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Federal Communications Commission
Office of the Secretary

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.¹ 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.² 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.³ They allege that the Commission's failure to extend the same forbearance relief to them and all other federal price

¹ Petition at 4-5.

² Petition at 5-9.

³ Petition at 9-11.

cap carriers would violate Section 10 of the Communications Act,⁴ and would violate the Administrative Procedures Act⁵ as arbitrary and capricious.⁶

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*⁷ and their more recent Petition for Reconsideration of the *Verizon/Qwest Cost Assignment Forbearance Order*,⁸ 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

⁴ 47 U.S.C. § 160.

⁵ 5 U.S.C. §§ 551 *et seq.*

⁶ Petition at 11-13.

⁷ *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 Red 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).

⁸ *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.⁹ 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.¹⁰ 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*

⁹ 47 U.S.C. § 254(k).

¹⁰ 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.¹¹ "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.¹²

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.¹³ It also

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

¹² "Blueprint For A Compliance Methodology Cost Assignment Plan" filed by AdHoc Telecommunications Users Committee, COMPTTEL, 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.

¹³ 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.¹⁴ 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.

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

Respectfully submitted,

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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:

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