

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

<b>In the Matter of:</b>	)	
	)	
<b>Petition of Verizon for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Recordkeeping And Reporting Requirements</b>	)	<b>WC Docket No. 07-273</b>
	)	
<b>Petition of Qwest Corporation for Forbearance From Enforcement of the Commission’s ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160</b>	)	<b>WC Docket No. 07-204</b>
	)	
<b>Petition of AT&amp;T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules</b>	)	<b>WC Docket No. 07-21</b>
	)	

**EMBARQ’S REPLY COMMENTS**

**INTRODUCTION**

In its April 24, 2008 order,<sup>1</sup> the Commission conditionally granted AT&T Inc.’s and Bellsouth Telecommunications, Inc.’s (together, “AT&T”) petitions for limited forbearance from section 220(a)(2) of the Act<sup>2</sup> and from various outdated and unnecessary cost assignment rules.<sup>3</sup> The Commission conditioned the forbearance grant

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<sup>1</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*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (“*AT&T Cost Assignment Forbearance Order*”), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, D.C. Cir. Case No. 08-1226 (filed June 23, 2008).

<sup>2</sup> 47 U.S.C. § 220(a)(2).

<sup>3</sup> These include section 32.23 (nonregulated activities), section 32.27 (transactions with affiliates, (Part 64, Subpart I (allocation of costs, Part 36 (jurisdictional separations procedures), Part 69 Subparts D and E (cost apportionment), and other related rules that are derivatives of, or dependent on, those rules.

on the Wireline Competition Bureau's approval of a compliance plan describing how AT&T will continue to fulfill its statutory and regulatory obligations.<sup>4</sup> AT&T filed its compliance plan on July 24, 2008.<sup>5</sup>

On September 6, 2008, the Commission acted "on its own motion" to "extend to Verizon and Qwest the conditional forbearance granted to AT&T."<sup>6</sup> Verizon and Qwest filed their individual compliance plans on September 19, 2008 and September 24, 2008; respectively.<sup>7</sup> The Wireline Competition Bureau subsequently issued public notices inviting comment on the two plans, as it had with AT&T's earlier submission.<sup>8</sup>

The compliance plan submitted by Verizon and Qwest meet the requirements set out in the *AT&T Cost Assignment Forbearance Order*. The plans set out a reasonable methodology that shows that their access charge imputation processes will be consistent with Section 272(e)(3) and the *Section 272 Sunset Order*, and they include procedures to ensure ongoing compliance with their requirements.<sup>9</sup> The plans include annual

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<sup>4</sup> *AT&T Cost Assignment Forbearance Order* at ¶ 31.

<sup>5</sup> Letter from Theodore Marcus, AT&T, to Dana Shaffer, FCC, WC Docket Nos. 07-21, 05-342 (filed July 24, 2008) ("AT&T Compliance Plan").

<sup>6</sup> *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket Nos. 08-190, 07-139, 07-204, 07-273, 07-21 Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203 at ¶¶ 1, 23 (rel. Sept. 6, 2008) ("*Verizon/Qwest Cost Assignment Forbearance Order*"), *pets. for recon. pending*.

<sup>7</sup> Letter from Ann Berkowitz, Verizon, to Dana Shaffer, FCC, WC Docket Nos. 07-273, 07-21 (filed Sept. 19, 2008) ("*Verizon Compliance Plan*"); Letter from Melissa Newman, Qwest, to Dana Shaffer, FCC, WC Docket Nos. 07-204, 07-21 (filed Sept. 24, 2008) ("*Qwest Compliance Plan*").

<sup>8</sup> Public Notice, WC Docket No. 07-21, DA 08-2136 (rel. Sept. 23, 2008); Public Notice, DA 08-2175 (rel. Sept. 29, 2008).

<sup>9</sup> 47 U.S.C. § 272(e)(3); *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region*

certification and other procedures to ensure Section 254(k) compliance. They describe how Verizon and Qwest will maintain accounting procedures and data to enable them to provide useable information on a timely basis, and they include a commitment to provide accounting data for regulatory purposes to the Commission on request. The plans also include descriptions of how each carrier will maintain accounting data sufficient to request and justify high cost universal service support (high cost loop support and/or local switching support) in those study areas that receive such support. The plans also explain how they will transition from existing cost assignment rules to the procedures outlined in their respective compliance plans.

**AT&T, Verizon, and Qwest reasonably have filed consistent compliance plans.**

In response to the Commission's separate public notices inviting comment on Verizon's and Qwest's compliance plans, only two sets of comments were submitted on either plan. Sprint Nextel -- joined by CompTel, Ad Hoc Telecommunications Group, One Communications, and tw telecom (together, "the Joint Commenters") -- refiled their earlier comments against AT&T's plan.<sup>10</sup> NASUCA and the New Jersey Division of Rate Counsel, also filing jointly (together, "Consumer Advocates"), filed parallel comments against Verizon and Qwest, and refiled their joint reply comments on AT&T's

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*Interexchange Services*, WC Docket No. 02-112, CC Docket 00-175, WC Docket 06-120, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007).

<sup>10</sup> Comments on the Verizon Compliance Plan (filed Oct. 8, 2008) (attaching Comments on the AT&T Compliance Plan of COMPTEL, One Communications, Sprint Nextel, and tw telecom (Aug. 18, 2008)); Comments on the Qwest Compliance Plan (filed Oct. 14, 2008).

plan.<sup>11</sup> These commenters echoed their general objection to the Commission's grant of any cost assignment forbearance, and claimed that Verizon's and Qwest's compliance plans were inadequate for the same reasons they had opposed AT&T's.

Verizon's and Qwest's individual compliance plans are indeed similar to AT&T's earlier plan. That is not surprising. AT&T, Verizon, and Qwest are similarly situated as "price cap carriers generally not subject to rate-of-return regulation."<sup>12</sup> They are subject to the same cost assignment rules. Moreover, for the purposes of those rules, they have similar operations. It is entirely appropriate that these carriers' compliance plans are consistent in content, and that they can be approved together.<sup>13</sup>

**The Bureau should take notice of state authorities' approval of the AT&T Compliance Plan Model.**

As the Commission is aware, state authorities supported the compliance plan model adopted by AT&T, Verizon, and Qwest. Commenting on AT&T's compliance plan, the Wisconsin Public Service Commission ("PSCW") observed that it "is a reasonable attempt to reply to the granted forbearance and to address some continuing data needs."<sup>14</sup> The PSCW cautioned the Commission, however, to ensure that approval

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<sup>11</sup> NASUCA/NJDRC Comments on the Verizon Compliance Plan (filed Oct. 8, 2008) (attaching NASUCA/NJDRC Reply Comments on the AT&T Compliance Plan (Aug. 18, 2008)); NASUCA/NJDRC Comments on the Qwest Compliance Plan (filed Oct. 14, 2008).

<sup>12</sup> *Verizon/Qwest Cost Assignment Order* at ¶ 26.

<sup>13</sup> It also follows that the Commission should act to extend the same forbearance from these cost assignment rules, subject to the same conditions, to other similarly situated price cap carriers, including Embarq. *See* Petition for Reconsideration of Embarq, Frontier, and Windstream, WC Docket Nos. 08-190, 07-273, 07-204, 07-139, 07-21 (filed Oct. 6, 2008).

<sup>14</sup> Comments of the Public Service Commission of Wisconsin at 4. The PSCW did not file separate comments on the Verizon or Qwest Compliance Plans.

of the plan does not “inadvertently limit” access to data needed for regulatory purposes, nor restrict the authority of the Commission and state authorities to require data reporting.

The State Members of the Separations Joint Board also commented on AT&T’s compliance plan. They did not oppose any aspect of the model, and like the PSCW did not file comments against Verizon’s or Qwest’s compliance plans. They had merely asked the Commission to “amplify ... that State commissions may exercise their own state authority to conduct their rate and other regulation,” and to reiterate that it is not preempting any state from maintaining its own accounting requirements or cost allocation rules.<sup>15</sup>

In the *Verizon/Qwest Cost Assignment Forbearance Order*, the Commission made the same finding as in the *AT&T Cost Assignment Forbearance Order*, “conclud[ing] that there is no current, federal need for the Cost Assignment Rules, as they apply to Verizon and Qwest, to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest.”<sup>16</sup> Accordingly, the Commission found that it is compelled by section 10<sup>17</sup> to forbear from enforcing these requirements. Nevertheless, in approving these compliance plans, the Bureau can reiterate that the order did not preempt state authority, and that these aspects of Verizon’s and Qwest’s plans will ensure that data and capabilities remain available, in the event the Commission or state authorities have legitimate future need.

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<sup>15</sup> Comments of the State Members of the Separations Joint Board at 2-3. They also asked the Commission to clarify that AT&T should make available to state commissions on request the same categories of data that AT&T had filed publicly through ARMIS before the forbearance grant.

<sup>16</sup> *Verizon/Qwest Cost Assignment Forbearance Order* at ¶ 27 (citing *AT&T Cost Assignment Forbearance Order* at ¶ 11).

<sup>17</sup> 47 U.S.C. § 160.

The *Verizon/Qwest Cost Assignment Forbearance Order* -- like the *AT&T Cost Assignment Forbearance Order* -- acknowledged that states continue to maintain their state authority over these carriers. The Commission expressly “recognize[d] that state commissions may exercise their own state authority to conduct their rate and other regulation as permitted under state law,” and the Commission “emphasize[d] that we do not in this Order preempt any state accounting requirements adopted under state authority.”<sup>18</sup> The order does nothing to preclude states from adopting reporting requirements that may be permitted under state law. Moreover, to the extent Verizon and/or Qwest have made any past commitments to state commissions to make particular data available, they will be obliged to maintain their accounting and data “in a manner that will allow it to provide useable information on a timely basis if requested by the Commission” and “to work with state commissions in its in-region territory to address state needs.”<sup>19</sup>

Like AT&T, Verizon and Qwest will maintain Uniform System of Accounts (“USOA”) books of account for all regulated operating companies that include account-specific investment, expense and revenue data for individual Part 32 accounts, and they will continue to record revenues and costs consistent with Part 32. This data will be available to the Commission on request. Verizon and Qwest will maintain Cost Allocation Manual (“CAM”) cost allocation ratios by Part 32 account as of the data of Compliance Plan approval. In addition, Verizon and Qwest will perform special cost studies if and when required by the Commission, and will keep records, systems, and

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<sup>18</sup> *Verizon/Qwest Cost Assignment Forbearance Order* at ¶ 31 (citing *AT&T Cost Assignment Forbearance Order* at ¶ 33).

<sup>19</sup> See Verizon Compliance Plan at 2-4; Qwest Compliance Plan at 3-5.

personnel sufficient to maintain that capability in case it is needed. Verizon and Qwest will maintain documentation of their existing methods and procedures for the recording of affiliate transactions, and will account for their affiliate transactions consistent with GAAP. Additionally, total company cost information will remain available for state regulatory purposes for all of these carriers.

**Verizon's and Qwest's compliance plans appropriately address rural high-cost support.**

Verizon and Qwest both receive a limited measure of support from either or both of two rural high-cost Universal Service Fund mechanisms, high-cost loop support and/or local switching support in certain study areas served by these carriers. For both Verizon and Qwest, these areas account for less than one percent of their switched access lines.<sup>20</sup> Only a small portion of the services in those areas are categorized as nonregulated.

Pursuant to their compliance plans, Verizon and Qwest will freeze cost allocation factors by USOA account (using the calendar year preceding the Bureau's plan approvals) to establish the regulated amounts for Commission purposes, including calculating rural USF support. In addition, because rural high-cost support calculations require certain Part 36 categorized cost data, Verizon and Qwest will calculate frozen category percentages by dividing categorized cable and wire facilities investment by total cable and wire facilities investment, and likewise by dividing categorized switching investment by total switching investment. They will also assign a pro rata share of plant-related accumulated deferred taxes. Both carriers will also forgo interstate cash working capital in their support filings.

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<sup>20</sup> See Verizon Compliance Plan at 5; Qwest Compliance Plan at 5-6.

The Joint Commenters object to this approach, but offer no reasons other than claiming it is “nothing different than what [they] (and AT&T) propose to do generally.”<sup>21</sup> However, even the Consumer Advocates grudgingly acknowledged that this “band-aid” approach is “adequate,” because the amount of such high-cost support is undeniably small.<sup>22</sup>

Embarq agrees with Verizon and Qwest that this approach is a reasonable way to address the relatively small cost allocations that may still be necessary for these small rural operations to receive any high-cost loop support and local switching support for which they may qualify.

**The Bureau should reject efforts to maintain burdensome and unnecessary reporting requirements.**

The two groups opposing Verizon’s and Qwest’s compliance plans argued that the plans fail to satisfy the requirements set out in the *AT&T Cost Assignment Forbearance Order* and adopted in the *Verizon/Qwest Cost Assignment Forbearance Order*, but offer no substance to back their claims.

The Joint Commenters repeat prior advocacy for their so-called “Blueprint” for the *AT&T Cost Assignment Forbearance Order*.<sup>23</sup> They insist the compliance plans are inadequate because they discontinue the very regulatory reporting requirements that the Commission found were unnecessary and therefore required forbearance under

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<sup>21</sup> Joint Commenters on Verizon Compliance Plan at 2; Joint Commenters on Qwest Compliance Plan at 2.

<sup>22</sup> NASUCA/NJDRC on Verizon Compliance Plan at 3; NASUCA/NJDRC Comments on Qwest Compliance Plan at 3.

<sup>23</sup> Joint Commenters on Verizon Compliance Plan at 3, *citing* Letter from James Blaszak, Counsel for AdHoc Telecoms. Users Committee, to Marlene Dortch, FCC, WC Docket No. 07-21 (July 21, 2008); Joint Commenters on Qwest Compliance Plan at 3 (same).

section 10. The Joint Commenters fear these price cap carriers could fail to provide useable and timely data if and when required, and they believe they could “manipulate” data and the results of any future cost study. The Consumer Advocates similarly oppose the plans, claiming they “would tip the scales even further” by “making access to cost information yet more asymmetric.”<sup>24</sup> They claim the compliance plans are too “unilateral” by somehow giving the price cap carriers “control” over their data, and that the carriers cannot be trusted to properly update ratios between regulated and nonregulated cost categories.<sup>25</sup> Such fears are overplayed. Embarq competes against each of these carriers, and it does not share these concerns. The Compliance Plan provides for data reporting whenever the Commission believes it is needed, and states retain their separate regulatory authority under state law.

The Consumer Advocates also deny there is “significant competition” in these carriers’ services, and they disagree with these carriers’ assertion -- and with the Commission’s express finding -- “that price caps render cost data irrelevant.”<sup>26</sup> In reality, they and the Joint Commenters simply refuse to accept that the Commission has granted forbearance, however limited, from any cost assignment and reporting requirements, however obsolete. Instead, they want the Commission to impose even more burdensome requirements outlined in the “Compliance Plan Blueprint,” which the Joint Commenters submitted before AT&T’s plan was even filed. Consistent with these parties’ perennial opposition to any deregulatory measures, that “Blueprint” would entirely undo forbearance. While pretending to streamline requirements, it would effectively leave

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<sup>24</sup> NASUCA/NJDRC Reply on AT&T Compliance Plan at 3.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.*

accounting and reporting obligations in place, simply because these parties contend price cap carriers cannot be trusted to account and report honestly and because they contend the Commission cannot provide effective oversight. In fact, their plan would impose an entirely new system of cost assignment, one more complex and burdensome than what the Commission has found is “unnecessary” and requiring forbearance. It would require Verizon and Qwest to do everything they do today, and it would require new costly studies and methods.

The state commission commenters found that AT&T’s model compliance plan fulfilled the requirements of the *AT&T Cost Assignment Forbearance Order*. The approach adopted by AT&T, and now followed by Verizon and Qwest, is “a reasonable step in a changing regulatory environment.”<sup>27</sup> The Joint Commenters and NASUCA/NJDRC need to recognize, as the Commission has recognized, that outdated accounting and reporting rules should not remain on the books indefinitely, especially when data will be available on an as needed basis. The Bureau should approve Verizon’s and Qwest’s compliance plans, as well as AT&T’s.

## **CONCLUSION**

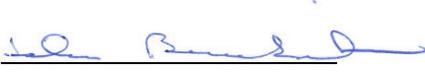
The Commission found there is no federal need for the cost assignment rules as applied to AT&T, Verizon, and Qwest. The Commission plainly did not intend the compliance plans to re-impose the very burdens that it found met section 10’s standards for forbearance. The Bureau should approve the plans submitted by Verizon and Qwest.

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<sup>27</sup> PSCW Comments at 2.

Respectfully submitted,

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