

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering	)	WC Docket No. 08-190
	)	
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	)	WC Docket No. 07-139
	)	
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)	)	
	)	
Petition of Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements	)	WC Docket No. 07-204
	)	
Petition of Frontier and Citizens ILECs 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	)	WC Docket No. 07-273
	)	
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
	)	

**OPPOSITION**

Sprint Nextel Corporation, COMPTTEL, One Communications Corp., and tw telecom inc.  
(together “Opponents”) hereby file their Opposition to the Petition for Reconsideration filed by

Embarq, Frontier, and Windstream (together “Petitioners”) on behalf of their respective incumbent local exchange carrier (“ILEC”) affiliates that are subject to federal price cap regulation in the above-referenced proceedings (the “Petition”). The Commission should not exacerbate its error in granting cost assignment forbearance to AT&T, Verizon, and Qwest (*i.e.*, the Bell Operating Companies (“BOCs”)) by extending such relief to these additional ILECs. If the Commission does choose to extend cost assignment forbearance to these additional ILECs, however, it should provide more detailed cost assignment compliance plan requirements and should, as a condition of that forbearance, eliminate the Universal Service Fund (“USF”) funding that the BOCs and these ILECs receive.

**I. The Commission Must Not Compound Its Mistake by Extending Cost Assignment Forbearance to All Federal Price Cap ILECs.**

The Petitioners ask the Commission to extend the conditional cost assignment forbearance relief it granted AT&T, Verizon, and Qwest to all ILECs subject to federal price cap regulation, or at a minimum, to Embarq, Frontier, and Windstream.<sup>1</sup> The Petitioners maintain that the Commission correctly granted forbearance to AT&T and appropriately extended forbearance to Verizon and Qwest as similarly situated carriers since Verizon and Qwest are federal price cap carriers like AT&T.<sup>2</sup> Given that they too are federal price cap carriers, the Petitioners argue that they are similarly situated with AT&T, Verizon, and Qwest, and thus are entitled to the same conditional cost assignment forbearance relief.<sup>3</sup> They allege that the Commission’s failure to extend the same forbearance relief to them and all other federal price

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<sup>1</sup> Petition at 4-5.

<sup>2</sup> Petition at 5-9.

<sup>3</sup> Petition at 9-11.

cap carriers would violate Section 10 of the Communications Act,<sup>4</sup> and would violate the Administrative Procedures Act<sup>5</sup> as arbitrary and capricious.<sup>6</sup>

The Commission must flatly reject the Petition. Granting the Petition will only serve to further compound the Commission's error in granting AT&T cost assignment forbearance relief and extending that same relief to Verizon and Qwest. As discussed in greater detail in the Opponents' Petition for Reconsideration of the *AT&T Cost Assignment Forbearance Order*<sup>7</sup> and their more recent Petition for Reconsideration of the *Verizon/Qwest Cost Assignment Forbearance Order*,<sup>8</sup> which are both incorporated herein by reference, the Commission erred in concluding that the Cost Assignment Rules are unnecessary to fulfill its statutory oversight responsibilities with respect to interstate access service rates, to detect and prevent anti-competitive cost-shifting and pricing, and to foreclose cross-subsidization prohibited under

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<sup>4</sup> 47 U.S.C. § 160.

<sup>5</sup> 5 U.S.C. §§ 551 *et seq.*

<sup>6</sup> Petition at 11-13.

<sup>7</sup> *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement Of Certain of the Commission's Cost Assignment Rules and 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 Nos. 07-21 and 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008). The statutory provisions, Commission rules, and related reporting requirements from which AT&T, Verizon, and Qwest received forbearance collectively will be referred to herein as the "Cost Assignment Rules." The data the Cost Assignment Rules generate will be referred to herein as "cost assignment data." See *Petition of Reconsideration of Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTTEL, and tw telecom inc. (formerly Time Warner Telecom Inc.)*, WC Docket Nos. 07-21 and 05-342 (filed May 27, 2008).

<sup>8</sup> *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; 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; et al.*, WC Docket Nos. 08-190, 07-139, 07-204, 07-273, and 07-21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203 (rel. Sept. 6, 2008) (*Verizon/Qwest Cost Assignment Forbearance Order*). See *Petition for Reconsideration of Sprint Nextel Corporation, COMPTTEL, One Communications Corp., and tw telecom inc.*, WC Docket Nos. 07-21, 07-204 and 07-273 (filed Oct. 6, 2008).

Section 254(k) of the Communications Act.<sup>9</sup> Eliminating the Cost Assignment Rules and replacing them with an inadequate compliance plan eliminates safeguards on the front end and effective enforcement on the back end, leaving BOC and ILEC market power to go unchecked to the detriment of consumers, competition and the public interest. The Commission must not exacerbate this problem by extending conditional cost assignment forbearance to additional ILECs wielding exclusionary market power.

**II. If the Commission Extends Cost Assignment Forbearance Relief, It Must Provide More Detailed Compliance Plan Guidance.**

If the Commission decides to extend conditional cost assignment forbearance to any ILEC, it first must issue more detailed guidance outlining the specific information each compliance plan must contain. The compliance plans that AT&T, Verizon, and Qwest have submitted so far to the Wireline Competition Bureau for review and approval have proven to be woefully inadequate. They merely halt ongoing allocations, update allocation ratios only when they deem it necessary, and maintain in a file drawer old Methods and Procedures (“M&P”) materials, as discussed in greater detail in the Opponents’ comments, which are incorporated herein by reference.<sup>10</sup> The Commission must issue more explicit requirements detailing the specific type of information the compliance plans must contain to ensure that it has access to “*useable* information on a *timely* basis” as it mandated in the *AT&T Cost Assignment*

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<sup>9</sup> 47 U.S.C. § 254(k).

<sup>10</sup> See Comments on the AT&T Compliance Plan, WC Docket Nos. 07-21 and 05-342, filed by Sprint Nextel Corporation, COMPTTEL, One Communications Corp. and tw telecom inc. (filed Aug. 18, 2008); Comments on the Verizon Compliance Plan, WC Docket No. 07-21, filed by Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTTEL, One Communications Corp., and tw telecom inc. (filed Oct. 8, 2008); Comments on the Qwest Compliance Plan, WC Docket No. 07-21, filed by Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTTEL, One Communications Corp., and tw telecom inc. (filed Oct. 14, 2008).

*Forbearance Order*.<sup>11</sup> “The Blueprint For A Compliance Methodology Cost Assignment Plan,” proposed by several parties to this proceeding, could serve as a starting point for such requirements.<sup>12</sup>

**III. If the Commission Extends Cost Assignment Forbearance Relief, It Should Condition Such Forbearance on the Elimination of Further USF Distributions.**

If the Commission chooses to extend cost assignment forbearance, which removes regulatory requirements that the BOCs and ILECs claim are so costly and burdensome, then it should also condition that forbearance on the elimination of certain regulatory benefits such carriers enjoy. For instance, many parties to this proceeding have demonstrated that forbearance from the Cost Assignment Rules permits the BOCs and ILECs to mask their exorbitant earnings (*i.e.*, earnings well over 11.25 percent), especially for Special Access services. As a result of the grant of these forbearance petitions, the Commission and other interested parties will be left without cost assignment data to assess whether the system of price cap regulation is properly calibrated, and the price cap ILECs will be able to hide their over-earnings unchecked. Such over-earnings greatly exceed the distributions they currently receive from the USF. In fact, AT&T, Verizon, Qwest, Embarq, Windstream, and Frontier are all earning above 11.25 percent on their total Interstate operations by much more than they receive from the USF. As a condition for receiving the forbearance they seek, all price cap carriers should be required to forego drawing from the USF.

The table below displays the 2007 Interstate rates of return based on the 2007 ARMIS reports for the price cap ILECs who are seeking or have been granted forbearance.<sup>13</sup> It also

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<sup>11</sup> *AT&T Cost Assignment Forbearance Order* at ¶ 31 (emphasis added).

<sup>12</sup> “Blueprint For A Compliance Methodology Cost Assignment Plan” filed by AdHoc Telecommunications Users Committee, COMPTel, tw telecom inc., and One Communications Corp. on July 7, 2008 (“Blueprint Plan”).

reports their computed earnings above 11.25 percent, including the income tax effect, as well as their annualized draw on the federal USF, based on the fourth quarter data submitted by the Universal Service Administrative Company.

	2007 Interstate Rate of Return	Earnings above 11.25% (000s)	Current USF Draw (000s)
Qwest	53.2%	1,918,300	71,008
AT&T	35.0%	3,823,476	204,204
Verizon	25.0%	2,155,442	238,405
Windstream	28.2%	109,609	87,507
Citizens	52.9%	164,450	84,240
Embarq	31.7%	306,323	104,558
Total			789,922

In every case, these carriers have managed to achieve returns under the “burden” of regulation that is substantially larger than the benefit of regulation that they receive from their draw on the USF. It is hard to understand how these companies should be relieved from a regulatory burden – especially one that the Commission has itself acknowledged provides information that might prove useful in future proceedings – and at the same time hold onto a regulatory benefit that they do not need.

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<sup>13</sup> Interstate data is reported in ARMIS 43-01, column (h). The rate of return for Interstate operations is computed by dividing the amount reported in row 1915 – Net Return by the amount reported in row 1910 – Average Net Investment. The amount of overearnings is computed by subtracting 11.25 percent from the resulting rate of return and multiplying that difference by the amount reported in row 1910, and multiplying that result by a tax factor that assumes a composite state and federal income tax rate of 39 percent. The results for Citizens reflect combined results for its Citizens and Frontier holding companies.

If the Commission were to condition forbearance from the Cost Assignment Rules on these carriers foregoing any further draw on USF, it would have a significant pro-competitive benefit. At the same time it reduces these carriers' burdens, it would also reduce the burden on all purchasers of interstate services, including those of these ILECs' competitors, who have to fund the USF. The Commission has already deemed that granting forbearance in this case to the BOCs will reduce their costs, and thereby provide a benefit to their customers.<sup>14</sup> By simultaneously reducing these carriers' draws on the USF, the Commission will also reduce the costs of all carriers, providing further consumer benefits.

These carriers have no financial need to draw any funds from the USF. Their windfall over-earnings will more than cover these carriers for any loss in USF distributions. Should the Commission grant the pending forbearance request and condition that grant on carriers' agreeing to give up their USF receipts, the Commission would save the USF approximately \$276 million. If the Commission also modified its conditional grants to AT&T, Verizon and Qwest to require those companies also to forego their USF receipts, the USF could be reduced by \$789 million.

#### **IV. Conclusion**

In sum, the Commission should not compound its mistake of granting cost assignment forbearance to AT&T, Verizon, and Qwest by extending its grant to any additional carriers, including Embarq, Frontier, and Windstream. If the Commission chooses to do so, however, it should provide clearer guidance regarding compliance plan requirements as well as eliminate the unwarranted USF distributions any BOC or ILEC receiving cost assignment forbearance currently receives.

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<sup>14</sup> See *AT&T Cost Assignment Forbearance Order* at ¶¶ 40-44.

Respectfully submitted,

/s/ Anna M. Gomez

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Anna M. Gomez  
Maria L. Cattafesta  
SPRINT NEXTEL CORPORATION  
2001 Edmund Halley Drive  
Reston, VA 20191  
(703) 592-5115

/s/ Karen Reidy

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Karen Reidy  
Vice President, Regulatory Affairs  
COMPTel  
900 17<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20006  
(202) 296-6650

/s/ Thomas Jones

---

Thomas Jones  
Jonathan Lechter  
Willkie Farr & Gallagher LLP  
1875 K Street, N.W.  
Washington, D.C. 20006  
(202) 303-1000  
ATTORNEYS FOR TW TELECOM INC.  
AND ONE COMMUNICATIONS CORP.

Dated: October 21, 2008

## CERTIFICATE OF SERVICE

I, Jo-Ann Monroe, do hereby certify that on this 21st day of October 2008, copies of the foregoing "Opposition" in WC Docket Nos. 08-190, 07-139, 07-204, 07-273, and 07-21 were served by U.S. first-class mail, postage prepaid, to the following:

Chairman Eddie Roberson  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

David C. Bergmann, Chair  
NASUCA Telecommunications Committee  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910

Paul M.A. Baker  
Project Director, Policy  
Wireless RERC  
500 10th Street, 3rd Floor NW  
Atlanta, GA 30332-0620

Paul Kjellander, President  
Idaho Public Utilities Commission  
P.O. Box 83720  
Boise, ID 83720-0074

Steven L. Beeler  
Assistant Attorney General  
Public Utilities Section  
Ohio Public Utilities Commission  
180 E. Broad Street, 9th Floor  
Columbus, OH 43215

John D. Burke, Esq.  
Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

Suzi Ray McClellan  
Katherine H. Farrell  
Texas Office of Public Utility Counsel  
1701 N. Congress Avenue, Suite 9-180  
P.O. Box 12307  
Austin, TX 78711-2397

Mark K. Johnson, Commissioner  
Regulatory Commission of Alaska  
1016 West 6th, Suite 400  
Anchorage, AK 99501

James. W. Olson  
Indra S. Chalk  
United States Telecom Association  
607 14th Street, NW, Suite 400  
Washington, DC 20005

Curt Stamp, Commissioner  
Iowa Utilities Board  
350 Maple Street  
Des Moines, IA 53019-0069

Paul M. Schudel  
James A. Overash  
Woods & Aitken LLP  
301 South 13th Street, Suite 500  
Lincoln, NE 68508

Ann Berkowitz  
Associate Director – Federal Regulatory  
Verizon  
1300 I Street, NW  
Washington, DC 20005

Joel Shifman  
Maine Public Utilities Commission  
242 State Street  
18 State House Station  
Augusta, ME 04333-0018

J. Bradford Ramsay, Counsel  
State Members of the Federal State Joint  
Board on Separations  
1101 Vermont Avenue, NW, Suite 200  
Washington, DC 20005

James S. Blaszak  
Colleen Boothby  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036

Robert W. Quinn  
Theodore C. Marcus  
Linda Vandeloop  
AT&T Services, Inc.  
1120 20th Street, NW, Suite 1000  
Washington, DC 20036

Mike Gleason, Chairman  
William A. Mundell, Commissioner  
Jeff Hatch-Miller, Commissioner  
Kristin K. Mayers, Commissioner  
Gary Pierce, Commissioner  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

Sara Kyle, Director  
Tre Hargett, Director  
Ron Jones, Director  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Edward A. Yorkgitis, Jr.  
Kelley Drye & Warren LLP  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007-5108

Philip Jones, Commissioner  
Washington Utilities & Trans Comm  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

Daniel Mitchell, Vice President  
Legal and Industry  
National Telecommunications Cooperative  
Association  
4121 Wilson Blvd., Tenth Floor  
Arlington, VA 22203

Anne L. Hammerstein  
Assistant Attorney General  
Public Utilities Section  
Ohio Public Utilities Commission  
180 East Broad Street, 9th Floor  
Columbus, OH 43215-3793

Frank S. Simone  
Executive Director – Federal Regulatory  
AT&T Services Inc.  
1120 20th Street, NW, Suite 1000  
Washington, DC 20036

David C. Bergmann  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485

Aryeh Friedman  
BT Americas Inc.  
1001 Connecticut Avenue, NW, Suite 720  
Washington, DC 20036

Randolph Wu  
Helen M. Mickiewicz  
Natalie D. Wales  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

John Heitman  
J. Isaac Himowitz  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007

Edward Shakin  
Christopher M. Miller  
Verizon  
1515 North Courthouse Road, Suite 500  
Arlington, VA 22201-2909

Melissa E. Newman  
Vice President – Federal Regulatory  
Qwest Communications International Inc.  
607 14th Street, NW, Suite 950  
Washington, DC 20005

Bennet L. Ross  
Bredan T. Carr  
Marjorie B. Manne  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Terri L. Hoskins  
Christopher M. Heimann  
Gary L. Phillips  
Paul K. Mancini  
AT&T Services Inc.  
1120 20th Street, NW, Suite 1000  
Washington, DC 20036

Sandra J. Paske  
Secretary to the Commission  
Public Service Commission of Wisconsin  
P.O. Box 7854  
Madison, WI 53707-7854

Ronald K. Chen  
Seema M. Singh  
Christopher J. White  
State of NJ Dept of the Public Advocate  
Division of Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Cindy B. Miller, Senior Attorney  
State of Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0880

Eric Einhorn  
Jennie B. Chandra  
Windstream Communications, Inc.  
1101 17th Street, NW, Suite 802  
Washington, DC 20036

Susanne A. Guyer  
Senior Vice President – Federal Regulatory  
Affairs  
Verizon  
1300 I Street, NW, Suite 400 West  
Washington, DC 20005

Sharon E. Gillett  
Commissioner  
Massachusetts Dept of Telecommunications  
and Cable  
Two South Station  
Boston, MA 02110

David C. Bartlett, Esq.  
John E. Benedict, Esq.  
Jeffrey S. Lanning, Esq.  
Embarq Corporation  
701 Pennsylvania Avenue, NW, Suite 820  
Washington, DC 20004

Lynn Starr  
Craig J. Brown  
Timothy M. Boucher  
Qwest Corporation  
607 14th Street, NW, Suite 950  
Washington, DC 20005

Kenneth F. Mason  
Gregg C. Sayre  
Frontier Communications  
180 South Clinton Avenue  
Rochester, NY 14646-0700

Peter McGowan, Acting General Counsel  
Brian Ossias, Assistant Counsel  
New York State Department of Public  
Service  
3 Empire State Plaza  
Albany, NY 12223-1350

Joshua Seidemann  
Vice President, Regulatory Affairs  
Independent Telephone & Telecom  
Alliance  
975 F Street, NW, Suite 550  
Washington, DC 20004

Jonathan Banks  
David Cohen  
United States Telecom Association  
607 14th Street, NW, Suite 400  
Washington, DC 20005

Alan R. Schriber  
Chairman  
Ohio Office of the Attorney General  
180 E. Broad Street, 9th Floor  
Columbus, OH 43215

Daniel L. Brenner  
Steven F. Morris  
National Cable & Telecommunications  
Association  
25 Massachusetts Avenue, NW, Suite 100  
Washington, DC 20001

Larry F. Darby, Senior Fellow  
American Consumer Institute CCR  
1701 Pennsylvania Avenue, NW, Suite 300  
Washington, DC 20006

Jeff Cloud, Chairman  
Oklahoma Corporation Commission  
Jim Thorpe Building  
2101 N. Lincoln Blvd.  
Oklahoma City, OK 73105

Shirley Bloomfield  
Senior Vice President – Federal Relations  
Qwest Communications International Inc.  
607 14th Street, NW, Suite 950  
Washington, DC 20005

Connie Murray  
Commissioner  
Missouri Public Service Commission  
Governor Office Building, Suite 900  
200 Madison Street – P.O. Box 360  
Jefferson City, MO 65109

Jason Marks, Chairman  
Sandy Jones, Vice Chairman  
David W. King, Commissioner  
Ben R. Lujan, Commissioner  
Carol K. Sloan, Commissioner  
New Mexico Public Regulation Commission  
P.E.R.A. Building  
1120 Paseo De Peralta  
Santa Fe, NM 87501

Joseph K. Witmer, Assistant Counsel  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

John F. Jones  
Jeffrey S. Glover  
Robert D. Shannon  
CenturyTel, Inc.  
100 CenturyTel Drive  
Monroe, LA 71203

Robin Ancona, Director  
Telecommunications Division  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, MI 48909

David W. Danner  
Executive Director  
Washington Utilities and Transportation  
Commission  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

Whit Adamson, President  
Tennessee Association of Broadcasters  
50 Music Square West, Suite 900  
Nashville, TN 37203-3208

Gregory E. Bunker, Assistant AG  
Colorado Attorney General's Office  
Colorado Office of Consumer Counsel  
1525 Sherman Street, 7th Floor  
Denver, CO 80203

Laura Y. Otsuka  
Senior Manager – Regulatory Affairs  
Hawaiian Telcom, Inc.  
P.O. Box 2200  
Honolulu, HI 96841

Ron Binz, Commissioner  
Polly Page, Commissioner  
Carl Miller, Commissioner  
The Public Utilities Commission of the  
State of Colorado  
1560 Broadway, Suite 250  
Denver, CO 80202

Douglas K. Denney  
Director, Costs and Policy  
Integra Telecom, Inc.  
3213 Duke Street, #246  
Alexandria, VA 22314

Edward B. Krachmer  
Director – Regulatory Affairs  
Iowa Telecommunications Services, Inc.  
403 W. 4th Street N  
Newton, IA 50208

Walter Arroyo  
Regulatory Affairs Director  
Puerto Rico Telephone Company  
P.O. Box 360998  
San Juan, PR 00936-0998

James Y. Kerr, II, Commissioner  
State of North Carolina Utilities  
Commission  
430 North Salisbury Street  
Raleigh, NC 27603

Dawn Hipp, Director  
Telecommunications, Transportation, Water  
And Wastewater  
1401 Main Street, Suite 900  
Columbia, SC 29201

Kenneth Peres, PhD  
Research Economist  
Communications Workers of America  
501 Third Street, NW  
Washington, DC 20001

Bartlett D. Cleland, Director  
Center for Technology Freedom  
Institute for Policy Innovation  
1660 Stemmons, Suite 245  
Lewisville, TX 75067

Gene Kimmelman  
Vice President for Federal & Int'l Policy  
Consumers Union  
1101 17th Street, NW, Suite 500  
Washington, DC 20036

Ben Scott, Policy Director  
Free Press  
501 third Street, NW, Suite 875  
Washington, DC 20001

Ed Mierzwinski  
Senior Fellow, Consumer Program  
U.S. PIRG  
218 D Street, SE  
Washington, DC 20003

Hance Haney, Director  
Senior Fellow, Technology & Democracy  
Discovery Institute  
1015 15th Street, NW, Suite 900  
Washington, DC 20005

Atif Malik, Organizer  
New Jersey Citizen Action  
744 Broad Street, Suite 2080  
Newark, NJ 07102

Public Utility Commission of Texas  
Infrastructure Reliability Division  
1711 North Congress Avenue  
P.O. Box 13326  
Austin, TX 78711-3326

Burce Kushnick  
Chairman, Teletruth  
Executive Director, New Networks Institute  
568 Broadway, Suite 404  
New York, NY 10012

Christopher J. Wilson  
Vice President, General Counsel  
& Secretary  
Cincinnati Bell Telephone  
221 E. Fourth Street, Rm 103-1280  
Cincinnati, OH 45202

*/s/ Jo-Ann Monroe*

Jo-Ann Monroe