



900 17th Street, NW, Suite 400, Washington, DC 20006. PH:202 296 6650. FX:202 296 7585. www.comptel

December 9, 2008

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte Notice*; WC Docket No. 07-204 and 07-273

Dear Ms. Dortch:

The Commission has before it a Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements.¹ Verizon has requested similar relief.² Qwest and Verizon have already been granted forbearance from a number of these reporting obligations pursuant to the *Recordkeeping and Reporting Forbearance Order*,³ in which the Commission extended to them the conditional forbearance granted to AT&T in the *AT&T Cost Assignment Forbearance Order*⁴ and, also, granted carriers relief from the obligations to file ARMIS Reports 43-

¹ Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160, WC Docket No. 07-204 (filed Sept. 13, 2007).

² 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 (filed Nov. 26, 2007).

³ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2000)(“Recordkeeping and Reporting Forbearance Order”).

⁴ *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, et al.*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008)(“AT&T Cost Assignment Order”). This includes four of the Commission reporting requirements –

05, 43-06, 43-07, and 43-08. The Commission should deny the petition of Qwest and Verizon, in the above-reference dockets, to the extent they seek forbearance relief not already granted.⁵ In particular, the Commission should not grant these carriers forbearance from their obligations to file ARMIS Reports 43-01, 43-02, and 43-03.

The regulations from which Qwest and Verizon seek forbearance relief are those which the Commission needs to determine whether these carriers' charges and practices for access and pole attachment are just, reasonable, and nondiscriminatory. The Commission, therefore, in accordance with Section 10, may not grant forbearance from these regulations.

Just last year, in the *Section 272 Sunset Order*,⁶ the Commission granted the Bell Operating Companies ("BOCs") forbearance from certain dominant carrier regulations so that AT&T, Qwest, and Verizon could provide - pursuant to nondominant carrier regulations - in-region, interstate, long distance services either directly or through affiliates that are neither subject to the section 272 nor rule 64.1903 separate affiliate requirements. As part of this forbearance grant, the Commission adopted *new* targeted safeguards that are implemented through the carriers' filing of ARMIS Reports 43-01, 43-02 and 43-03. Specifically, the Commission required the costs imputed to the in-region long distance operations of AT&T, Qwest and Verizon be included in these ARMIS reports.⁷ In adopting these filing requirements, the Commission found that these obligations would "not in any way hamper the BOCs' and their independent incumbent LEC affiliates' ability to compete."⁸ Rather, the Commission found these requirements to provide it with meaningful information for evaluating whether these carriers' imputation and access charge practices and procedures comply with section 272(e)(3) and the *Section 272 Sunset Order*, thereby providing a "less costly but more effective method [than dominant carrier regulations] of assuring that the BOCs and their independent

ARMIS 43-04, FCC Form 492, FCC Form 495A and FCC Form 495B. *See Recordkeeping and Reporting Forbearance Order* at n. 22 and n. 82.

⁵ The Commission should also reconsider the relief already granted.

⁶ *Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requierments, et al*, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007)("Section 272 Sunset Order").

⁷ Section 272(e)(3) requires the Bell Operating Companies and the 251(c) affiliates to impute to its separate affiliates, or to itself (if using the access for its provision of its own services), "an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to an unaffiliated interexchange carriers for such service."⁷

⁸ *Section 272 Sunset Order* at ¶ 105.

incumbent LEC affiliates will not discriminate between their own operations and their competitors in the pricing of special access services.”⁹

Neither Qwest, nor any other party to this proceeding, has provided discussion or evidence demonstrating a change in circumstance warranting a change in the law. Verizon merely states that even if forbearance were granted, Verizon would continue to be required to record the imputed charges in account 32.5280, and that these amounts would be included in the biennial audit of Verizon’s cost allocation manual.¹⁰ As these records are not publicly filed they do not address the Commission’s specific purpose for adopting the rules – *transparency*.¹¹ Moreover, if the recording requirements Verizon mentions were sufficient, the Commission would not have adopted the new ARMIS reporting rules in the *Section 272 Sunset Order*. The Commission cannot merely state that these were existing rules the Commission cited to as safeguards when providing the BOCs relief from the nondominant carrier regulations, as it did in the *AT&T Cost Assignment Order*; these were *new* rules the Commission specifically adopted to address concerns resulting from that relief. For the Commission to grant forbearance from these newly adopted rules, when no carrier has provided evidence of change circumstances in the BOCs exclusionary market power since the *Section 272 Sunset Order* was adopted, would suggest that the Commission adopt rules that were unnecessary at the time. This is clearly not the case. The Commission should not adopt safeguards in order to provide the requested relief, only to eliminate those safeguards a little over a year later, especially if such decision lacks reasoned analysis to justify its actions as it did in the *AT&T Cost Assignment Forbearance Order*. As these obligations are an essential component in the Commission’s ability to fulfill its obligations in evaluating access charges, Section 10 compels the Commission to deny, not grant, forbearance.

The Commission’s formula for cable and telecommunications pole attachment rates requires the use of cost data contained in ARMIS 43-01. The data must be publicly available for use by the Commission and the attaching parties. In an attempt to address concerns raised with regard to the availability of this data if forbearance were to be granted, Qwest agreed to voluntarily, publicly file with the Commission, on an annual basis, pole attachment data that is currently contained in ARMIS Report 43-01, upon grant of Qwest’s pending ARMIS forbearance petition. It makes no sense for the Commission to eliminate an existing regulation on the basis of a carrier’s voluntary commitment to comply. The regulation is needed to ensure that there is no confusion with regard to the Commission’s ability to enforce the obligation to file. Indeed, Verizon, in agreeing to the same voluntary commitment, has already placed qualifications on its commitment. It states that “Verizon will continue to file the data so long as it is actually used by the Commission for pole attachment purposes.” Who will decide if the Commission is actually using the data? Will the decision-maker for this voluntary

⁹ *Id.*

¹⁰ Verizon Reply Comments, WC Docket No. 07-273, p. 11.

¹¹ See *Section 272 Sunset Order* at ¶104.

commitment be the Commission or Verizon? The regulation is needed for the Commission to fulfill its responsibility of ensuring just, reasonable, and nondiscriminatory rates for pole attachments. Therefore, in accordance with Section 10, the regulation must be maintained.

Sincerely,

Karen Reidy
Vice President, Regulatory Affairs
COMPTEL

Russ Merbeth
Assistant General Counsel
Integra Telecom

W. Richard Morris
Senior Counsel
SPRINT NEXTEL CORPORATION

Mark Iannuzzi
President
TelNet Worldwide, Inc.

Don Shephard
Vice President, Federal Regulatory Affairs
tw telecom inc.