Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Petition of AT&T Inc. for Forbearance	)	
Under 47 U.S.C. § 160(c) From Enforcement	)	**WC Docket No. 07-21**
of Certain of the Commission's Cost	)	
Assignment Rules	)	

COMMENTS OF EMBARQ

I. INTRODUCTION

The Commission can and should deregulate whenever it has the opportunity to do so without harming consumers. This is a central premise of the Telecommunications Act of 1996, and the competition and deregulation it has brought about have benefitted consumers tremendously. Industry investment, particularly in broadband networks, has changed the telecommunications marketplace markedly. Consumers today have a choice of service providers, of technologies, and of services few would have imagined in 1996.

In this proceeding, the Commission has an opportunity to extend this progress quickly and relatively effortlessly. Two months ago, the Commission issued an order[1] granting petitions filed by AT&T and BellSouth seeking limited forbearance from section

[1] *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 Nos. 07-21, 05-342, Memorandum Opinion and Order, FCC 08-120 (rel. Apr. 24, 2008), *pet. for recon. pending* ("AT&T Forbearance Order").

220(a)(2) of the Act[2] and the Commission's Cost Assignment Rules. Those rules included section 32.23 (non-regulated activities), section 32.27 (transactions with affiliates), Part 64, Subpart I (cost allocation), Part 36 (jurisdictional separations procedures), Part 69, Subparts D and E (cost apportionment), and other related rules that derive from or are dependent upon them.[3] The grant was conditioned on Wireline Competition Bureau review and approval of a compliance plan by AT&T showing how it will continue to meet statutory and regulatory obligations.[4]

Other incumbent local exchange carriers ("ILECs") have sought to point out to the Commission must extend forbearance from enforcement of these Cost Assignment Rules to other ILECs -- indeed to all price cap ILECs. Verizon and Qwest, in particular, have asked the Commission to grant the same forbearance to their ILECs.[5] On June 6, 2008, the Commission issued a public notice, subsequently published in the *Federal Register*, which invited comment on Verizon's and Qwest's request.[6]

The Embarq Local Operating Companies ("Embarq")[7] agree with Verizon and Qwest that the Commission's conclusions that led to granting AT&T forbearance from the Cost Assignment Rules to AT&T also compel extending the same forbearance relief

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[2] 47.U.S.C. § 220(a)(2).

[3] *AT&T Forbearance Order* at ¶ 6. *See* 47 C.F.R. § 32.23; § 32.27; Part 64, Subpart I; Part 36; Part 69, Subparts D and E.

[4] *Id.* at ¶ 31.

[5] Letter from Ann Berkowitz, Verizon, to Marlene Dortch, FCC, WC Docket Nos. 07-21, 07-273, 07-204 (filed May 23, 2008) ("Verizon/Qwest Letter").

[6] Public Notice, DA 08-1361 (rel. June 6, 2008); Comment Sought on Request of Verizon and Qwest to Extend Forbearance Relief From Cost Assignment Rules, 73 Fed. Reg. 33,430 (June 12, 2008); Public Notice, DA 08-1402 (rel. June 12, 2008).

[7] The Embarq Local Operating Companies are listed in Attachment A.

to Verizon and Qwest. Indeed, the Commission's reasoning in the AT&T Forbearance Order compels extending the same forbearance relief to all price cap ILECs, including Verizon, Qwest, and independent ILECs like Embarq. The Commission should, therefore, extend forbearance to all ILECs on its own initiative, as section 10(a) calls on it to do.[8] To the degree federal price cap ILECs face any subtle differences in circumstances, the public interest and consumers would be better served by addressing those in individual compliance plans.

I. THE COMMISSION RIGHTLY GRANTED FORBEARANCE TO AT&T.

In that order, the Commission rightly found "[a]n integral part of the 'pro-competitive, de-regulatory national policy framework' established in the Act is the requirement, set forth in section 10, that the Commission forbear from applying any provision of the Act, or any of the Commission's regulations, if the Commission makes certain findings with respect to such provisions or regulations."[9] As the Commission explained, forbearance is mandatory where section 10's criteria have been met.

Reviewing the petitions, the Commission determined that (1) enforcement of the regulation is not necessary to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public

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[8] 47 U.S.C. § 160(a).

[9] *AT&T Forbearance Order* at ¶ 10, *quoting* Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996) *and citing* 47 U.S.C. § 160(a).

interest.[10] The Commission also determined, pursuant to section 10(b), that forbearance would promote competitive market conditions.[11]

In conducting its analysis of the Cost Assignment Rules, the Commission concluded "that there is no current, federal need for the Cost Assignment Rules, as they apply to AT&T."[12] That finding, the Commission recognized, compelled forbearance. The Commission found that the rules are not necessary to ensure just and reasonable rates, because AT&T is subject to price cap regulation, which has eliminated any "direct link between regulated costs and prices."[13]

The Commission acknowledged that some state commissions, opposing AT&T's and BellSouth's petitions, had argued that they may rely on parts of the Commission's cost assignment process and reporting. But the Commission recognized that it "do[es] 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."[14]

In today's price cap environment, however, the Commission has continued to maintain regulatory burdens on many ILECs that no longer serve federal purposes, even if some states may believe these federal regulations are useful for state regulators. The

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[10] *AT&T Forbearance Order* at ¶¶ 15, 36, 39.

[11] *Id.* at ¶ 39.

[12] *Id.* at ¶ 11.

[13] *Id.* at ¶ 11.

[14] *Id.* at ¶ 32.

transition to federal price cap regulation has long since been completed. Cost assignment rules and reporting requirements, however, have remained unchanged. The Commission rightly granted forbearance to AT&T, and the conditions attached to the grant address the concerns of state commissions. In addition, all ILECs value their relationships with state regulators, and AT&T "committed to work with the state commissions in its in-region territory to address state needs."[15] Certainly, Embarq would do the same.

III. THE COMMISSION SHOULD GRANT THE SAME CONDITIONAL FORBEARANCE TO ALL OTHER FEDERAL PRICE CAP ILECS.

Verizon and Qwest correctly pointed out that, like AT&T, Verizon and Qwest are subject to federal price cap regulation exclusively, and therefore there is no link between their costs and their rates to customers.[16] Embarq is in the same situation; it no longer has any properties subject to federal rate of return regulation. Therefore, Verizon, Qwest, and Embarq are all similarly situated to AT&T. Indeed, any ILEC wholly within the federal price cap regime is similarly situated.

Verizon and Qwest also explained that, again like AT&T, they could file compliance plans, subject to Wireline Competition Bureau review and approval, to address the forbearance conditions that the Commission included in the *AT&T Forbearance Order*.[17] Embarq likewise could provide a detailed compliance plan to address each of the same conditions included in the *AT&T Forbearance Order.*[18]

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[15] *Id.* at ¶ 34

[16] *Verizon/Qwest Letter* at 1.

[17] *Verizon/Qwest Letter* at 2.

[18] *AT&T Forbearance Order* at ¶ 31.

Granted, there could be reasons that one compliance plan may differ from another, or that one ILEC may take longer time to transition from existing Cost Assignment Rules and associated accounting and reporting practices. Conceivably, an ILEC may continue following some or all of the Cost Assignment Rules for a period of time. That does not make an ILEC any less a member of the class of telecommunications carriers for which forbearance has been found to be justified.

The Commission should grant relief from the Cost Assignment Rules to all similarly situated carriers, including Verizon, Qwest, and Embarq -- and any other carrier subject exclusively to federal price cap regulation that in the future would file a compliance plan acceptable to the Bureau. It should be inconceivable that forbearance should be limited just to AT&T, or just to Bell Operating Companies.

Indeed, forbearance is most compelling for independent ILECs like Embarq. Embarq is a small fraction of AT&T's size.[19] Embarq is not an integrated carrier,[20] and it is chiefly rural.[21] The economic burden of unnecessary federal regulations therefore weighs even more heavily on Embarq than on AT&T. As a chiefly rural ILEC, Embarq appreciates that any dollar needlessly spent on regulatory accounting and reporting is a dollar not available to invest in its network or in extending broadband to rural America.

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[19] AT&T's market capitalization is $205 billion, compared to Embarq's $6.7 billion.

[20] Embarq has no major facilities-based long distance or wireless affiliates.

[21] Embarq is a rural carrier, as defined in the Act, in seventeen of the 18 states in which it provides service. Embarq is non-rural only in Nevada, where it serves the Las Vegas metropolitan area.

IV. THE COMMISSION HAS A STATUTORY DUTY TO FORBEAR FROM OUTDATED REGULATORY REQUIREMENTS.

Under section 10(a), the Commission has a statutory obligation to "forbear from any regulation or any provision of [the Act] to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets," if the Commission finds that section 10 standards are met.[22] Where the Commission has found that forbearance standards are met for one carrier, and that forbearance must be granted, certainly the Commission has an obligation under section 10 to forbear from applying the same regulation or provision to other carriers in the same class when they are similarly situated.

The obligation to forbear from outdated regulation is not limited to the Commission's review and grant of forbearance petitions filed by any individual telecommunications carrier(s) under section 10(c). Forbearance is plainly appropriate for others in the same class of telecommunications carriers, providing the same telecommunications services. Indeed, Congress directed the Commission to forbear from outdated and "unnecessary" regulations *even without a formal petition from any carrier* -- which must mean that the Commission should do so without a further petition by other carriers in the very same class. If the Commission determines (1) that enforcement is not necessary to ensure charges, practices, classifications, or regulations by a carrier are just and reasonable and not unjustly or unreasonably discriminatory; (2) that enforcement is

[22] 47 U.S.C. § 160(a).

not necessary to protect consumers; and (3) that forbearance is consistent with the public interest, then "the Commission shall forbear from applying [that] regulation...."[23]

In the *AT&T Forbearance Order*, the Commission appropriately made each of those findings with respect to AT&T. The Commission recognized that "the Cost Assignment rules developed at a time when ILEC rates were regulated based on their costs." The rules were meant to be temporary, during the transition from rate-of-return regulation to a competitive, price cap environment. In its public interest review, the Commission appropriately concluded that conditional forbearance from these outdated cost assignment rules would serve to promote competition.[24]

V. CONCLUSION

In 1996, Congress adopted section 10 to allow carriers to seek forbearance from outdated regulations and directed the Commission to look for opportunities to reduce the costs and burdens of unnecessary regulations for any class of telecommunications carriers. Congress also instructed the Commission to look for all opportunities, including regulatory forbearance on its own initiative, to reduce barriers to infrastructure investment.[25]

The Commission has rightly found that the Cost Assignment Rules warrant conditional forbearance for AT&T. Like AT&T, Verizon, Qwest, and Embarq have long since completed their transition to federal price cap regulation. They are indisputably

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[23] 47 U.S.C. §§ 160(a), 160(a)(1)-(3).

[24] *AT&T Forbearance Order* at ¶ 39.

[25] 47 U.S.C. § 157 nt.

within the same "class of telecommunications carrier" as AT&T, they provide the same "class of telecommunications services," and are the same regulatory position. It is only appropriate that the Commission extend the same conditional forbearance to all similarly situated ILECs.

For the reasons set out in the *AT&T Forbearance Order*, the Commission should extend that same conditional forbearance to Verizon, Qwest, and Embarq -- indeed to all federal price cap ILECs.

Respectfully submitted,

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APPENDIX A

EMBARQ LOCAL OPERATING COMPANIES

Central Telephone Company d/b/a Embarq
Central Telephone Company of Texas, Inc. d/b/a Embarq
Central Telephone Company of Virginia d/b/a Embarq
Embarq Florida, Inc.
United Telephone Company of Indiana, Inc. d/b/a Embarq
United Telephone Company of Eastern Kansas d/b/a Embarq
United Telephone Company of Kansas d/b/a Embarq
United Telephone Company of Southcentral Kansas d/b/a Embarq
United Telephone Company of Southeast Kansas d/b/a Embarq
Embarq Minnesota, Inc.
Embarq Missouri, Inc.
Carolina Telephone and Telegraph Company LLC d/b/a Embarq
United Telephone Company of the West d/b/a Embarq
United Telephone Company of New Jersey, Inc. d/b/a Embarq
United Telephone Company of Ohio d/b/a Embarq
United Telephone Company of the Northwest d/b/a Embarq
The United Telephone Company of Pennsylvania LLC d/b/a Embarq
United Telephone Company of the Carolinas LLC d/b/a Embarq
United Telephone Southeast LLC d/b/a Embarq
United Telephone Company of Texas, Inc. d/b/a Embarq