

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
Petition of Qwest Corporation for	)	WC Docket No. 07-204
Forbearance from Enforcement)	
of the Commission's ARMIS and 492A)	
Reporting Requirements Pursuant)	
to 47 U.S.C. § 160)	
)	
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)	

Review of Qwest's Compliance Plan

REPLY COMMENTS OF QWEST

Craig J. Brown
Timothy M. Boucher
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6608

Attorneys for

QWEST CORPORATION

Of Counsel,

James T. Hannon

October 29, 2008

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	2
II. QWEST’S COMPLIANCE PLAN SATISFIES THE REQUIREMENTS OF THE COMMISSION’S <i>FORBEARANCE DECISIONS</i>	4
III. COMMENTERS PROVIDE NO EVIDENCE OF ANY INADEQUACIES IN QWEST’S METHOD FOR PROVIDING ACCOUNTING DATA FOR RURAL HIGH-COST UNIVERSAL SERVICE FUND SUPPORT	6
IV. QWEST’S COMPLIANCE PLAN DOES NOT LIMIT THE COMMISSION’S OR STATES’ AUTHORITY TO OBTAIN DATA FOR REGULATORY PURPOSES	7
V. OPPONENTS’ CLAIMS THAT QWEST’S COMPLIANCE PLAN FAILS TO PRESERVE THE INTEGRITY OF QWEST’S ACCOUNTING PROCEDURES AND DATA ARE UNSUBSTANTIATED	8
VI. QWEST’S CERTIFICATION THAT IT WILL COMPLY WITH SECTION 254(k) IS SUFFICIENT TO PROTECT THE PUBLIC INTEREST	10
VII. CONCLUSION	11

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
Petition of Qwest Corporation for	)	WC Docket No. 07-204
Forbearance from Enforcement)	
of the Commission's ARMIS and 492A)	
Reporting Requirements Pursuant)	
to 47 U.S.C. § 160)	
)	
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)	

Review of Qwest's Compliance Plan

REPLY COMMENTS OF QWEST

Qwest Corporation ("Qwest"), on behalf of Qwest and its incumbent local exchange carrier ("ILEC") affiliates¹ (hereafter referred to jointly as Qwest) hereby submits this Reply to Comments filed jointly by Sprint Nextel Corporation, the AdHoc Telecommunications Users Committee, COMPTel, One Communications Corp. and tw telecom inc., (jointly referred to as "Sprint" or "Sprint, *et al.*")² and by the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel (jointly referred to as "NASUCA")³ on the Compliance Plan that Qwest filed to comply with the requirements of the Federal Communications Commission's ("Commission") *ARMIS Forbearance Order* in which the Commission exercised its authority to forbear from enforcing its cost assignment rules against

¹ Qwest's Compliance Plan also covers Malheur Home Telephone Company and The El Paso County Telephone Company which are wholly-owned subsidiaries of Qwest Corporation.

² Comments on the Qwest Compliance Plan of Sprint, *et al.*, filed herein Oct. 14, 2008.

³ Comments of NASUCA on Qwest's Compliance Plan, filed herein Oct. 14, 2008.

Qwest and Verizon.⁴ In the *ARMIS Forbearance Order*, the Commission granted Qwest and Verizon the same relief that it had previously granted to AT&T Inc. (“AT&T”) in the *Cost Assignment Forbearance Order*⁵ (jointly referred to as the “*Forbearance Orders*” or “*Forbearance Decisions*”).

I. INTRODUCTION AND SUMMARY

Sprint, *et al.*'s and NASUCA's comments on Qwest's Compliance Plan are identical to Sprint's comments and NASUCA's reply comments that they filed on August 18, 2008 and September 3, 2008, respectively, attacking AT&T's Compliance Plan.⁶ In fact, both sets of comments simply incorporate their earlier arguments opposing AT&T's Compliance Plan.⁷

⁴ *In the Matter of 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, 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 the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, 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, 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 (“*ARMIS Forbearance Order*”), WC Docket Nos. 08-190, 07-139, 07-204, 07-273 and 07-21, FCC 08-203 (rel. Sept. 6, 2008), *pets. for recon. pending* (Oct. 6, 2008).

⁵ *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, et al.*, Memorandum Opinion and Order (“*Cost Assignment Forbearance Order*” or “*AT&T Cost Assignment Forbearance Order*”), 23 FCC Rcd 7302 (2008), *pet. for recon. pending*, and *appeal pending sub nom. NASUCA v. FCC*, No. 08-1226, Order Granting Motion to Hold Case in Abeyance (D.C. Cir. Sept. 16, 2008).

⁶ Comments on the AT&T Compliance Plan of Sprint Nextel Corporation, COMPTel, tw telecom inc. and One Communications Corp., filed in WC Docket Nos. 07-21 and 05-342, Aug. 18, 2008; Reply Comments of NASUCA and N.J. Division of Rate Counsel on AT&T Compliance Plan, filed in WC Docket No. 07-21, Sept. 3, 2008.

⁷ “Given that the Qwest Plan is virtually identical to the AT&T Plan, the arguments opposing the AT&T Plan apply equally to the Qwest Plan. Accordingly, Commenters attach as Exhibit A

Sprint and NASUCA's comments opposing Qwest's Compliance Plan are also a mirror image of their opposition to Verizon's Compliance Plan on October 8, 2008.⁸ In order to minimize the amount of repetition in this Reply, Qwest requests that Verizon's Reply Comments and AT&T's Response on their Compliance Plans (both of which are attached hereto) be incorporated into this Reply and this proceeding since the issues are unchanged from those in the earlier proceedings on AT&T and Verizon's Compliance Plans.⁹

The focus of Sprint, *et al.*'s and NASUCA's comments is their fundamental disagreement with the Commission's decision to forbear from applying the cost assignment rules to Qwest, Verizon and AT&T. Commenters' attempts to re-argue the merits of whether the cost assignment rules are necessary are misdirected and ultimately fail to hold water. Additionally, while the Commission conditioned forbearance on the Wireline Competition Bureau's ("Bureau") approval of an acceptable compliance plan, this condition cannot be interpreted as a requirement to adopt a new set of cost assignment rules, as Sprint, *et al.* and NASUCA imply.¹⁰

Similarly, the Commission should reject Sprint, *et al.*'s and NASUCA's recommendation that the Commission adopt AdHoc, *et al.*'s Blueprint Plan.¹¹ The Blueprint Plan is nothing more

their Comments on the AT&T Compliance Plan and request that the arguments therein be applied to the Qwest plan." Sprint, *et al.* at 2. *Also see* NASUCA at 3.

⁸ See Comments on Verizon's Compliance Plan of Sprint, *et al.*, filed Oct. 8, 2008 and Comments of NASUCA on Verizon's Compliance Plan, filed Oct. 8, 2008.

⁹ See Verizon's Reply Comments, filed Oct. 23, 2008 ("Verizon Reply"), and AT&T's Response, filed Sept. 3, 2008 ("AT&T Response"), WC Docket Nos. 07-21, 05-342 and 07-273, on their compliance plans. These Replies are included in Attachment A.

¹⁰ As AT&T pointed out, "[T]hese parties' entire approach is fundamentally inconsistent with the forbearance that has been granted: a principal holding of the *Forbearance Order* was that the public interest compelled the elimination of any requirement that AT&T [Verizon and Qwest] maintain an ongoing, day-to-day cost assignment system." AT&T Response at 2 and n.5, citing *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7324-26 ¶¶ 40-44.

¹¹ See "Blueprint for A Compliance *Methodology* Cost Assignment Plan," filed in WC Docket Nos. 07-21 and 05-342 by AdHoc, COMPTel, tw telecom inc. and One Communications Corp.

than a thinly disguised attempt by forbearance opponents to impose another set of burdensome cost assignment rules on Qwest, Verizon and AT&T.¹² Furthermore, consideration of AdHoc's Blueprint Plan has no place in this proceeding. This proceeding is limited to comments on Qwest's Compliance Plan -- it is not a rulemaking proceeding on cost assignment rules¹³ nor is it a petition for reconsideration ("PFR") of the Commission's decision to forbear from applying the cost assignment rules.¹⁴ The fact that Sprint, *et al.* and NASUCA disagree with the Commission's decisions to forbear from applying the cost assignment rules to Qwest, Verizon and AT&T is irrelevant to this proceeding which is limited to addressing the adequacy of Qwest's Compliance Plan.

II. QWEST'S COMPLIANCE PLAN SATISFIES THE REQUIREMENTS OF THE COMMISSION'S *FORBEARANCE DECISIONS*

The Commission's *Forbearance Orders* required Qwest's Compliance Plan to address the following issues:

("jointly referred to as "AdHoc, *et al.*" or "AdHoc"), as an attachment to an *ex parte* Letter from James S. Blaszk, Counsel for AdHoc to Marlene H. Dortch, Secretary, Federal Communications Commission, July 7, 2008, ("Blueprint Plan").

¹² Similarly, NASUCA's proposal to include a third-party audit requirement or a requirement of public access to workpapers, etc., relating to accounting compliance would, in addition to creating other obvious problems, reimpose even more burdensome cost assignment rules. NASUCA Comments at 7-9.

¹³ As AT&T observed in its Response, "AdHoc and its supporters are improperly trying to turn this forbearance proceeding -- in which the Commission has decided to *eliminate* cost assignment rules for AT&T [and Qwest and Verizon] -- into the equivalent of a rulemaking proceeding in which the Commission would consider a fundamental (and more burdensome) replacement of the rules from which AT&T [and Qwest and Verizon] just received forbearance." AT&T Response at 3.

¹⁴ Some of the Sprint, *et al.* entities have already filed PFRs of both *Forbearance Orders* and NASUCA has filed an appeal of the *Cost Assignment Forbearance Order* with the D.C. Circuit. See Petition for Reconsideration of Sprint Nextel Corporation, COMPTTEL, tw telecom inc. and One Communications Corp., filed in WC Docket Nos. 07-21, *et al.*, Oct. 6, 2008; Petition for Reconsideration of Sprint Nextel Corporation, COMPTTEL, Ad Hoc, tw telecom inc., filed in WC Docket Nos. 07-21 and 05-342, May 27, 2008; *see also* note 5, *supra*.

- 1) a description of how Qwest will maintain its accounting procedures and accounting data so that it will be able to provide information in a timely manner, if requested by the Commission, to comply with the conditions of the *Forbearance Orders* for Commission regulatory purposes, consistent with the Commission's statutory authority;
- 2) a description of how Qwest proposes to maintain and provide accounting data in study areas where Qwest receives rural high-cost universal service support sufficient to justify the support;
- 3) a description of Qwest's imputation methodology demonstrating that its access charge imputation processes are consistent with section 272(e)(3) of the Act and the *Non-Dominant Order*,¹⁵ and related procedures to ensure compliance with these requirements;¹⁶
- 4) a description of Qwest's procedures to ensure compliance with section 254(k) of the Act, together with a certification executed by a Qwest executive, attesting that Qwest will comply with the requirements of section 254(k) in the absence of the Commission's cost assignment rules and to provide to the Commission information necessary to establish such compliance upon receipt of an appropriate request,¹⁷ including the designation of a single point of contact for section 254(k) compliance; and
- 5) a description of the transition process that Qwest will undertake to implement the procedures in its Compliance Plan.

Qwest's Compliance Plan addresses each of these Commission concerns in a fully satisfactory manner. Sprint and NASUCA offer no constructive comments on Qwest's Compliance Plan. Rather, they only offer, inappropriately, an alternative set of cost assignment

¹⁵ *In the Matters of 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 Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) ("Non-Dominant Order").*

¹⁶ 47 U.S.C. § 272(e)(3).

¹⁷ 47 U.S.C. § 254(k).

rules (*i.e.*, AdHoc's Blueprint Plan)¹⁸ and challenge the merits of the Commission's underlying *Forbearance Decisions*. The Bureau should find that Qwest's Compliance Plan satisfies the requirements of the Commission's *Forbearance Decisions* and approve Qwest's Compliance Plan as filed.

III. COMMENTERS PROVIDE NO EVIDENCE OF ANY INADEQUACIES IN QWEST'S METHOD FOR PROVIDING ACCOUNTING DATA FOR RURAL HIGH-COST UNIVERSAL SERVICE FUND SUPPORT

In its Compliance Plan, Qwest proposed to derive regulated expense and investment for rural high-cost support purposes (*i.e.*, for three small study areas where Qwest receives Universal Service Fund ("USF") support) by using frozen cost allocation factors by USOA account (*i.e.*, using data from the calendar year immediately preceding the approval of Qwest's Compliance Plan).¹⁹ Additionally, Qwest agreed to forego an allowance for interstate cash working capital in its rural high-cost support filings. Sprint rejects Qwest's proposal out-of-hand without identifying any specific shortcomings with Qwest's approach.²⁰ NASUCA, on the other hand, reluctantly admits that Qwest's proposed approach is adequate for federal rural high-cost support purposes.²¹ Therefore, the Bureau should find that Qwest's approach to providing data for rural

¹⁸ See AT&T's Response rebutting AdHoc, *et al.*'s and Sprint's claim that the Blueprint Plan is a "streamlined" cost assignment process that would reduce AT&T's (and Qwest's and Verizon's) compliance burden. AT&T Response at 9-16.

¹⁹ Qwest Compliance Plan at 5-6.

²⁰ "Qwest's proposal to use frozen cost allocation factors to derive the cost data for Regulated operations that is used to compute rural USF support is nothing different than what it (and AT&T) propose to do generally, and would fail to produce timely, useable data for this purpose as well." Sprint Comments at 2.

²¹ "Qwest's Compliance Plan, like Verizon's, proposes a 'band-aid' approach to this issue for the study areas in question. It appears that the band-aid is adequate to the limited purpose, given that about \$1.74 million in annual support is involved. But, as with Verizon, that is only acceptable in the face of the initial erroneous grant of forbearance." NASUCA Comments at 3.

high-cost USF support purposes satisfies the requirements of the Commission's *Forbearance Orders*.

IV. QWEST'S COMPLIANCE PLAN DOES NOT LIMIT THE COMMISSION'S OR STATES' AUTHORITY TO OBTAIN DATA FOR REGULATORY PURPOSES

NASUCA implies that Qwest's Compliance Plan will limit both the Commission's ability and state regulatory authorities' ability to obtain necessary data for regulatory proceedings.²² Sprint makes a similar claim in its comments.²³ Neither party's comments have any basis in fact or law. First, as the Commission acknowledged in the *Cost Assignment Forbearance Order* it has adequate authority to obtain any accounting information that it needs to fulfill its ongoing regulatory responsibilities.²⁴ Thus, the Commission has already considered and rejected Opponents' general argument regarding future federal needs for accounting and cost assignment data. While Opponents' arguments are directed at Qwest's Compliance Plan, they offer no proposed modifications to Qwest's Compliance Plan other than re-imposing a more burdensome version (*i.e.*, AdHoc's Blueprint Plan) of the cost assignment rules that the Commission found to be unnecessary in its *Forbearance Decisions*. The Commission should reject Opponents' repetitious arguments.

Second, as to State needs, the Commission has already concluded that it does not have the legal authority to retain a regulation if it does not have a "federal need" for the regulation --

²² *Id.* at 6-7.

²³ Sprint Comments at 5-10.

²⁴ *See Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314-15 ¶ 21. "Even without the Cost Assignment Rules, the Act provides the Commission with ample authority -- including section 220 -- to require AT&T [and Qwest and Verizon] to produce any accounting data that the Commission needs for regulatory purposes, including rulemakings or adjudications, in the future." (Footnote omitted.)

which it does not have in the case of the cost assignment rules.²⁵ Regardless, the *Cost Assignment Forbearance Order* also makes it clear that the Commission is not infringing on States' authority to collect any accounting information that they may need for intrastate regulatory purposes which they have the authority to collect under state law.²⁶ Thus, regardless of any *bona fide* State need for accounting data, the Commission has no authority to collect such information in the absence of a federal need. Therefore, any discussion of State needs and related arguments is irrelevant to this proceeding on Qwest's Compliance Plan.

V. OPPONENTS' CLAIMS THAT QWEST'S COMPLIANCE PLAN FAILS TO PRESERVE THE INTEGRITY OF QWEST'S ACCOUNTING PROCEDURES AND DATA ARE UNSUBSTANTIATED

Sprint and NASUCA assert that Qwest's Compliance Plan is inadequate to satisfy the Commission's requirement that Qwest maintain its accounting procedures and accounting data so that it will be able to provide reliable information in a timely manner, if requested to do so by the Commission.²⁷ Qwest disagrees with Opponents' unsubstantiated assertion. As with any other purported deficiency with Qwest's (and Verizon's and AT&T's) Compliance Plan, Sprint and NASUCA offer the same solution -- the adoption of an alternative set of cost assignment rules, AdHoc's Blueprint Plan. Opponents' comments ring hollow.

²⁵ In forbearing on its own motion from applying the Cost Assignment Rules to Qwest and Verizon, the Commission concluded 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." *ARMIS Forbearance Order* ¶ 27 (citing *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307 ¶ 11, where the Commission found that Section 10's three forbearance criteria had been satisfied.).

²⁶ "We recognize that state commissions may exercise their own state authority to conduct their rate and other regulation as permitted under state law. We emphasize that we do not in this Order preempt any state accounting requirements adopted under state authority." (Footnotes omitted.) *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7321 ¶ 33.

²⁷ Sprint Comments at 4-10; NASUCA Comments at 10-11.

Qwest's Compliance Plan recognizes that the future is uncertain and has been constructed to be flexible so that Qwest can respond to future Commission information needs in a timely manner. Qwest's Compliance Plan, which is based on the Uniform System of Accounts, is a reasonable proposal for satisfying the Commission's forbearance conditions without incurring the unnecessary costs of complying with the current cost assignment rules. Included in Qwest's Compliance Plan is a commitment to perform special economic cost studies:

“if the Commission appropriately seeks cost information necessary for a federal regulatory purpose beyond data that can be derived from the preserved information [described above], Qwest can perform a special economic cost study to respond to such a request. Qwest will perform such a study to the extent it is not unreasonably burdensome.”²⁸

Sprint criticizes this aspect of Qwest's Compliance Plan as undefined and as an opportunity for Qwest to “manipulate” the data.²⁹ The Commission should reject Sprint's self-serving comments which attempt to burden Qwest with unnecessary regulation. As with any other “special study,” the study scope and methodology can be defined if and when the Commission determines the type of specific cost information that it needs to fulfill its regulatory responsibilities.

Furthermore, Commission staff is more than qualified to evaluate the results of any such special studies and to address any claims of manipulation.

No one knows what type of accounting information the Commission may need for future regulatory proceedings. And, there is no reason to assume, as Sprint and NASUCA have, that the Commission will need accounting data from the alternative cost assignment scheme that Sprint and NASUCA advance. The *Forbearance Orders* require that Qwest “implement a method of preserving the integrity -- for both costs and revenues -- of its accounting system in the absence of the Cost Assignment Rules to ensure that accounting data requested by the

²⁸ Qwest Compliance Plan at 4.

²⁹ Sprint Comments at 8-9.

Commission in the future will be available and reliable.”³⁰ Qwest’s Compliance Plan does precisely this, without presuming (as Sprint and NASUCA do) what type of cost assignment data the Commission might require in the future.

VI. QWEST’S CERTIFICATION THAT IT WILL COMPLY WITH SECTION 254(k) IS SUFFICIENT TO PROTECT THE PUBLIC INTEREST

Sprint argues that the Commission needs to reverse its decision to forbear from enforcing the affiliate transactions rules, section 32.27,³¹ in order to ensure that Qwest complies with section 254(k) of the Act.³² Sprint’s attempt to persuade the Commission to modify its forbearance decision with respect to section 32.27 is not appropriate in this proceeding on Qwest’s Compliance Plan and should be rejected.³³ As Qwest noted in its Compliance Plan, the Commission has already determined that an annual certification is a suitable indicator of compliance for some carriers.³⁴ More importantly, the Commission’s price cap regime has eliminated any incentive for Qwest to assign excessive costs to non-competitive services.³⁵ As such, Qwest has nothing to gain by shifting excessive costs to allegedly non-competitive services from either a market or regulatory perspective. Regardless, as Qwest stated in its Compliance

³⁰ *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314-15 ¶ 21.

³¹ 47 C.F.R. § 32.27.

³² Sprint Comments at 10-12.

³³ Sprint has already filed a PFR of the Commission’s *ARMIS Forbearance Order*. See note 14, *supra*.

³⁴ See 47 C.F.R. § 64.905.

³⁵ Price caps “sever[ed] the direct link between regulated costs and prices” long ago. *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7311 ¶ 17 (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.”)).

Plan, “Qwest will continue to comply with its section 254(k) obligations and will not allocate excessive costs to non-competitive services as verified by Mr. Johnston’s attached certification.”³⁶ Also, as Qwest observed in its Compliance Plan, the Commission has more than adequate authority under section 220(c) of the Act to investigate or audit the veracity of Qwest’s certification.³⁷ No further safeguards are necessary to protect the public interest and ensure compliance with section 254(k).

VII. CONCLUSION

As noted in the foregoing Reply, Qwest’s Compliance Plan is fully responsive to the Commission’s concerns as articulated in its *Forbearance Decisions*. Sprint, *et al.*’s and NASUCA’s comments merely re-argue the merits of the Commission’s *Forbearance Orders* and offer no constructive suggestions as to how Qwest’s Compliance Plan might be revised to better address the requirements of the *Forbearance Orders*. As such, Qwest urges the Bureau to approve Qwest’s Compliance Plan as filed.

Respectfully submitted,

QWEST CORPORATION

By: /s/ Timothy M. Boucher
Craig J. Brown
Timothy M. Boucher
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6608

Its Attorneys

Of Counsel,

James T. Hannon

October 29, 2008

³⁶ Qwest Compliance Plan at 10.

³⁷ See, e.g., 47 U.S.C. § 220(c).

ATTACHMENT A

Before the
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)	

**RESPONSE OF AT&T
CONCERNING ITS COMPLIANCE PLAN**

David L. Lawson
Sidley Austin LLP
1501 K St., N.W.
Washington, D.C. 20005
(202) 736-8000

Theodore C. Marcus
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036
(202) 457-2044

Attorneys for AT&T Inc.

September 3, 2008

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY..... 1

**I. STATE COMMENTERS SUPPORT AT&T’S PROPOSED PLAN, AND AD
HOC’S AND SPRINT NEXTEL’S CRITICISMS OF AT&T’S PLAN ARE
MERITLESS. 4**

**II. OPPONENTS’ PROPOSED “BLUEPRINT” COMPLIANCE PLAN
WOULD BE FAR MORE COMPLEX THAN THE CURRENT RULES
AND WOULD BE COMPLETELY UNNECESSARY. 9**

CONCLUSION 17

Before the
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)	

**RESPONSE OF AT&T
CONCERNING ITS COMPLIANCE PLAN**

Pursuant to the Commission's Public Notice, DA 08-1826, released on July 31, 2008, AT&T submits this response in support of its Compliance Plan previously submitted in this proceeding.¹

INTRODUCTION AND SUMMARY.

In the *Forbearance Order*,² the Commission recognized that its Cost Assignment Rules no longer serve any ongoing regulatory purpose. The Commission therefore granted AT&T forbearance from those rules subject to the submission of a compliance plan to explain how AT&T would maintain the ability to make cost assignment data available to the Commission in the unlikely event that the Commission should ever want to examine such data in a future

¹ See Letter from Theodore C. Marcus (AT&T) to Marlene Dortch (FCC), dated July 24, 2008 ("AT&T Compliance Plan").

² Memorandum Opinion and Order, *AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, 23 FCC Rcd. 7302 (2008) ("*Forbearance Order*").

proceeding.³ AT&T has fully complied with this requirement by submitting a substantial compliance plan, which, among other things, includes a detailed proposal for how AT&T will retain the ability to produce usable and timely cost assignment data if and when it is needed. The state commission commenters uniformly agree that AT&T's proposal "addresses [their] concerns" and is a "reasonable attempt to reply to the granted forbearance and to address some continuing data needs."⁴ They are correct, and AT&T's compliance plan should be promptly approved.

The few opposing commenters (Comptel, Ad Hoc, Sprint and Time Warner Telecom) do not even seriously address the Commission's request for comments on AT&T's plan to preserve the ability to respond promptly to any future need for cost assignment information. Instead, they contend that *no* plan to be ready to respond could ever be sufficient, and that the Commission should instead require AT&T to continue to maintain a complete cost assignment system on an ongoing basis, just as it does today. These parties' entire approach is fundamentally inconsistent with the forbearance that has been granted: a principal holding of the *Forbearance Order* was that the public interest compelled the elimination of any requirement that AT&T maintain an ongoing, day-to-day cost assignment system.⁵ The Public Notice makes clear that parties are prohibited from re-arguing the forbearance decision, and these proposals should therefore be barred outright.

Ad Hoc *et al.* have treated the Commission's simple request for a compliance plan as an invitation to propose a full-scale, alternative set of cost assignment rules that would only apply to AT&T and not other carriers and that would be even *more* complex, burdensome and pointless

³ *Id.* ¶ 31.

⁴ Public Service Commission of Wisconsin at 4.

⁵ *See Forbearance Order* ¶¶ 40-44.

than the current rules.⁶ Under their “Blueprint” proposal, AT&T would have to train and maintain an extensive workforce to make hundreds of necessarily arbitrary judgment calls each day about how to assign each and every type of cost it incurs. Moreover, the Blueprint relies on a radically different philosophy of cost assignment than the current rules, including many cost and service categories that no carrier has ever tracked for cost assignment (or any other) purposes. Accordingly, AT&T would have to undertake extensive new studies, conduct a massive inventory and cost assignment of embedded investment, and develop completely new systems, to track these costs.

Working out the details necessary to implement the vast new system envisioned by the Blueprint – the Blueprint itself is, tellingly, devoid of any such details – would be extraordinarily time- and resource-consuming both for the Commission and AT&T. Indeed, Ad Hoc and its supporters are improperly trying to turn this forbearance proceeding – in which the Commission has decided to *eliminate* cost assignment rules for AT&T – into the equivalent of a rulemaking proceeding in which the Commission would consider a fundamental (and more burdensome) replacement of the rules from which AT&T just received forbearance. And all of this effort would be for nothing: neither the Commission nor the state commissions has any ongoing regulatory use for the massive and arbitrary outputs that would be generated by the Blueprint approach, and any future request for cost assignment data is not only unlikely but would almost certainly be limited in scope (and different in focus) relative to the enormous effort required to maintain the Blueprint’s procedures. The Blueprint is not a good faith effort to assist the Commission in addressing legitimate concerns for potential future data needs, but rather is a

⁶ See Comments of Ad Hoc at 4; Comments of Sprint Nextel Corporation, COMPTTEL, TW Telecom, Inc. and One Communications Corp. (hereinafter “Sprint Nextel”) at 12-14.

transparent and misguided effort to advance its proponents' own narrow regulatory agenda and generate grist for the mill of their long-discredited arguments about special access rates of return.

Rather than helping construct this useless Rube Goldberg cost assignment system, the Commission should approve AT&T's Plan. As explained in Section I below, the few criticisms of *AT&T's* plan that opponents have mustered are patently meritless. And as explained in Section II, the Blueprint proposal is arbitrary, burdensome, completely unnecessary, and fundamentally inconsistent with the *Forbearance Order*.

I. STATE COMMENTERS SUPPORT AT&T'S PROPOSED PLAN, AND AD HOC'S AND SPRINT NEXTEL'S CRITICISMS OF AT&T'S PLAN ARE MERITLESS.

In response to the *Forbearance Order*, AT&T has offered a detailed compliance plan that, in accordance with the order's requirements, includes (1) procedures to ensure continued compliance with Sections 272(e)(3) and 254(k) of the Act, (2) a description of the imputation methodology that demonstrates that AT&T's access charge imputation methodologies will be consistent with Section 272(e)(3) and the *Section 272 Sunset Order*, (3) AT&T's first annual certification that it will comply with its obligations under Section 254(k), (4) a proposal for how it will maintain its accounting procedures and data in a manner that will allow it to provide usable information on a timely basis if it is ever requested by the Commission, and (5) an explanation of the transition process. The state commission commenters do not oppose AT&T's proposal, and agree that the proposal "appears to address [their] concerns"⁷ and is a "reasonable attempt to reply to the granted forbearance and to address some continuing data needs."⁸ The only parties that take issue with AT&T's proposal are Ad Hoc and Sprint/Comptel/Time Warner ("Sprint"), but their handful of criticisms are makeweights.

⁷ State Members of the Joint Board on Separations at 4.

⁸ Public Service Commission of Wisconsin at 4.

As AT&T explained in its Compliance Plan, it will continue to maintain all of its USOA accounts and it will retain the latest cost assignment allocations resulting from the application of ratios resulting from its last ARMIS Report. AT&T also explained that it will retain documentation of its existing systems for recording affiliate transactions pursuant to Part 32.27.⁹ Thus, if the Commission ever asks for this data, AT&T could readily apply the last available cost allocation ratios to the relevant USOA accounts and provide the Commission with the cost assignment data it needs. This is entirely reasonable. In the event of any future Commission request, the last available assignments would be the logical starting place. As AT&T noted previously, many of these cost assignment ratios have already been frozen for some time.¹⁰

It is conceivable, however, that, in some circumstances, a different approach would be preferable in response to a specific future request, and therefore AT&T's plan preserves the right to update the ratios to account for intervening events.¹¹ Ad Hoc and Sprint attempt to turn this reasonable accommodation into a fatal flaw, but the argument is meritless.¹² Both parties fault AT&T for not explaining, today, exactly how it might make those future adjustments, but any such adjustment would naturally depend on a host of factors that cannot be known today – how far in the future the request is made, what costs, facilities, and services are involved, what marketplace developments have occurred, the purpose for which the Commission intends to use the data, and the like. All of these scenarios are unlikely in the first place – *i.e.*, while it is unlikely that the Commission will request any necessarily arbitrary cost assignment data in the

⁹ Ad Hoc (at 5, n.9) erroneously assumes that all affiliate transaction data for legacy BellSouth will be destroyed. In fact, under AT&T's compliance plan (at 12, n.6) only the previous *system* used by legacy BellSouth to process affiliate transactions will be terminated. AT&T's system for recording affiliate transactions will not be terminated.

¹⁰ See AT&T Compliance Plan at 11-12.

¹¹ *Id.* at 12.

¹² Sprint at 7; Ad Hoc at 6.

future, it is even less likely that it will request data for which the last available ratios are not usable. It would be a foolish and feckless waste of time to try to anticipate, today, all of the possible issues that may arise in such future proceedings and map out, right now, how AT&T might go about making such data more usable.

This aspect of the Compliance Plan is also a complete answer to Sprint's complaint (at 6-7) that today's cost allocation may become inaccurate because of a proportional increase in non-regulated services. First, Sprint's proposed answer – that the only way to ensure accurate data in the future is for AT&T to continue maintaining full, company-wide cost allocation data on an ongoing basis, as it would under the rules from which AT&T just received forbearance¹³ – would obviously undo the grant of forbearance and thus cannot be what was contemplated in a *forbearance* compliance plan. Indeed, the Commission has admonished parties not to re-argue the predicate question of forbearance in considering the compliance plan. Moreover, it is clear that the Commission is not going to need company-wide cost allocation data in the future, and that any future request for such data will almost certainly be limited to requests targeted to particular types of costs or services. Whether today's cost allocation ratios will become so out of line (in either direction) that they would be unusable for any specific future request is wholly speculative today; without knowing whether the Commission will ever seek such data or the purpose for which the Commission may want it, it is impossible to anticipate exactly whether such adjustments would be necessary or how they would best be made.

AT&T also recognized that it was possible that the Commission might ask AT&T for cost assignment data based on factors other than the allocation factors just discussed. As AT&T

¹³ Sprint at 7-8.

indicated, it can perform special cost studies in such circumstances to determine those factors.¹⁴ To facilitate such special studies, AT&T explained that it would retain all of its methods and procedures manuals, and that it would retain on backup storage media copies of its electronic systems, spreadsheets, and other software that it currently uses for cost assignment.¹⁵ Ad Hoc and Sprint again fault AT&T for not explaining exactly how it might go about performing such a special study,¹⁶ but again the proper way to conduct such a *special* study would depend entirely on a host of variables, specific to the special request that triggered the need for a study, that cannot be known today. Most pertinently, it would depend on the specific nature of the Commission's request, whatever it may be, but it would also depend on the types of costs at issue, the market developments that have occurred at the time, and other factors. All of this, by its nature, is highly speculative and unlikely; it would be fruitless to try to predict with any specificity what types of future situations might prompt the Commission to make an unorthodox request for cost assignment data and how AT&T might best respond to such a possible request. AT&T has promised to retain all of the materials it currently uses that might be of use in answering such a Commission request, and no more can reasonably be required.¹⁷

Sprint's additional challenge to AT&T's proposal with respect to compliance with Section 254(k) is meritless. Sprint candidly acknowledges that the Commission granted forbearance from Rule 32.27, but nonetheless argues that "the Commission did not find

¹⁴ AT&T Compliance Plan at 12.

¹⁵ *Id.*

¹⁶ Sprint at 8-10; Ad Hoc at 7-8.

¹⁷ Sprint complains (at 9) that AT&T employees may forget how to perform cost assignment functions, but there is no basis to believe that AT&T could not use reasonable efforts to respond adequately to future Commission requests for data. Again, Sprint's alternative – that AT&T continue performing cost assignment on an ongoing basis – is precisely the requirement from which AT&T just received forbearance.

unreasonable or even question the logic underlying Section 32.27,” and that the Commission therefore should *reimpose* § 32.27 as part of the Compliance Plan.¹⁸ Here again, Sprint’s out of bounds “solution” for complying with the forbearance grant is to reverse it and require AT&T to continue performing all of the functions from which it just received forbearance.¹⁹

Finally, there is no need for any Commission clarification that adoption of AT&T’s Compliance Plan will not preclude states from obtaining the information they need for legitimate regulatory purposes.²⁰ AT&T has always worked with states to provide them with data they need for legitimate regulatory purposes, and AT&T will continue to do so. And, such concerns are especially misplaced here given that AT&T is no longer subject to rate-of-return regulation in any state, making the separations data at issue here entirely irrelevant. Similarly, the assertions by Sprint and Ad Hoc that approving AT&T’s Compliance Plan could somehow impair the Joint Board’s separation reform is also misguided. To the extent the Joint Board needs separations data, such data is available from AT&T and other carriers through 2007, and will continue to be available from other carriers even after 2007. Thus, because the Board must complete its activities by July 2009, it clearly will have all of the separations data it needs (if it needs it at all) to finalize its proposals and, to the extent AT&T would have responded to a data request prior to the FCC granting Forbearance, AT&T can still respond using the 2007 data.

¹⁸ Sprint at 10-12.

¹⁹ Sprint’s claimed concern about cross-subsidization is baseless because AT&T’s rates are governed solely by price caps. Under that system, the cost allocation rules play no role in determining what prices AT&T may charge for any service, competitive or non-competitive. Accordingly, the cost allocation rules are irrelevant to Section 254(k), because even if AT&T were to “misallocate” costs to regulated services, such misallocations would have no effect on AT&T’s price caps and AT&T would not gain any ability or opportunity to subsidize any services. *See* AT&T Compliance Plan at 8-10.

²⁰ State Members of the Joint Board on Separations at 3.

II. OPPONENTS' PROPOSED "BLUEPRINT" COMPLIANCE PLAN WOULD BE FAR MORE COMPLEX THAN THE CURRENT RULES AND WOULD BE COMPLETELY UNNECESSARY.

Although the Commission's *Forbearance Order* required AT&T to submit a proposed Compliance Plan, the order's opponents did not wait for AT&T's submission but rather rushed out their own "compliance plan," which they call a "Blueprint."²¹ Ad Hoc and Sprint hawk the Blueprint as a "streamlined" cost assignment process that would "drastically reduce" AT&T's "current compliance burden."²² The truth is the exact opposite. The Blueprint would require AT&T and the Commission to develop a very different, but in many ways much more complex, system of cost assignment than exists today, which would not only require AT&T to perform virtually all of the tasks it performs today and more, but also to develop entirely new studies and methods to give effect to the Blueprint's very different cost assignment philosophy. The Blueprint would be burdensome, unnecessary, and arbitrary, for several reasons.

First and most fundamentally, the entire concept of the Blueprint is misguided. The Commission's central holding in the *Forbearance Order* was that the cost assignment system, as it relates to AT&T, is not necessary or even used for any regulatory purpose. Accordingly, the Commission granted *forbearance* from those rules – *i.e.*, it held that requiring AT&T to maintain and report complex cost assignment data on an ongoing basis is not necessary to ensure just and reasonable rates, or to protect consumers, or to promote the public interest.²³ In light of those

²¹ Letter from James Blaszak (Ad Hoc) to Marlene Dortch (FCC), dated July 7, 2008) ("Ad Hoc Blueprint Proposal").

²² See Ad Hoc at 4 (Blueprint "would greatly simplify AT&T's data collection duties"); Sprint at 12 (Blueprint would "drastically reduce AT&T's current Cost Assignment Rule compliance burden").

²³ See *Forbearance Order* ¶¶ 15-45; see *id.* ¶ 45 (we view it as inconsistent with the public interest, under section 10, to maintain costly requirements in exchange for benefits that are speculative in nature and for uses that do not currently exist").

holdings, all that is required now are reasonable steps that would allow AT&T to produce usable and timely cost assignment data in the unlikely event that the Commission would ever want to examine such data in a future proceeding.²⁴ It would be completely inconsistent with the forbearance that has been granted to read the *Forbearance Order* as requiring a full-blown alternative cost assignment system that AT&T would be required to maintain and to report publicly on an ongoing basis²⁵ – much less the radically different system envisioned by the Blueprint (under which AT&T would report data in a format preferred by Ad Hoc but which bears no resemblance to anything AT&T or anyone else does now). The Commission is not going to use the data generated by the Blueprint for any foreseeable day-to-day purpose, and the Commission expressly held that one of the major public interest benefits of forbearance was the elimination of precisely the costs and administrative burdens inherent in such an ongoing system.²⁶

Ad Hoc and Sprint insist, however, that their proposal would not be burdensome for AT&T, because the Blueprint envisions a much more “streamlined” approach than the current rules. The reality is that the Blueprint’s approach would be even more complicated and burdensome than what AT&T does today. Under the Blueprint’s approach, AT&T would still have to maintain a complex tracking system in which AT&T employees place appropriate codes on every single cost, just as they do today.²⁷ The Blueprint, however, would require an entirely

²⁴ *Id.* ¶ 31.

²⁵ *See, e.g., id.* ¶ 40 (“there is sufficient evidence in the record to show that the Cost Assignment Rules significantly increase AT&T’s operating costs, and that the elimination of the Cost Assignment Rules will likely result in substantial cost savings and enable AT&T to compete more effectively”).

²⁶ *Id.* ¶¶ 40-45.

²⁷ *Cf. id.* ¶ 43 (public interest benefit of forbearance was elimination of need to “direct considerable financial and personnel resources ‘to utilize a complex hierarchy to track, value and

different set of codes than AT&T or any other carrier has ever used, and thus AT&T would not only have to create an entirely new set of studies and methodologies to implement the Blueprint, but it would have to train a small army of people to become Blueprint experts.

Ad Hoc's charts purporting to explain the "simplified" nature of the Blueprint are particularly laughable.²⁸ Ad Hoc may have deleted some boxes from the second picture, but that cannot change the reality that AT&T would have divide all of these costs into interstate/intrastate and regulated/non-regulated (as in the first chart), which would require an enormous number of steps involving an enormous number of people. Indeed, if Ad Hoc's Blueprint were an architectural blueprint, it would be a stick figure drawing of a 100-room castle – with no specific instructions as to how to construct or maintain such a monstrosity. And any attempt to work out the thousands of details inherent in the Blueprint's scheme would improperly turn this proceeding – which is supposed to be about *forbearance* from these rules – into the equivalent of a full-blown rulemaking for a new set of rules to replace the ones from which AT&T received forbearance.

For example, Ad Hoc and Sprint claim that the Blueprint should be much easier to implement because it relies as much as possible on "direct assignment" of costs. This is ridiculous; given the extraordinary array of services AT&T provides today, there are very few aspects of the network that could be directly assigned to any single service or function. Ad Hoc's own explanation confirms this: in its list of the functional categories covered by the Blueprint approach, almost every single one – dedicated interoffice transport, end-user common line loop for voice, wholesale common line loops, local switches, and packet switches – is

record affiliate transactions, to allocate costs of regulated and non-regulated services, to maintain, update and audit its Cost Allocation Manual, to jurisdictionalize intra and interstate costs and to apportion interstate costs to interstate service baskets . . .").

²⁸ See Ad Hoc Blueprint Proposal at 2-3.

expressly identified as “mixed use.”²⁹ Equally important, even the three types of equipment Ad Hoc identifies as directly assignable – dedicated loop plant, multiplexing equipment, and broadband packet switching equipment³⁰ – are not really susceptible to direct assignment, because each of those types of equipment is used to provide a wide variety of services. And even if some nontrivial portion of AT&T’s costs were directly assignable, that would save AT&T very little work relative to the current system; AT&T would still have to train and deploy a large body of people who would have to make countless judgments about whether a given cost should be directly assigned or set aside for allocation.³¹

Moreover, the Blueprint would require AT&T to allocate costs to a whole range of categories that no carrier has ever been required to track before. Contrary to Ad Hoc’s contention, for example, dedicated loops (channel terminations and entrance facilities) for special and switched access are not 100% interstate today nor could they be directly assigned and AT&T would have to perform special cost studies to determine how such costs would be assigned within the framework of the Blueprint.³² Similarly, AT&T has never tracked facility detail for cost assignment purposes for interoffice transport facilities, wholesale loops used for unbundled network elements, loops used for DSL or U-verse services, or packet switching facilities.³³ AT&T would have to perform special studies to determine whether AT&T could even reasonably obtain such detail, and if so, how it would assign the costs under the Blueprint.

²⁹ See Ad Hoc Blueprint Proposal at 6.

³⁰ See *id.* at 7.

³¹ For the same reason, the fact that the Blueprint would relegate some costs to a “residual” category saves little work; AT&T would still have to train and retain a workforce to code each cost properly and to make appropriate judgments about whether each cost (or some portion of it) fits into the residual or some other category.

³² See Ad Hoc Blueprint Proposal at 6.

³³ See *id.* at 6.

The Blueprint would also require AT&T to distinguish certain cost categories by capacity level – e.g., AT&T would be required to distinguish special access services provided at DS3 capacity and below, at capacities greater than DS3, and via broadband packet switching³⁴ – something AT&T has never done and which would require the development of entirely new burdensome administrative systems to track.³⁵ Most fundamentally, however, any assignment of the costs for these facility categories would be entirely arbitrary, and would inevitably lead to intractable debates about how best to implement the Blueprint. Indeed, one of the principal holdings of the *Forbearance Order* is that there is no point in making AT&T – and AT&T alone – spend time and effort trying to “shoehorn” the costs of today’s innovative and dynamically changing services into the wholly arbitrary categories inherent in any cost assignment system.³⁶

Equally troubling, the Blueprint’s proposed method for allocating the cost of mixed use facilities – which would be necessary for almost all of AT&T’s costs, since very few would be directly assignable – is also wholly arbitrary and burdensome. Using interoffice transport as an example, Ad Hoc explains that the Blueprint would require AT&T to assign costs based on the portion of the *capacity* of each facility that is used to provide switched and special access channels, non-dedicated switched access, and Internet services.³⁷ AT&T has never tried to apportion traffic on network facilities by *capacity*, nor is it even clear how one would do that.

³⁴ *See id.* at 5.

³⁵ Even more outrageous, the Blueprint would require AT&T to go back in time and re-analyze special access facility assignments during the period of the separations freeze in accordance with the Blueprint’s dictates. *See Ad Hoc Blueprint Proposal* at 7 n.10 (“an analysis of plant additions during the ‘freeze’ period would need to be undertaken to allow ‘direct assignment’ of the plant additions that undertaken specially to support special access during that time frame”).

³⁶ *Forbearance Order* ¶ 42 (noting that for every new broadband service AT&T seeks to offer, it must “conduct an exhaustive analysis of every part of the network” and sometimes make up to 100 allocation decisions, even though those rules were designed for an analog, single purpose, circuit-switched network); *see also id.* ¶ 17.

³⁷ *See Ad Hoc Blueprint Proposal* at Appendix A.

Indeed, any attempt to allocate voice and data services by the capacity of the facility would be inherently arbitrary, because there is no theoretically obvious method for dividing a facility between a voice service that uses dedicated channels and a data service that is “always on” and being dynamically routed through many paths simultaneously with the use of packets. The Commission has recognized this very difficulty, and that is why, in the *Wireline Broadband Internet Access Order*, the Commission required incumbent LECs to continue treating wireline broadband Internet access services as regulated services – specifically because the Commission did not want carriers to have to perform a full Part 64 analysis of these services when the benefits of such an analysis would be negligible and the results would likely be arbitrary.³⁸

In short, there is no reason in the world for the Commission even to consider the Blueprint as a “compliance plan.” The Blueprint’s authors did not design it to serve the Commission’s purposes (which are merely to ensure that AT&T can quickly generate usable cost assignment data on the extremely small chance that the Commission may one day want it). Rather, the sole purpose of the Blueprint, which Ad Hoc and Sprint hardly conceal, is to force AT&T to generate a new set of data from which they can repeat their discredited arguments that ARMIS-generated rate-of-returns for special access require those services to be re-regulated.³⁹

³⁸ Report and Order, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd. 14853, ¶¶ 130, 134 (2005) (“Requiring that incumbent LECs classify the provision of broadband Internet access transmission provided on a non-common carrier basis as a nonregulated activity under part 64 would mean, among other matters, that incumbent LECs would have to develop, and we would have to review, methods for measuring the relative usage that this transmission and the incumbent LECs’ traditional local services make of incumbent LECs’ transmission facilities. . . . [the Commission agreed that such an analysis] would impose significant burdens on [LECs] with little discernible benefit. . . . The proceedings to set these measures would be both resource-intensive and, given the changes in network technology from the time when the part 64 cost allocation rules were developed, likely to lead to arbitrary cost allocation results”).

³⁹ Indeed, a central feature of the Blueprint is that AT&T must make the resulting data publicly available on an ongoing basis, so that Ad Hoc’s and Sprint Nextel’s consultants can mine it for

Indeed, everything about the Blueprint is rigged to pull as much cost from special and switched access services as possible: that is why it requires absurdly granular cost assignment data for special access services that have never been required before; that is why it arbitrarily assigns 100% of the cost of many broadband investments to nonregulated services; that is why it arbitrarily assigns all investments used to provide broadband Internet access to nonregulated Internet access services.⁴⁰

Although AT&T has addressed these parties' special access arguments on numerous occasions, it bears repeating here again: *None of these cost assignments matter.* There is no basis for using ARMIS-generated rate of return estimates as a ground for re-regulating special access. The Commission has already rejected claims that special access caps should be reinitialized on the basis of ARMIS-generated returns⁴¹; the seven-year-old separations freeze, on which the Blueprint would continue to rely, has rendered the already arbitrary cost allocations in ARMIS more and more wildly inaccurate every year;⁴² and even if the Commission were to

meaningless rate-of-return figures. *See, e.g.,* Sprint Nextel at 5 n.14 (“it is critically important that the information generated from the AT&T compliance plan (if and when it is approved) be publicly available in a searchable format to provide all interested parties complete access to such data”); *see also* Ad Hoc at 5 n.8.

⁴⁰ It should be noted that the entirety of the vast amount of meaningless figures that would be generated by the Blueprint, focused as it is on distinctions within the interstate jurisdiction related to special access, would be useless to any state commission.

⁴¹ *See* Order And Notice Of Proposed Rulemaking, *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 20 FCC Rcd. 1994, ¶ 129 (2005) (rejecting request for interim special access rate reductions that was premised on ARMIS rates of return, and expressly “question[ing the] central reliance on accounting rate of return data to draw conclusions about market power” because “[h]igh or increasing rates of return calculated using regulatory cost assignments for special access services do not in themselves indicate the exercise of monopoly power”).

⁴² Report and Order, *Jurisdictional Separations and Referral to the Federal-State Joint Board*, 16 FCC Rcd. 11382, ¶ 12 (2001) (“*Separations Freeze Order*”) (“rapid changes in telecommunications infrastructure” will cause “cost shifts in separations results because these

replace Part 64 with the Blueprint's arbitrary alternative assumptions, the Commission's ARMIS data were never intended to be used to calculate service-specific returns in the first place.⁴³ These parties' "Blueprint" thus confirms again that the Commission should put an end to all of this once and for all by closing down the special access re-regulation proceeding as soon as possible, and it certainly should not put itself and AT&T through the time, effort and expense of generating this meaningless mass of data just so Ad Hoc and Sprint Nextel can make another baseless argument in the special access proceeding.

and other new technologies . . . as well as a competitive local exchange marketplace" have not been appropriately incorporated into the "current Part 36 rules"); Notice of Proposed Rulemaking, *Jurisdictional Separations and Referral to the Federal-State Joint Board*, 12 FCC Rcd. 22120, ¶¶ 9-16 (1997) (acknowledging in the late 1990's that a comprehensive review of the separations factors was necessary in light of the fundamental changes in telecommunications networks that had already taken place).

⁴³ Order on Reconsideration, *Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd. 2637, ¶ 199 (1991) (category-specific returns reported in ARMIS "do[] not serve a ratemaking purpose"); Second Report and Order, *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd. 6786, ¶ 380 (1990) ("the collection of rate of return data on an access category or rate element level is improper and unnecessary for price cap LECs"); *see id.* (there is "no need for disaggregated rate of return data.").

CONCLUSION

AT&T's Compliance Plan should be approved.

Respectfully Submitted,

David L. Lawson
Sidley Austin LLP
1501 K St., N.W.
Washington, D.C. 20005
(202) 736-8000

/s/ Theodore C. Marcus

Theodore C. Marcus
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036
(202) 457-2044

Attorneys for AT&T Inc.

September 3, 2008

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 Verizon For Forbearance	)	WC Docket No. 07-273
Under 47 U.S.C. § 160(c) From Enforcement)	
Of Certain of the Commission's Recordkeeping)	
And Reporting Requirements)	
)	

REPLY COMMENTS OF VERIZON¹
REGARDING ITS COST ASSIGNMENT FORBEARANCE COMPLIANCE PLAN

Verizon's compliance plan satisfies all of the requirements of the *Cost Assignment Forbearance Order* and the *Recordkeeping and Reporting Forbearance Order*.² Only two sets of comments opposing Verizon's plan were filed, and those commenters largely take issue with the logic of the underlying forbearance orders, which is not relevant to the Wireline Competition Bureau's evaluation of Verizon's plan. The Bureau should approve Verizon's plan and the similar compliance plans filed by AT&T and Qwest, which also satisfy the requirements of the

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

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, ¶ 32 (rel. April 24, 2008) ("*Cost Assignment Forbearance Order*"), *pet. for recon. pending*; *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 of Proposed Rulemaking, WC Docket Nos. 01-139, 07-273 (rel. Sept. 6, 2008) ("*Recordkeeping and Reporting Forbearance Order*").

Commission's cost assignment forbearance orders. Approval of the companies' compliance plans will allow them to implement the forbearance relief granted by the Commission and will help level the playing field with competitors that have never been constrained by the Commission's outdated and unnecessary cost assignment rules.

As required, Verizon's compliance plan: (i) includes "proposed procedures to ensure continued compliance with sections 272(e)(3) and 254(k) of the Act"; (ii) includes a description of Verizon's "imputation methodology that demonstrates its access charge imputation methodologies remain consistent with section 272(e)(3) and the *Section 272 Sunset Order*"; (iii) includes Verizon's "first annual certification that it will comply with its obligations under section 252(k) in the absence of the Cost Assignment Rules and will provide any requested cost accounting information necessary to prove such compliance"; (iv) demonstrates how Verizon will "maintain its accounting procedures and data in a manner that will allow it to provide useable information on a timely basis if requested by the Commission"; and (v) includes an explanation of the "transition process" that Verizon will undertake. *Cost Assignment Forbearance Order* ¶ 31. In addition, Verizon's compliance plan describes how it will maintain the requisite accounting data necessary to request and justify the high cost universal service support that Verizon receives in a limited number of study areas. *Recordkeeping and Reporting Forbearance Order* ¶ 30.

Both of the opposing comments were filed by the same parties that opposed forbearance from the cost assignment rules in the first place.³ In one set, state consumer organizations agree that Verizon's procedures for maintaining the accounting data in the study areas where it

³ See Comments of Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTTEL, One Communications Corp., and tw telecom inc. ("Joint Comments"); Comments of the National Association of State Utility Consumer Advocates and New Jersey Division of Rate Counsel ("NASUCA Comments").

receives high cost support are “adequate.” NASUCA Comments at 3. Otherwise, commenters merely summarize and repeat their opposition to the compliance plan filed by AT&T, to which Verizon has already responded, *see* Reply Comments of Verizon, Docket No. 07-21 (filed Sept. 3, 2008) (“Verizon Reply Comments”) (attached at Attachment A), or challenge the merits of granting forbearance relief to Verizon, even though the Bureau admonished parties that such comments “will not be considered.” *Comment Dates Set on Verizon Compliance Plan for Forbearance Relief From Cost Assignment Rules*, Public Notice, WC Docket No. 07-21, at 2 (rel. Sept. 23, 2008).

The argument that Verizon’s compliance plan will hinder “state commissions’ ability to fulfill their statutory mandates” is misguided. NASUCA Comments, Attachment at 3. Consistent with the Commission’s determination that it cannot lawfully “maintain regulatory burdens that may produce information helpful to state commissions solely for intrastate regulatory purposes,” *Recordkeeping and Reporting Forbearance Order* ¶ 31, Verizon’s compliance plan is intended to ensure continued compliance with federal regulatory requirements. Verizon will work with state commissions under appropriate circumstances for access to Verizon data. Verizon Reply Comments at 2.

Equally misguided are claims that price cap regulation does not “render cost data irrelevant,” NASUCA Comments, Attachment at 4, that Verizon’s compliance plan must maintain existing “regulatory cost allocations,” or that the Commission never questioned “the logic underlying [the affiliate transaction rules].” Joint Comments, Attachment at 3 & 11. Such claims are a clear challenge to the merits of the Commission’s forbearance decision, which the Bureau should disregard.

The same is true for the “Blueprint Plan” advocated by commenters, *id.*, which is nothing more than an attempt to revisit the Commission’s decision to forbear from the cost assignment rules. Rather than address Verizon’s compliance plan and its consistency with the requirements of the *Cost Assignment Forbearance Order* and the *Recordkeeping and Reporting Forbearance Order*, these commenters seek to create new accounting rules that are even more complex and burdensome than those from which the Commission has granted forbearance⁴

With respect to the substance of Verizon’s compliance plan, commenters offer various criticisms, none of which has merit. For example, commenters insist that “freezing” cost allocation ratios, which would be calculated based upon data from the calendar year immediately preceding approval of Verizon’s compliance plan, will result in ratios that “will quickly become outdated.” Joint Comments, Attachment at 6. However, without knowing whether the Commission will ever request cost assignment data or the uses to which such data would be put in the future, it is entirely speculative to assume that existing cost allocation ratios will necessarily become “outdated.” Furthermore, the use of historical ratios is not precluded. *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 (2006) (extending freeze of Part 36 category relationships and jurisdictional cost allocation factors established in 2000). And, in any event, under Verizon’s compliance plan, if the Commission were to request cost allocation information or attendant data in the future, the ratios could be updated depending upon “the reliability of existing ratios and the relative burden of an updating process.” Verizon Compliance Plan at 3-4.

⁴ Of course, this proceeding is a forbearance proceeding to eliminate unnecessary rules, not a rulemaking to create new rules. And, as Verizon noted previously, the Bureau does not have the authority to invent a new cost assignment system under the guise of adopting the Blueprint Plan. *See* 47 C.F.R. § 0.291(e).

Similarly, commenters complain that Verizon's compliance plan fails to provide adequate details, such as the "methodology" Verizon would use to update cost allocation ratios or the process by which it would conduct "special cost studies" that the Commission may require in the future. Joint Comments, Attachment at 7-8. This complaint ignores the fact that the compliance plan must be flexible by design in order for Verizon to produce unspecified accounting data that the Commission may request "in the future." *Cost Assignment Forbearance Order* ¶ 21. Such flexibility would be completely lost if the compliance plan were to spell out every detail concerning how cost allocation ratios will be updated or special cost studies conducted. Furthermore, it is impossible to provide such details at this juncture because the specific accounting information the Commission may require for future regulatory purposes is unknown. Indeed, the ability to predict whether and to what extent the Commission may need cost assignment data in the future is complicated by the fact that Verizon operates under the Commission's price cap regime, which has been in place for more than 15 years and is cost agnostic. Verizon also competes in a vibrantly competitive market that increasingly makes carrier costs irrelevant.

Accordingly, the Bureau should approve Verizon's compliance plan and the similar compliance plans filed by AT&T and Qwest.

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

October 23, 2008

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST to be: 1) filed with the FCC via its Electronic Comment Filing
System in WC Docket Nos. 07-204 and 07-21; 2) 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 and Printing, Inc. at fcc@bcpweb.com.

/s/Richard Grozier

October 29, 2008

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

David C. Bergmann
National Association of State Utility
Consumer Advocates
Suite 101
8380 Colesville Road
Silver Spring, MD 20910

Ronald K. Chen
Stefanie A. Brand
New Jersey Division of Rate Counsel
POB 46005
Newark, NJ 07101

Anna M. Gomez
Maria L. Cattafesta
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

Karen Reidy
COMPTEL
Suite 400
900 17th Street, N.W.
Washington, DC 20006

James S. Blaszak.....Ad Hoc Telecom Users
Levine, Blaszak, Block & Boothby, LLP
Suite 900
2001 L Street, N.W.
Washington, DC 20036

Thomas JonesTW Telecom
Jonathan Lechter.....One Comm Corp
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, DC 20006