essentially to self-regulate and design its own plan, it is unlikely that this approach will generate the objective data the Commission requires to carry out its statutory oversight responsibilities. Furthermore, by making it more difficult to obtain the evidence necessary to detect and prove statutory and regulatory violations, the AT&T compliance plan approach may impede the ability of both the Commission and third parties to enforce the Communications Act and the Commission's rules effectively to the ultimate detriment of consumers and the industry at large.⁴²

In the same way, allowing Verizon and Qwest also to regulate themselves and design their own self-serving compliance plans with vague guidance from the Commission undermines the Commission's ability to satisfy its statutory mandate and widens the circle of potential harm. Like AT&T, Verizon and Qwest's shareholder obligations in combination with their exclusionary market power give them a powerful incentive to skew the design of the plan in their respective favors to the ultimate detriment of the public interest.⁴³

Moreover, extending AT&T's relief to Verizon and Qwest would make it more difficult to obtain access to and evaluate BOC cost assignment data and thus severely undermine the ability of the Commission and third parties to lodge Section 208 formal complaints and otherwise enforce the requirements of the Act effectively. Indeed, the same question with

procedures and data in a manner that will allow it to provide useable information on a timely basis if requested by the Commission; and an explanation of the transition process. *Id.* at ¶ 31.

⁴¹ See *Petition for Reconsideration* at 19-25.

⁴² See *id.* at 19-21.

⁴³ If, alternatively, the Wireline Competition Bureau, working through its delegated authority, adopts a compliance plan that is the same for all three carriers, the result will be new cost allocation rules that will be the same for all of them, just like the current Cost Assignment Rules. Unlike the current Cost Assignment Rules, however, the new cost assignment rules will have been designed only by the BOCs and the Commission, rather than by those parties plus state regulators and other parties with significant interests at stake.

respect to AT&T applies to Verizon and Qwest -- how will the Commission know if there is a violation warranting an accounting data request if it does not have the accounting data to flag the violation in the first place?⁴⁴ The answer is that the Commission will not know, and thus will be left in the dark. As a result, the Commission's ability to administer and enforce the Act will be compromised.

In sum, permitting Verizon and Qwest to take advantage of the compliance plan approach will significantly increase the Commission's administrative burden as it attempts to review, parse through and monitor three different biased compliance plans, while significantly decreasing its ability to obtain the precise data it needs to satisfy its statutory oversight responsibilities to protect consumers and competition from anticompetitive conduct. Such a result cannot possibly serve the public interest.

V. CONCLUSION

The Commission must immediately reject Verizon and Qwest's request for the identical Cost Assignment Rule forbearance relief AT&T received in the *AT&T Order*. The Commission cannot blindly grant Verizon and Qwest's request given that the *Verizon/Qwest Ex Parte* woefully fails to meet the relevant procedural and substantive forbearance requirements, and neither party is similarly situated with AT&T. In any event, the Commission's first priority must be to consider the pending *Petition for Reconsideration* and rectify the many *AT&T Order* defects identified before it even considers compounding those mistakes by expanding that order's application to additional parties. Accordingly, the Commenters respectfully urge the Commission to reject and dismiss the *Verizon/Qwest Ex Parte* immediately.

⁴⁴ See *Petition for Reconsideration* at 22.

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