

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)	WC Docket No. 07-21
Of Certain of the Commission’s Cost)	
Assignment Rules)	
)	
Petition of Verizon For Forbearance Under)	
47 U.S.C. § 160(c) From Enforcement of)	
Certain of the Commission’s)	WC Docket No. 07-273
Recordkeeping and Reporting)	
Requirements)	
)	
Petition of Qwest Corporation for)	
Forbearance from Enforcement of the)	WC Docket No. 07-204
Commission’s ARMIS and 492A)	
Reporting Requirements Pursuant to 47)	
U.S.C. § 160)	

OPPOSITION OF VERIZON¹
TO PETITIONS FOR RECONSIDERATION

Sprint, COMPTEL, Time Warner Telecom, and One Communications and AdHoc (separately),² petition for reconsideration of the Commission’s decision to extend to Verizon and Qwest³ forbearance relief from certain cost assignment rules granted earlier to AT&T.⁴

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications, Inc. (collectively “Verizon”).

² *Petition for Reconsideration*, Sprint Nextel Corporation, et al., WC Docket Nos. 07-21, 07-273, 07-204 (Oct. 6, 2008) (“Sprint Petition”); *Petition for Reconsideration*, AdHoc Telecommunications User Committee, WC Docket Nos. 07-21, 07-273, 07-204 (Oct. 6, 2008) (“AdHoc Petition”).

³ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements, et al.*, Memorandum Opinion and Order and Notice

Petitioners fail to raise any new arguments or facts that warrant reconsideration. The Commission should deny the petitions.

In essence, both the Sprint Petition and the AdHoc Petition seek only to add Verizon and Qwest to Petitioners' pending requests for reconsideration of the *AT&T Cost Assignment Forbearance Order*. Petitioners request reconsideration of the Verizon and Qwest relief on the same grounds as discussed in their earlier reconsideration petitions, which they attach to their present petitions and incorporate by reference. Verizon's previous Opposition to reconsideration of the *AT&T Cost Assignment Forbearance Order* is attached as Attachment A and is incorporated herein by reference. Verizon opposes the Sprint Petition and the AdHoc Petition for reasons discussed in Verizon's previous Opposition.

AdHoc suggests there are two additional grounds for reconsideration of the Verizon and Qwest relief: (1) an alleged "statement against interest" by Verizon in an unrelated universal service proceeding that pre-dates the *Recordkeeping and Reporting Forbearance Order*; and (2) the current global financial crisis as chronicled by the *New York Times*. Ad Hoc Petition at 3-5. Both arguments are irrelevant to these forbearance proceedings and should be dismissed.

The Commission only grants reconsideration "if the petitioner cites material error of fact or law or presents new or previously unknown facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action." *Petitions for Reconsideration of the Second Report and Order*;

of Proposed Rulemaking, WC Docket Nos. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (Sept. 6, 2008) ("*Recordkeeping and Reporting Forbearance Order*").

⁴ *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) ("*AT&T Cost Assignment Forbearance Order*"), *pet. for recon. pending*.

Implementation of Section 207 of the Telecommunications Act of 1996, et al., Order on Reconsideration, 14 FCC Rcd 19924, ¶ 7 (1999).⁵

AdHoc’s repeated allegation that a Verizon statement regarding carrier cost incentives in an unrelated universal service proceeding is an inadvertent admission against interest is even more absurd in this context than when raised by AdHoc in the past.⁶ AdHoc Petition at 3-4. Foremost, Verizon’s comments in the universal service proceeding seized upon by AdHoc – that “[e]xperience suggests that when there is an incentive for carriers to demonstrate high costs, they will do so”⁷ – were made *three months prior to the Recordkeeping and Reporting Forbearance Order*. It is impossible for the Verizon statement cited by AdHoc to constitute a new or previously unknown fact because the statement was made months before the *Recordkeeping and Reporting Forbearance Order* was issued, and AdHoc itself has brought this statement to the Commission’s attention multiple times in these forbearance proceedings.

Regardless, the Verizon statement cited by AdHoc is not an admission against interest because the context in which it was made (*i.e.*, eligible telecommunications carrier costs) has absolutely no relationship to the issues in this docket. Verizon’s statement described a concern about universal service proposals by which competitive ETCs would receive subsidies based on a showing that their costs are high. But here, AT&T, Verizon, and Qwest’s costs have no

⁵ See also *Policies Regarding Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations*, Memorandum Opinion and Order, 4 FCC Rcd 2276, ¶ 7 (1989) (reconsideration “will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken”).

⁶ This is now the third time AdHoc has misused the same Verizon statement. See *Opposition of AdHoc Telecommunications Users Committee to AT&T’s proposed cost assignment forbearance compliance plan*, WC Docket Nos. 07-21, 05-342, at 3 (Aug. 18, 2008); *Opposition of AdHoc Telecommunications Users Committee to extending cost assignment forbearance relief to Verizon and Qwest*, WC Docket Nos. 07-21, 05-342, at 2 (June 26, 2008).

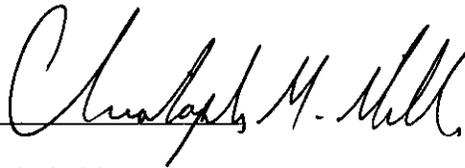
⁷ Reply Comments of Verizon and Verizon Wireless, *Federal-State Joint Board on Universal Service, et al.*, WC Docket No. 05-337, CC Docket No. 96-45, at 13 (June 2, 2008).

bearing on rates under the Commission's price cap regime or on any material federal subsidies that they receive. *AT&T Cost Assignment Forbearance Order* ¶ 17; *Recordkeeping and Reporting Forbearance Order* ¶¶ 26, 27, 31.

AdHoc's claim that the Commission should reconsider the Verizon and Qwest relief because of the global economic downturn, as chronicled in the *New York Times*, is equally flawed. AdHoc Petition at 4-5. First, the current economic crisis did not suddenly materialize in the few weeks since the Commission issued the *Recordkeeping and Reporting Forbearance Order* and thus also does not constitute a new question of law or fact. Second, and more fundamentally, the economic downturn has no material relationship to the issues evaluated by the Commission. The standard for forbearance under the Act is whether a Commission regulation is necessary to a legitimate federal need. 47 U.S.C. § 160(a). The economic downturn does not change the fact that, as the Commission found in the *Recordkeeping and Reporting Forbearance Order* and the *AT&T Cost Assignment Forbearance Order*, carrier costs are not relevant under price cap regulation. Price caps are cost agnostic. Thus, for federal price cap carriers such as AT&T, Verizon, and Qwest, the cost assignment rules serve no purpose and unfairly burden only a few among many competing providers.

For these reasons, the Commission should deny the petitions.

Respectfully submitted,

By: 

Michael E. Glover, *Of Counsel*

Edward Shakin
Christopher M. Miller
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

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ATTACHMENT A

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)	

**OPPOSITION OF VERIZON¹ TO
PETITION FOR RECONSIDERATION**

Four parties petition for reconsideration to reestablish the antiquated cost assignment rules that the Commission correctly found serve no federal purpose.² Petitioners fail to raise any new arguments or facts that warrant reconsideration. The Commission should deny the Petition.

The Commission determined in the *Cost Assignment Forbearance Order* that eliminating the cost assignment rules would result in significant public interest benefits. The Commission found that the cost of continued compliance with these rules, which is ultimately passed on to consumers, cannot be justified because there is no continuing federal need for the rules under price cap regulation in today's competitive market. *Cost Assignment Forbearance Order* ¶ 16.

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications, Inc. (collectively "Verizon").

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*, WC Docket No. 07-21, Memorandum Opinion and Order (rel. April 24, 2008) ("*Cost Assignment Forbearance Order*"); see *Petition for Reconsideration of Sprint Nextel Corporation, Ad Hoc Telecommunications User's Committee, CompTel, and Time Warner Telecom Inc.* (collectively "Petitioners"), WC Docket No. 07-21 (May 28, 2008) ("Petition").

The Commission held that eliminating the cost assignment rules will “promote competitive market conditions and enhance competition.” *Id.* ¶ 39. Conversely, the Commission concluded that to leave the cost assignment rules in tact would harm consumers because compliance with the rules hinders introduction and delivery of innovative products and services that consumers demand. *Id.* ¶ 42. Rather than rolling back forbearance relief as Petitioners suggest, the Commission’s holdings in the *Cost Assignment Forbearance Order* militate strongly in favor of expanding relief to other carriers, which the Commission also suggested. *Id.* ¶ 11.

Reconsideration is appropriate only when the petitioning party either demonstrates a material error or omission in the underlying order or raises additional facts not previously known or existing that the Commission failed to consider. *See* 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966). It is well established that reconsideration “will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken. The public interest in expeditious resolution of Commission proceedings is done a disservice if the Commission readdresses arguments and issues it has already considered.” *Policies Regarding Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations*, Memorandum Opinion and Order, 4 FCC Rcd 2276, 2277 ¶ 7 (1989). Consistent with this policy, the Commission routinely rejects reconsideration petitions that are nothing more than a restatement of arguments previously presented.³

³ *See e.g., Paging Systems, Inc., Assignor and American Telecasting of Oklahoma, Inc., Assignee*, DA 08-1084, Order on Reconsideration, 2008 FCC LEXIS 3883, at *17 (May 6, 2008) (denying reconsideration petition that merely “rehashes arguments previously considered and rejected”); *Wireless Properties of Virginia, Inc., Assignor and Nextel Spectrum Acquisition Corp., Assignee*, DA 08-1085, Order on Reconsideration, 2008 FCC LEXIS 3884, at *14 (May 7, 2008) (same); *Broadcast Entertainment Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 5431, 5432 ¶ 5 (2008) (“A petition for reconsideration that reiterates arguments that

The Commission should deny reconsideration here; Petitioners have done little more than repackage the same arguments they presented previously. Specifically, Petitioners insist that reconsideration of the *Cost Assignment Forbearance Order* is warranted because, according to Petitioners, the cost assignment rules are: (1) necessary to help “identify malfunctioning price caps” and serve “as a benchmark to help reset them” (Petition at 6-10); (2) required for “jurisdictional separations and intercarrier compensation reform” (*id.* at 11-12); (3) used by state regulators “for a wide variety of state regulatory oversight functions” (*id.* at 12); (4) mandated by the Commission’s *Non-Dominant Order*⁴ (Petition at 12-15); and (5) required to ensure compliance with 47 U.S.C. § 254(k) (*id.* at 16-18).

However, Petitioners raised these identical arguments in their prior filings, and the Commission considered and properly rejected them.⁵ In particular, the Commission concluded

were previously considered and rejected will be denied”); *General Motors Corp. and Hughes Electronics Corp., Transferors and The News Corporation Ltd., Transferee for Authority to Transfer Control*, Orders on Reconsideration, 23 FCC Rcd 3131, 3135 ¶ 11 (2008) (noting that “the Commission has rejected petitions for reconsideration where the petitioner ‘essentially repeats the same arguments it relied upon in the comments and reply comments it filed’ and ‘fails to raise new arguments or facts that would warrant reconsideration of [the underlying] order’”) (quotation omitted).

⁴ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (“*Non-Dominant Order*”).

⁵ *See, e.g.*, Opposition of Time Warner Telecom Inc. at 4-12 (filed March 19, 2007) (arguing that states “remain critically dependent” upon data developed under cost assignment rules); Opposition of the AdHoc Telecommunications Users Committee at 2-9 (filed March 19, 2007) (arguing that cost assignment rules are necessary to ensure just and reasonable special access rates); Reply Comments of the AdHoc Telecommunications Users Committee at 2-3 (filed April 9, 2007) (same); Opposition of Sprint Nextel Corporation at 8-13 (filed March 19, 2007) (arguing that cost assignment rules are necessary to ensure just and reasonable rates and are relied upon by the states “for their own regulatory purposes”); Reply Comments of Sprint Nextel Corporation at 5-6 (filed April 9, 2007) (arguing that cost assignment rules are “critical” for state regulatory purposes and for evaluation of “significant federal policy decisions,” such as “the general reform of intercarrier compensation mechanisms”); *Ex Parte* Letter from Jonathan

that: (1) it “no longer routinely need[s] the accounting data derived from the Cost Assignment Rules for rate regulation functions” (*Cost Assignment Forbearance Order* ¶¶ 18-19); (2) the need for data resulting from the cost assignment rules in other rulemaking proceedings, such as intercarrier compensation, was “speculative,” since such data “may not be relevant” “depending on the approach adopted by the Commission” (*id.* ¶ 45); (3) it had no authority to maintain the cost assignment rules “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” (*id.* ¶ 32); (4) the *Non-Dominant Order* did “not preclude” the granting of forbearance, particularly since “section 10 compels us to the modify the framework” when the statutory standard for forbearance has been satisfied (*id.* ¶ 27); and (5) AT&T remains subject to section 254(k), compliance with which AT&T can demonstrate “in the absence of the Cost Assignment Rules” (*id.* ¶ 30).

Petitioners erroneously assert that the *Cost Assignment Forbearance Order* represents an unexplained “departure” from the *CALLS Order*⁶ in which the Commission allegedly “used cost data to uncover and help remedy price cap performance issues.” Petition at 8. But this assertion cannot be reconciled with the fact that the rates in the *CALLS Order* were the result of an industry-wide settlement; they were not established or adopted by the Commission using any

Lechter, Counsel for Time Warner Telecom, to Marlene Dortch, Secretary, FCC (April 16, 2008) (arguing that cost assignment rules are required to ensure compliance with the *Non-Dominant Order* and section 254(k)); *Ex Parte* Letter from James Blaszak, Counsel for AdHoc Telecommunications Users Committee, to Marlene Dortch, Secretary, FCC (April 24, 2008).

⁶ See *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, 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) (“*CALLS Order*”), *aff’d in part, rev’d in part sub. nom.*, *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

“cost data.” In the footnote cited by Petitioners, the Commission simply referenced 1999 cost data in explaining its rationale for approving the settlement that did not target rate reductions to the common line basket, as some commenters had proposed. *CALLS Order*, 15 FCC Rcd at 13033 ¶ 171, n.376.

Nor does the *Cost Assignment Forbearance Order* represent a “departure” from the Commission’s alleged “traditional” use of “benchmarking,” which Petitioners portray as “a cornerstone of its efficient enforcement approach for years.” Petition at 22; *see id.* at 9, n.28. This portrayal ignores the Commission’s decision in *AT&T, Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5755 ¶ 189 (2007) (“*AT&T/BellSouth Order*”), in which it concluded that benchmarking “does not represent as useful or important a regulatory tool as the Commission previously believed,” noting that, since its 1999 *Ameritech/SBC Order*⁷ (upon which Petitioners rely), it has “rarely used benchmarking in either rulemaking or enforcement proceedings.” Petitioners do not address, let alone attempt to distinguish this conclusion. Similar to commenters in the *AT&T/BellSouth Order*, while stressing the purported importance of benchmarking to the Commission’s enforcement scheme, Petitioners do not cite a single enforcement decision in which the Commission referenced, let alone relied upon benchmarking evidence. *AT&T/BellSouth Order*, 22 FCC Rcd 5662, at ¶ 189.

Petitioners also complain generally about the Commission’s decision to condition forbearance upon AT&T’s providing accounting data as requested for future regulatory purposes and filing a compliance plan explaining how it will satisfy this condition. *Cost Assignment*

⁷ *Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) (“*Ameritech/SBC Order*”).

Forbearance Order ¶¶ 21 & 45. These complaints ring hollow. Notwithstanding Petitioners' suggestion to the contrary, these conditions do not "reaffirm [] that price cap regulation requires the cost assignment rules." Petition at 6. That the Commission may desire unspecified revenue and cost data for a regulatory purpose in the future cannot reasonably be read as an endorsement that the cost assignment rules should remain in place in perpetuity. Rather, as the Commission explained at great length, the cost assignment rules themselves are "overbroad" and are not necessary to ensure just, reasonable, and nondiscriminatory rates or to protect consumers in today's competitive environment. *Cost Assignment Forbearance Order* ¶¶ 10-11 & 44.

Moreover, there is no merit to Petitioners' argument that the Commission "is improperly relinquishing its regulatory responsibilities" to AT&T by conditioning relief on AT&T filing a compliance plan that is acceptable to the Wireline Competition Bureau. Petition at 20. This argument overlooks the role of the Bureau, to which the Commission has delegated: (i) the authority to prescribe the requirements of and approve the compliance plan; and (ii) the responsibility to determine that, in the absence of the cost assignment rules, "AT&T will implement a method of preserving the integrity of its accounting system" *Cost Assignment Forbearance Order* ¶ 31. The Commission found that this delegation was consistent with its rules and "existing procedures," *id.* – a finding that Petitioners do not and cannot dispute.⁸

Because the Bureau, acting on behalf of the Commission, ultimately will pass on the adequacy of

⁸ See 47 C.F.R. § 0.91(e) (listing the functions of the Bureau, including to "[d]evelop and administer rules and policies relating to incumbent local exchange carrier accounting."); 47 C.F.R. § 0.291 (delegating authority to the Bureau chief to "perform all functions of the Bureau"); 47 C.F.R. § 0.203 (directing that "[t]he person, panel, or board to which functions are delegated shall, with respect to such functions, have all the jurisdiction, powers, and authority conferred by law upon the Commission, and shall be subject to the same duties and obligations.")

the compliance plan before forbearance goes into effect, AT&T is not being permitted “to regulate itself,” as Petitioners maintain. Petition at 21.

Equally without merit is Petitioners’ claim that the compliance plan condition will make it more difficult to file complaints under section 208 because third parties will be denied access to cost assignment data that, according to Petitioners, serve “as objective evidence of unlawful conduct, such as price gouging or unlawful cross-subsidization” Petition at 22-24. First, this claim is a rehash of Petitioners’ argument that the cost assignment data are necessary to ensure just, reasonable, and nondiscriminatory rates – an argument that the Commission considered and properly rejected. *Cost Assignment Forbearance Order* ¶¶ 16-18.

Second, it is falsely premised on the notion that “earning levels” and costs are still relevant to evaluating whether rates established under price cap regulation are just and reasonable, which is not the case. *Cost Assignment Forbearance Order* ¶ 17 (“price cap regulation severs the direct link between regulated costs and prices”) (quoting *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 sub. nom., California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert denied*, 514 U.S. 1050 (1995); and *United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir. 1993) (“[Price cap regulation] reduces any BOC’s ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling.”)); *see also Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 2035 ¶¶ 129-130 (2005) (questioning “reliance on accounting rate of return data to draw conclusions about market

power” and rejecting argument that such data support finding that special access rates “violate[] section 201 of the Communications Act”).

Third, there is no requirement, let alone any need for a party filing a section 208 complaint to rely upon cost data, particularly the antiquated data generated under the cost assignment rules. To the extent a party believes that a carrier is charging unjust or unreasonable rates, that party can bring a section 208 complaint based upon rate comparisons, benchmarks, or non-cost factors – evidence the Commission frequently uses to evaluate whether rates are just and reasonable. *See, e.g., AT&T Corp. v. Business Telecom, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12312, 12323-24 ¶ 23 (2001). Because forbearance from the cost assignment rules does not foreclose Petitioners or any third party from bringing a complaint based upon such evidence, the Commission’s finding that complaints under section 208 remain a “viable option for enforcing the provisions of the Act and the Commission’s rules” is entirely correct. *Cost Assignment Forbearance Order* ¶ 22.

For these reasons, the Commission should deny the Petition for Reconsideration.

Respectfully submitted,

By: /s/ Edward Shakin

Michael E. Glover, *Of Counsel*

Edward Shakin
Christopher M. Miller
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

Bennett L. Ross
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Verizon

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