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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

REPLY OF QWEST CORPORATION

FILED/ACCEPTED
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Office of the Secretary

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REPLY OF QWEST CORPORATION

Qwest Corporation ("Qwest")[1] hereby submits this reply to comments on extending forbearance relief from the Federal Communications Commission's ("Commission") cost assignment rules to Qwest.

I. INTRODUCTION AND SUMMARY

On April 24, 2008, the Commission released the *Cost Assignment Forbearance Order* granting AT&T's and legacy 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 the

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

cost assignment rules (hereafter, referred to as the "Cost Assignment Rules").[2] On June 6, 2008, the Commission released a Public Notice seeking comment on Qwest's and Verizon's request that forbearance from the Cost Assignment Rules be extended to them.[3] Eight sets of comments, including those of Qwest and Verizon, were submitted in response to the Commission's Public Notice.[4] Sprint, *et al.*, AdHoc, NASUCA and NJ Rate Counsel (hereafter "opponents") opposed Qwest's and Verizon's request for forbearance from unnecessary cost assignment rules.[5] However, for the most part, opponents simply restate the same arguments that the Commission considered and rejected in adopting the *Cost Assignment Forbearance Order* in the first place. Circumstances have not changed since the Commission adopted that order two months ago. The Commission still does not have a current federal need for cost assignment information to regulate price cap carriers such as Qwest. Therefore, there is only one issue in this proceeding: is Qwest similarly situated to AT&T with regard to those rules? As Qwest demonstrated in its initial comments and as is demonstrated further below, the answer to this question is clearly "yes." The Commission's findings and rationale in granting AT&T forbearance apply equally to Qwest and

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[2] *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) ("*Cost Assignment Forbearance Order*"), *pet. for recon. pending, pet. for review pending sub nom. NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. June 23, 2008).

[3] Public Notice, WC Docket No. 07-21, DA 08-1361, rel. June 6, 2008.

[4] In addition to Qwest, the following parties submitted comments: Verizon; Embarq Corporation ("Embarq"); the National Association of State Utility Consumer Advocates ("NASUCA"); the New Jersey Division of Rate Counsel ("NJ Rate Counsel"); the AdHoc Telecommunications Users Committee ("AdHoc"); the Joint Comments of Sprint Nextel Corporation, COMPTEL, T-Mobile USA, Inc. and Time Warner Telecom Inc. and One Communications Corp. ("Sprint, *et al.*"); and the State of New York Department of Public Service ("NYDPS").

[5] In addition to Qwest and Verizon, Embarq also submitted supporting comments. *See* Embarq, *generally*. NYDPS, in its comments, expressly stated that it "does not comment on the merits of granting the request," but merely asked for the opportunity to have input on any compliance plan filed by Verizon. NYDPS at 2.

compel extending the same relief to Qwest. The Commission also has the authority under Section 10 of the Act to extend forbearance to Qwest. Finally, no commenting party has presented any valid reason why the forbearance relief granted in the *Cost Assignment Forbearance Order* should not be granted to Qwest. Instead, opponents simply restate arguments regarding the federal requirements with respect to the establishment of rates for interstate services, jurisdictional separations, the *Section 272 Sunset Order*, Section 254(k), and universal service that were considered and rejected by the Commission in the *Cost Assignment Forbearance Order*. Accordingly, the Commission should enter an order granting the requested relief.

II. QWEST IS SIMILARLY SITUATED TO AT&T AND SHOULD BE GRANTED THE SAME RELIEF AS AT&T

A. Qwest is similarly situated to AT&T.

As Qwest demonstrated in its initial comments, Qwest is similarly situated to AT&T with regard to the application of the Cost Assignment Rules and the forbearance relief at issue.[6] Again, the critical factor supporting the Commission's finding that there was no federal need to enforce the Cost Assignment Rules against AT&T was that AT&T was a price cap carrier not generally subject to rate of return regulation for its interstate services.[7] This finding applies with equal force to Qwest. The Commission also found that AT&T's costs of complying with the Cost Assignment Rules outweighed any benefits.[8] This conclusion also applies equally to Qwest. Qwest also faces the same competition as AT&T and, as the Commission found for AT&T in the *Cost Assignment Forbearance Order*, such competition constrains prices even

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[6] *See* Qwest Comments at 2-6.

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

[8] *Id.* at 7322 ¶ 36.

though Qwest remains subject to price cap regulation.[9] Qwest is also similarly situated to AT&T with respect to all other factors potentially relevant to the forbearance relief at issue. Therefore, the Commission should extend forbearance from the Cost Assignment Rules to Qwest.

B. There is no material distinction between Qwest and AT&T with respect to any of the purported roadblocks to forbearance asserted by opponents.

As the Commission found for AT&T in the *Cost Assignment Forbearance Order*, an extension of forbearance to Qwest is not precluded by the federal requirements with respect to the establishment of rates for interstate services, jurisdictional separations, the *Section 272 Sunset Order*, Section 254(k), universal service or any other potentially relevant factor. In their comments, opponents simply restate arguments on these issues that are identical to those already considered and rejected by the Commission in the *Cost Assignment Forbearance Order*. The Commission should reject them here as well. There simply is no material distinction between Qwest and AT&T with respect to any of these purported roadblocks to forbearance asserted by opponents.

Contrary to the suggestion of Sprint, *et al.*,[10] the extension of forbearance to Qwest does not conflict with any requirements regarding the establishment of rates for interstate services under a price cap regime. Again, the Cost Assignment Rules are a "hold-over" from the period when local exchange carriers ("LECs") were subject to rate of return regulation and have virtually no role under today's price cap regulation.[11] In the *Cost Assignment Forbearance Order*, the Commission addressed Sprint's arguments that the "Cost Assignment Rules would be

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[9] *Id.* at 7312 ¶ 18.

[10] *See* Sprint, *et al.* at 14.

[11] In the past, price cap companies such as Qwest were subject to sharing and low end adjustments that were triggered by a carrier's rate of return. These adjustments no longer apply to Qwest and any justification for continuing to apply the Cost Assignment Rules to Qwest has long since ceased to exist.

needed for various functions even under price cap regulation, such as reinitializing price caps, reviewing exogenous cost adjustments, and setting the X-factor."[12] In responding to those comments, the Commission noted that interstate rates are not based on cost under price cap regulation.[13] The Commission also noted that the prior requirement that price cap LECs "share" earnings above specified levels has been eliminated along with the low-end adjustment mechanism and the productivity factor.[14] Based on these findings and others, the Commission ultimately found that Sprint's argument essentially was an "anticipation of a possible need for the information to modify rate regulation at some point in the future."[15] The Commission correctly found that this did not rise to the level of the "strong connection" needed to justify the existence of the Cost Assignment Rules today.[16] Further, the Commission conditioned the relief it granted to AT&T in the *Cost Assignment Forbearance Order* on the provision by AT&T of accounting data on request by the Commission for its use in rulemakings, adjudications or for other regulatory purposes.[17] It also required AT&T to obtain approval of a compliance plan that will, among other things, explain how it would satisfy this condition.[18] As with AT&T, this condition will more than adequately address any lingering concern that the Cost Assignment

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[12] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7312-13 ¶ 19.

[13] *Id.*

[14] *Id.* at 7311-13 ¶¶ 17-19.

[15] *Id.* at 7313-14 ¶ 20.

[16] *Id.*

[17] *Id.*

[18] *Id.*

Rules might be needed in the future with respect to Qwest in connection with the Commission's oversight of the price cap regime.[19]

As for jurisdictional separations and the requirements of *Smith v. Illinois Bell*,[20] the Commission expressly ruled in the *Cost Assignment Forbearance Order* that "*Smith v. Illinois Bell* does not preclude it from finding that forbearance from these rules satisfies the three-prong statutory test with regard to AT&T."[21] In doing so, the Commission noted its prior acknowledgement "that statutory, regulatory, and market changes since *Smith v. Illinois Bell* may have eliminated the need for federal separations rules generally."[22] Again, neither the Act nor *Smith v. Illinois Bell* requires that the Commission adopt or maintain detailed jurisdictional separations rules. The Commission also found "that AT&T, working cooperatively with the state commissions in its region, can develop methods of separating costs, satisfying any remaining need states have for jurisdictional separations information."[23] The same is true for Qwest.

Nor is forbearance precluded by any purported state need for the Cost Assignment Rules. Sprint, *et al.*, argue that the fact that Verizon and Qwest have some level of state rate-of-return regulation in their respective service areas is "a major difference between them and AT&T."[24] However, in the *Cost Assignment Forbearance Order* the Commission ruled that it had no authority to deny forbearance in order to maintain regulatory burdens that may produce

[19] The compliance plan condition also addresses any purported concern that accounting data be available as necessary for purposes of enforcement action. *See* Sprint, *et al.* at 16-17. *See also*, *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7315 ¶ 22.

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

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

[22] *Id.* (citing *Separations Notice*, 12 FCC Rcd at 22123, para. 3 and para. 9).

[23] *Id.*

[24] Sprint, *et al.* at 8.

information helpful to state commissions solely for intrastate regulatory purposes.[25] The Commission correctly found that it can not deny forbearance as to the Cost Assignment Rules based on a purported state need for the rules.[26] The same is true for Qwest.[27]

The extension of forbearance to Qwest also does not conflict with the requirements of the *Section 272 Sunset Order*. The Commission's discussion of this issue as to AT&T in the *Cost Assignment Forbearance Order* remains sound. In the *Section 272 Sunset Order*, the Commission correctly recognized that the "accounting and cost allocation rules and related reporting requirements" were an obligation that would continue to apply to BOCs following the grant of the regulatory relief reflected in that order. However, that fact does not preclude the Commission from now finding that the three-prong Section 10 statutory forbearance standard requires that the Commission forbear from those rules.[28] In the *Cost Assignment Forbearance Order*, the Commission agreed with AT&T and found that such an overly-broad method of regulating AT&T could not be justified.[29] This conclusion applies to Qwest as well.

Forbearance as to Qwest is also not precluded by Section 254(k).[30] Qwest will remain subject to Section 254(k) after forbearance -- just as AT&T will be. And, continued enforcement of the Cost Assignment Rules is not necessary to ensure compliance with Section 254(k). Qwest anticipates that, in extending forbearance to Qwest, the Commission will also require Qwest to

[25] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320-21 ¶ 32.

[26] *Id.*

[27] In the *Cost Assignment Forbearance Order*, the Commission also 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. Therefore, there is, in any event, no material distinction between Qwest and AT&T on this point.

[28] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7317-18 ¶ 27.

[29] *Id.* at 7318 ¶ 28.

[30] *See, e.g.*, Sprint, *et al.* at 14-15.

file an annual certification of compliance with Section 254(k), as it did for AT&T.[31] If the Commission needs additional accounting information at some point in the future to assure itself that Qwest is complying with Section 254(k) with regard to interstate services, the Commission has more than adequate authority to obtain such information from Qwest. In short, the Commission, in granting AT&T's forbearance petition, found that the Cost Assignment Rules were not necessary to enforce Section 254(k) against AT&T and opponents have presented no arguments that would support a finding that these rules are necessary to enforce Section 254(k) against Qwest. Notably, Section 254(k) limits the Commission's responsibility to determining whether noncompetitive interstate services are subsidizing competitive interstate services.[32] State regulatory agencies are thus given the responsibility to determine whether any such cross subsidies exist at the intrastate level.[33]

Finally, forbearance is not precluded by the requirements for universal service. Sprint, *et al.*, argue that the fact that certain Verizon affiliates receive high cost loop support means that Verizon is not similarly situated to AT&T for purposes of forbearance relief.[34] However, the fact that Verizon or Qwest may receive some high cost loop support is not a material difference from AT&T with respect to the forbearance relief at issue. Indeed, in the *Cost Assignment Forbearance Order*, the Commission expressly rejected Sprint's argument that AT&T's cost data are needed to set high-cost loop support levels for rural carriers.[35] The Commission noted, among other things, that the National Exchange Carrier Association ("NECA") is not using

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[31] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7319 ¶ 30.

[32] 47 U.S.C. § 254(k).

[33] *Id.*

[34] Sprint, *et al.* at 10.

[35] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7322-23 ¶ 37.

AT&T's cost data to calculate the national average unseparated loop cost for purposes of calculating rural high-cost loop support.[36] Similarly, while Qwest's Malheur Home Telephone Company and The El Paso County Telephone Company affiliates do receive support from the high cost loop support fund, the necessary data supplied pursuant to 47 C.F.R. Section 36.611 is pre-separations, and this data will continue to be available. Likewise, to the extent these affiliates and Qwest's North Idaho jurisdiction also receive local switching support, the data provided are pre-separations and will continue to be available as well. If anything, this is the kind of going-forward detail that the compliance plan condition is designed to address.

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

Opponents argue that the Commission must not extend forbearance because Qwest has no existing petition for forbearance on file covering all the Cost Assignment Rules.[37] As was demonstrated in Qwest's initial comments, Section 10 does not require carriers to file petitions requesting forbearance. Rather, the Commission may forbear on its own initiative and, indeed, is required to 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.[38] Previously, in granting forbearance petitions, the Commission has extended forbearance to similarly situated carriers without any additional factual determinations regarding Section 10's

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[36] *Id.*

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

[38] 47 C.F.R. §160(a) (1)-(3).

requirements or requiring carriers to file "me too" petitions.[39] The only issue in extending forbearance was whether a carrier was similarly situated to the petitioner initially requesting forbearance.[40] Accordingly, there is no question that the Commission has the authority to extend forbearance from the Cost Assignment Rules to Qwest, as long as it satisfies the conditions that the Commission required AT&T to satisfy in the *Cost Assignment Forbearance Order*.

Nor is it the case, as opponents suggest, that the existence of an alternative route (*e.g.*, a rulemaking or other proceeding) is grounds to deny a forbearance petition.[41] As the Commission itself recognized in the *Cost Assignment Forbearance Order*, when the Section 10 criteria are met, it "has no authority to sweep [Section 10] away by mere reference to another, very different, regulatory mechanism."[42] Similarly, the existence of a pending petition for reconsideration ("PFR") or petition for review of the *Cost Assignment Forbearance Order* is not grounds to deny the requested forbearance. As AT&T and others have adequately demonstrated in connection with the PFR, that pending PFR merely restates the same arguments that were previously

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[39] Clearly, it would be a waste of Commission resources to require either.

[40] Qwest Comments at 9. *See also*, Verizon at 7-8; Embarq at 6.

[41] *See* NJ Rate Counsel at 3-4; NASUCA at 2-3; Sprint, *et al.* at 2 and 11.

[42] *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7308-09 ¶ 13 (quoting *AT&T v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001)). The D.C. Circuit Court of Appeals clarified this point in its decision granting Qwest's (formerly U S WEST Communications) petition for review of the Commission's *Order* denying U S WEST's Petition for forbearance from applying the dominant carrier rules to its high-capacity services in Phoenix, AZ and Seattle, WA (along with various petitions by the SBC Companies, Ameritech Operating Companies and the Bell Atlantic Telephone Companies). *See Petition of U S West Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, . . . Petition of U S West Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington, MSA*, Memorandum Opinion and Order, 14 FCC Rcd 19947 (1999) (U S WEST filed its Arizona Forbearance Petition on Aug. 24, 1998, CC Docket No. 98-157 and its Seattle Forbearance Petition on Dec. 30, 1999, CC Docket No. 99-1). In that case, the D.C. Circuit granted Qwest's petition for review and remanded to the Commission for further consideration.

rejected by the Commission in the *Cost Assignment Forbearance Order*.[43] In any event, the filing of a PFR or a petition for review does not change the legal effect of the *Cost Assignment Forbearance Order* and does not preclude the Commission from extending forbearance to Qwest.[44] Nor do opponents cite any authority for such a conclusion.

IV. CONCLUSION

The above discussion and Qwest's comments in this proceeding demonstrate that Qwest is similarly situated to AT&T with respect to the application of the Cost Assignment Rules and that the findings and rationale underlying the *Cost Assignment Forbearance Order* apply equally to Qwest. It follows that the Commission should extend the forbearance relief granted in that order to Qwest as well.

Respectfully submitted,

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[43] *See* Opposition of AT&T Inc. to Petition for Reconsideration, WC Docket Nos. 07-21 and 05-342, filed June 11, 2008 at 2.

[44] *See* 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(n); 28 U.S.C. § 2349(b).

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY OF QWEST CORPORATION** to be: 1) filed via hard copy, original and ten copies, with the Office of the Secretary of the FCC in WC Docket Nos. 07-21, 05-342, 07-273 and 07-204; served via first class United States Mail, postage prepaid on the parties listed on the attached service list; and 3) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com.

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