

**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 from Enforcement of Certain)	WC Docket No. 07-21
of the Commission’s Cost Assignment Rules.)	
)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
OPPOSING FORBEARANCE FOR VERIZON AND QWEST**

On April 24, 2008, the Federal Communications Commission (“Commission” or “FCC”) granted, with conditions, an AT&T Inc. (“AT&T”) petition requesting forbearance from enforcement of certain of the Commission’s cost assignment rules.¹ On May 23, 2008, Verizon filed an ex parte letter on behalf of itself and Qwest asking “that the Commission grant the same forbearance to them.”²

In response to an FCC Public Notice,³ comments opposing the Verizon/Qwest Request were filed by the National Association of State Utility Consumer Advocates (“NASUCA”), NASUCA member New Jersey Division of Rate Counsel (“Rate Counsel”), the Ad Hoc Telecommunications Users Committee (“Ad Hoc”), and jointly by Sprint Nextel Corporation, T-Mobile USA, Inc., COMPTEL, and Time Warner Telecom Inc. (“Joint Competitors”). Not

¹ Memorandum Opinion and Order, FCC 08-120 (rel. April 24, 2008) (“*AT&T Cost Allocation Forbearance 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 Public Notice, DA 08-1402 (rel. June 12, 2008), stating that initial comments were due June 26, 2008, with reply comments due July 7, 2008.

surprisingly, comments supporting the request were filed by Verizon and Qwest themselves.⁴ Embarq filed comments requesting that it and other “similarly situated” incumbent local exchange carriers (“ILECs”) be granted forbearance as well.

NASUCA’s comments stressed that it would be substantially premature to grant forbearance to Verizon or Qwest (or any other ILEC, for that matter), because of 1) NASUCA’s appeal of the *AT&T Cost Allocation Forbearance Order*⁵; 2) the informal nature of Verizon’s and Qwest’s request⁶; 3) the pending Petition for Reconsideration of the *AT&T Cost Allocation Forbearance Order*⁷; and the uncertainties regarding AT&T’s compliance plan.⁸ These concerns are shared by Joint Competitors,⁹ Ad Hoc,¹⁰ and Rate Counsel.¹¹ Joint Competitors also show that Verizon and Qwest are not similarly situated to AT&T.¹²

Verizon’s comments do not help its cause. Verizon merely parrots the findings of the *AT&T Cost Allocation Forbearance Order*, and does not address the concerns of the Petition for Reconsideration. Verizon also argues that the Commission is **required** to extend forbearance,¹³ which merely highlights the anarchic regime created by the lack of procedural rules for the

⁴ The New York Department of Public Service filed comments requesting the ability to review Verizon’s compliance plan if Verizon is granted forbearance.

⁵ *National Association of State Utility Consumer Advocates v. FCC*, D.C. Cir. Case No. 08-1226 (filed June 23, 2008).

⁶ This is not cured by the filing of comments by Verizon and Qwest.

⁷ Petition for Reconsideration filed by Sprint Nextel Corporation, Ad Hoc Telecommunications User’s Committee, CompTel, and Time Warner Telecom Inc. (May 27, 2008).

⁸ Ex parte letter by Time Warner Telecom, et al., COMPTTEL, and Sprint Nextel (May 12, 2008) at 1 (footnote omitted).

⁹ See, e.g., Joint Competitors Comments at 4 (informal nature of Verizon/Qwest Request) and 11 (regarding Petition for Reconsideration).

¹⁰ See, e.g., Ad Hoc Comments at 1 (same).

¹¹ See, e.g., Rate Counsel Comments at 2 (informal nature of the request).

¹² Joint Competitors Comments at 8-11.

¹³ Verizon Comments at 5-6.

forbearance process.¹⁴ Verizon's claim that the cost allocation rules unfairly apply only to incumbent local exchange carriers overlooks those carriers -- AT&T's (and Verizon's, and Qwest's, and Embarq's) -- continued market dominance.¹⁵

For its part, Qwest also repeats the findings in the *AT&T Cost Allocation Forbearance Order*.¹⁶ Qwest also argues that the Commission is required to extend forbearance to Qwest, but like Verizon, cites no authority for that proposition.¹⁷

Embarq's comments are little different, other than the request to extend forbearance to Embarq "and any other carrier subject exclusively to federal price cap regulation that in the future would file a compliance plan acceptable to the [Wireline Competition] Bureau."¹⁸ Yet Embarq's comments also highlight why such an action would be inappropriate:

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.¹⁹

A review of each company's situation is clearly needed, and companies should not be able to pick and choose which rules they will follow, making a blanket grant of forbearance unjust and unreasonable.

¹⁴ The situations identified by Verizon (id. at 7-8; see also Qwest Comments at 9-10) where the Commission has expanded forbearance beyond the requesting carrier are not apposite, especially given the challenges to the *AT&T Cost Allocation Forbearance Order*.

¹⁵ See Ad Hoc Comments at 3; Joint Competitors Comments at 12.

¹⁶ Qwest Comments at 2-7.

¹⁷ Id. at 9-10. Qwest asserts that 47 U.S.C. § 160 "does not require carriers to file petitions requesting forbearance," but asserts that it has done so. Id. at 9 and n.33. Yet the requests in the cited Qwest Petition, filed in WC Docket 07-204, do not match the relief granted in the *AT&T Cost Allocation Forbearance Order*.

¹⁸ Embarq Comments at 6.

¹⁹ Id.

Ad Hoc refers to a Verizon statement in WC Docket 05-337 and CC Docket 96-45 as an object lesson, pointing out that

[w]hether a carrier's incentive is to obtain greater USF high cost support, to cross-subsidize competitive and/or unregulated services from regulated and/or de facto monopoly services, to avoid rate decrease prescriptions for special access service, to avoid adjustments to price cap formulae, or to accomplish other objectives that may be in the carrier's interest but not in the public interest, Verizon's statement acknowledges that carriers have the ability and incentive to demonstrate the costs needed to accomplish a given objective. Indeed, given the context within which it was made, Verizon's statement seems reasonably to imply that carriers may have an incentive at least to select data and methods that further their interests, whether or not the data present a fully accurate picture.²⁰

The *AT&T Cost Allocation Forbearance Order* creates a dangerous precedent that should not be extended to other carriers. The Verizon/Qwest Request should be denied.

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²⁰ Ad Hoc Comments at 2-3.