Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters 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	)	WC Docket No. 07-21
	)	
Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules	)	WC Docket No. 05-342
	)	
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
	)	
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

COMMENTS OF QWEST CORPORATION

Qwest Corporation and its incumbent local exchange carrier ("ILEC") affiliates (hereafter referred to jointly as Qwest)[1] hereby submit these comments in support of Qwest's request to extend forbearance relief from the Federal Communications Commission's ("Commission") Cost Assignment Rules, which request was publicly noticed by the Commission on June 6, 2008.[2]

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[1] Qwest seeks relief for the following Qwest affiliates: Qwest Corporation, The El Paso County Telephone Company and Malheur Home Telephone Company.

[2] Public Notice, WC Docket No. 07-21, DA 08-1361, rel. June 6, 2008. *And see* Verizon *ex parte* letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from Ann Berkowitz, Verizon (May 23, 2008).

I. INTRODUCTION AND SUMMARY

On April 24, 2008, the Commission conditionally granted AT&T's and BellSouth's (collectively, "AT&T") petitions for forbearance from Section 220(a)(2) of the Act (to a limited extent) and various Commission rules including Cost Assignment Rules (hereafter, the "*Cost Assignment Forbearance Order*").[3] Qwest is similarly situated to AT&T with respect to the issues presented by and the relief granted in the *Cost Assignment Forbearance Order*. As such, the Commission should grant the same forbearance relief to Qwest. In the *Cost Assignment Forbearance Order*, the Commission granted AT&T forbearance relief from the Cost Assignment Rules because it found that AT&T had demonstrated that forbearance from enforcing the Cost Assignment Rules satisfies the three-part standard for forbearance under Section 10 of the Act. The Commission's findings and rationale in granting AT&T forbearance apply equally to Qwest and compels extending the same relief to Qwest.

II. QWEST IS SIMILARLY SITUATED TO AT&T WITH RESPECT TO THE FINDINGS AND RATIONALE UNDERLYING THE *COST ASSIGNMENT FORBEARANCE ORDER*

As demonstrated below, Qwest is similarly situated to AT&T with respect to the entirety of the findings and rationale underlying the Commission's grant of forbearance relief in the *Cost Assignment Forbearance Order*:

No federal need. In the *Cost Assignment Forbearance Order*, the Commission found that AT&T was a price cap carrier not generally subject to rate-of-return regulation for its

[3] The statutory provision and relevant rules at issue in the *Cost Assignment Forbearance Order* are referred to collectively as the "Cost Assignment Rules." *See 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*, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008), *pet. for recon. pending, pet. for review pending sub nom. NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. June 23, 2008).

interstate rates.[4] The Commission acknowledged that it had previously found that "price cap regulation severs the direct link between regulated costs and prices."[5] These findings were, in turn, key to the Commission's finding that "there is no current, federal need for the Cost Assignment Rules, as they apply to AT&T, to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest."[6] Qwest is also a price cap carrier not generally subject to rate-of-return regulation for its interstate rates and therefore is similarly situated to AT&T with respect to these findings. There is no current federal need for the Cost Assignment Rules as they apply to Qwest.

Costs and benefits. The Commission also found that the Cost Assignment Rules impose costs that outweigh their benefits.[7] The Commission opined that those costs likely distort the market by diverting resources that would otherwise be directed to "positive activities that generate consumer benefit" and that the Cost Assignment Rules could negatively affect

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[4] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7306-07 ¶ 10, 7311 ¶ 16.

[5] *Id.* at 7305-06 ¶ 8 and n.23 (citing *In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards,* Report and Order, 6 FCC Rcd 7571, 7596 ¶ 55 (1991), *vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1995)). *See also*, *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14925-26 ¶¶ 131-34 (2005), *aff'd, Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007) (finding that price cap ratemaking obviated the need for cost allocation and recognizing the complexity of cost allocation and burden and lack of a corresponding benefit). *See also*, *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990), *aff'd, Nat'l. Rural Telecom Ass'n v.* FCC, 988 F.2d 174 (D.C. Cir. 1993), and *In the Matter of Access Charge Reform, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45,* 15 FCC Rcd 12962 (2000), *aff'd in part, rev'd in part, and remanded, Texas Office of Pub. Util. Counsel v. FCC*, 265 F.2d 313 (5th Cir. 2001), *cert. denied*, 525 U.S. 986 (2002), *on remand*, 18 FCC Rcd 14976 (2003).

[6] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307 ¶ 11.

[7] *Id.* at 7322 ¶ 36.

"innovation, efficiency and competitiveness" of services provided to consumers.[8] The Commission found, by way of example, that AT&T's competitors are able to quickly bring to market new product offerings because they are not subject to the Cost Assignment Rules.[9] Similarly, the Commission found that the Cost Assignment Rules are an overbroad means of eliminating any risk of cost misallocation and price discrimination in today's market and "pose significant adverse consequences -- in terms of competition and financial costs -- that outweigh any potential benefits … given the protections afforded to consumers and competition by remaining safeguards and conditions."[10] The Commission also found that the Cost Assignment Rules required AT&T to direct considerable financial and personnel resources "to utilize a complex hierarchy to track, value and record affiliate transactions, to allocate costs of regulated and non-regulated services, to maintain, update and audit its Cost Allocation Manual, to jurisdictionalize intra and interstate costs and to apportion interstate costs to interstate service baskets . . . ."[11] As a result, the Commission found that the likely savings to AT&T by elimination of the rules supported a forbearance finding.[12] All of these findings apply equally to Qwest.[13]

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[8] *Id.*

[9] *Id.* at 7325 ¶ 42.

[10] *Id.* at 7326 ¶ 44.

[11] *Id.* at 7325-26 ¶ 43 (citing AT&T estimates that that it spends $1.7 million per year on an outside auditor just to audit its CAM and that legacy AT&T spends approximately $7 million annually in employee-related systems and audit costs associated with these activities to ensure compliance with these requirements.)

[12] *Id.*

[13] Indeed, Qwest is subject to the very same complex hierarchy of activities necessitated by the Cost Assignment Rules and detailed in the AT&T Inc Petition for Forbearance, WC Docket No. 07-21, filed Jan. 25, 2007 at 5-19.

Competition. The Commission also relied, in the *Cost Assignment Forbearance Order*, on its finding that "flourishing competition increasingly constrains prices."[14] It cited data that applies equally to Qwest.[15]

No other reason precluding forbearance. Finally, in the *Cost Assignment Forbearance Order,* the Commission expressly found: 1) that the Cost Assignment Rules were "unnecessary in determining whether [AT&T]'s rates are just, reasonable, and not unjustly or unreasonably discriminatory;"[16] 2) that forbearance was not precluded by the requirements of *Smith v. Illinois*[17] with respect to jurisdictional separations;[18] 3) that forbearance was not in conflict with the Commission's recent decision in the *Section 272 Sunset Order;*[19] 4) that forbearance was not precluded by the requirements of Section 272(e);[20] 5) that the Cost Assignment Rules are not

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[14] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7312 ¶ 18.

[15] *Id.* n.63 (citing market data submitted from, among other parties, Qwest).

[16] *Id.* at 7311 ¶ 17 (noting that interstate rates are not based on cost under price cap regulation), *id.* at 7312 ¶ 18 (noting that price cap regulation of AT&T's interstate rates will remain in place to continue to protect consumers), *id.* at 7312-13 ¶ 19 (noting elimination of requirement that price cap LECs "share" earnings above specified levels, that the low-end adjustment mechanism is no longer generally applicable to AT&T and that the productivity factor has been eliminated).

[17] *Smith v. Illinois Bell*, 282 U.S. 133, 150-51 (1930).

[18] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7316-17 ¶¶ 24-25.

[19] *Id.* at 7317-18 ¶¶ 26-27. *See In the Matter of 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*, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16486-87 ¶¶ 93-94 (2007) ("*Section 272 Sunset Order*").

[20] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7318 ¶ 28 (agreeing with AT&T that "[t]he maintenance of the elaborate and pervasive blanket of regulations at issue in the instant AT&T petitions would constitute a substantially overbroad method of ensuring section 272(e) compliance."). The Commission noted that AT&T will continue to report its imputation data as required by the *Section 272 Sunset Order* based on the imputation methodology approved in its compliance plan and that AT&T's compliance plan must describe how it will account for imputed tariff rates given the grant of the requested forbearance from Section 32.5280(b) and (c)

necessary to prevent cross-subsidies between competitive and noncompetitive services as required by Section 254;[21] 6) that the Commission had no authority to deny forbearance in order to maintain regulatory burdens that may produce information helpful to state commissions solely for intrastate regulatory purposes;[22] 7) that the Cost Assignment Rules need not be retained for universal service purposes;[23] 8) that the Cost Assignment Rules were not necessary to protect consumers by ensuring the integrity of AT&T's financial records through financial transparency or accountability;[24] and 9) that the Cost Assignment Rules were not necessary because of the speculative possibility that the resulting data may possibly be useful in pending or future rulemaking proceedings.[25] Each of these findings and the rationale underlying each also applies with equal force to Qwest.

Compliance plan condition. Finally, the Commission found that any lingering concerns it had about the forbearance relief granted in the *Cost Assignment Forbearance Order* were addressed by the fact that it conditioned the relief on the provision by AT&T of accounting data on request by the Commission for its use in rulemakings, adjudications or for other regulatory

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of the Commission's rules. If granted the same relief, Qwest would be subject to the same obligations.

[21] *Id.* at 7319 ¶ 30. The Commission conditioned the forbearance grant on annual certification by AT&T that it will comply with its obligations under Section 254(k) in the absence of the Cost Assignment Rules, and will maintain and provide any requested cost accounting information necessary to prove such compliance. If granted the same relief, Qwest would be subject to the same obligations.

[22] *Id.* at 7320-21 ¶ 32. In making this finding, the Commission ruled it was unnecessary to resolve a factual dispute as to whether or not states did rely on AT&T data created pursuant to the Cost Assignment Rules for ratemaking or other purposes.

[23] *Id.* at 7322-23 ¶ 37.

[24] *Id.* at 7323-24 ¶ 38 (finding that GAAP, Securities and Exchange Commission, Sarbanes-Oxley Act, and other financial accounting and reporting requirements will be unaffected by forbearance).

[25] *Id.* at 7326-27 ¶ 45.

purposes and by the requirement that AT&T submit and obtain approval of a compliance plan that will, among other things, explain how it would satisfy this condition.[26]

III. QWEST SEEKS THE SAME RELIEF AS THAT GRANTED TO AT&T AND WOULD BE SUBJECT TO THE SAME CONDITIONS IMPOSED ON AT&T IN THE *COST ASSIGNMENT FORBEARANCE ORDER*

Qwest seeks the same relief as that granted to AT&T and would be subject to the same conditions imposed on AT&T in the *Cost Assignment Forbearance Order*. Qwest seeks forbearance from the statutory provisions and Commission rules described in Paragraph 12 of the *Cost Assignment Forbearance Order:*

- limited forbearance from Section 220(a)(2) of the Act to the extent that this provision contemplates separate accounting of nonregulated costs.

- forbearance from various Commission rules including the following: Section 32.23 (nonregulated activities); Section 32.27 (transactions with affiliates); Part 64 Subpart I, including the requirement to file Cost Allocation Manuals (CAMs) (citing 47 C.F.R. § 64.903) (allocation of costs); Part 36 (jurisdictional separations procedures); Part 69, Subparts D and E (cost apportionment); and other related rules that are derivative of or dependent on the foregoing rules (*see, e.g.*, 47 C.F.R. §§ 32.23, 32.27, Part 64 Subpart I, Part 36, Part 69 Subparts D and E, Attachment 1 of the AT&T Petition (listing each rule from which Legacy AT&T sought forbearance) and Attachment 1 to the BellSouth Petition (listing each rule from which Legacy BellSouth sought forbearance)).

- forbearance from four of the Commission's reporting requirements -- the Access Report (ARMIS 43-04), the Rate of Return Monitoring Report (FCC Form 492), the Reg/Non-Reg Forecast Report (FCC Form 495A) and the Reg/Non-Reg Actual Usage Report (FCC Form 495B).[27]

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[26] *Id.* at 7314-15 ¶ 21. *See also id.* at 7315 ¶ 22, 7318-20 ¶¶ 29, 30, 31, 7322-23 ¶ 37 and 7326-27 ¶ 45.

[27] *Id.* at 7307-08 ¶ 12.

Similarly, before it would obtain the benefit of this forbearance relief, Qwest will be subject to the obligations imposed on AT&T in the *Cost Assignment Forbearance Order* such as the condition that they file and gain approval of a compliance plan as described above.[28]

IV. FORBEARANCE FROM ENFORCING THE COST ASSIGNMENT RULES AS TO QWEST SATISFIES THE SECTION 10 FORBEARANCE STANDARD

The above analysis demonstrates unequivocally that forbearance from enforcing the Cost Assignment Rules as to Qwest also satisfies the Section 10 forbearance standard. As demonstrated above, Qwest is similarly situated to AT&T with respect to the entirety of the findings and rationale underlying the Commission's grant for forbearance relief in the *Cost Assignment Forbearance Order*. Those findings were the basis of the Commission's conclusion in the *Cost Assignment Forbearance Order* that AT&T demonstrated that forbearance from the Cost Assignment Rules satisfies Section 10. It follows that the Commission should extend that same forbearance relief to Qwest. In light of the above, there is clearly no strong connection between the Cost Assignment Rules and Qwest's interstate rates as price cap carriers and, as the Commission found for AT&T, the Cost Assignment Rules are not otherwise necessary in determining whether Qwest's rates are just, reasonable, and not unjustly or unreasonably discriminatory.[29] The above findings also demonstrate that, as the Commission found with respect to AT&T, continued enforcement of the Cost Assignment Rules against Qwest is not necessary to protect consumers.[30] Finally, the above findings demonstrate that, as the

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[28] *See also id.* at 7305-06 nn. 20 and 21.

[29] *See id.* at 7310-22 ¶¶ 15-35 (discussing, in connection with this forbearance criteria, in addition to the absence of a federal need, the conditions that will continue to apply after forbearance and the Commission's findings that the host of issues posited by opponents as roadblocks to forbearance failed to hold water).

[30] *See id.* at 7322-24 ¶¶ 36-38 (discussing in particular, in connection with this criteria, the potential impact on universal service and the fact that GAAP, Securities and Exchange

Commission found with regard to AT&T, forbearance from enforcing the Cost Assignment Rules against Qwest is consistent with the public interest.[31]

V. SECTION 10 REQUIRES THE COMMISSION TO EXTEND FORBEARANCE FROM THE COST ASSIGNMENT RULES TO QWEST

Section 10 requires that the Commission forbear from applying any provision of the Act or the Commission's rules if the Commission determines that the forbearance requirements of Section 10 are satisfied.[32] Section 10 does not require carriers to file petitions requesting forbearance.[33] Previously, in granting forbearance petitions, the Commission has extended forbearance to similarly situated carriers without requiring carriers to file "me too" petitions. The only issue in extending forbearance was whether a carrier was similarly situated to the petitioner initially requesting forbearance. For example, in the *Section 272 Sunset Order*, the Commission extended relief from the equal access scripting requirements to Qwest and Verizon.[34] In doing so, the Commission found that "[its] analysis of the EA Scripting Requirement would not vary for any of the BOCs" and that the BOCs were "similarly situated with regard to the factors relevant to forbearance."[35] Because of this, the Commission exercised

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Commission, Sarbanes-Oxley Act, and other financial accounting and reporting requirements will remain after forbearance).

[31] *See id.* (discussing in particular, in connection with this criteria, the Commission's cost-benefit analysis with respect to the Cost Assignment Rules and the contention by opponents that the Cost Assignment Rules produced data that was needed for other open proceedings).

[32] 47 U.S.C. § 160(a) (1)-(3).

[33] Qwest has filed a forbearance petition addressing, among other Commission rules, some of the Cost Assignment Rules -- specifically, the reporting requirements described above. *See* 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.

[34] *Section 272 Sunset Order*, 22 FCC Rcd at 16501 ¶ 125.

[35] *Id.*

its authority under Section 10 to forbear from applying this requirement to BOCs as a class.[36] The Commission also cited other instances where it had extended forbearance relief on its own motion to similarly situated carriers.[37] Thus, as a similarly situated price cap carrier, there is no question that the Commission has the authority to extend forbearance from the Cost Assignment Rules to Qwest. Indeed, as long as it satisfies the conditions that the Commission required AT&T to satisfy in the *Cost Assignment Forbearance Order*, Section 10 requires the Commission to extend forbearance from the Cost Assignment Rules to Qwest.

VI. CONCLUSION

For the reasons stated above, Qwest requests that the Commission take the action described herein.

QWEST CORPORATION

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[36] *Id.*

[37] *Id.* at n. 360.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION** to be: 1) filed via ECFS with the Office of the Secretary of the FCC in WC Docket Nos. 07-21, 05-342, 07-273 and 07-204; and 2) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

June 26, 2008