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EX PARTE

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: 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 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

Dear Ms. Dortch:

Yesterday, Dee May, Maggie McCready, and Chris Miller of Verizon met separately with Amy Bender, Legal Advisor to Chairman Martin, Scott Deutchman, Legal Advisor to Commissioner Copps, and Scott Bergmann, Senior Legal Advisor to Commissioner Adelstein. Today, the undersigned, Ms. McCready, and Mr. Miller of Verizon met separately with Greg Orlando, Legal Advisor to Commissioner Tate, and Nick Alexander, Legal Advisor to Commissioner McDowell. The purpose of the meetings was to discuss the above-captioned petitions. Verizon requested that the Commission grant forbearance relief from the remaining ARMIS financial reports. Verizon also requested that the Commission grant relief from its continuing property records rules.

The ARMIS financial reports and the Commission's continuing property records rules are the two items in Verizon's recordkeeping and reporting forbearance petition that remain unaddressed. Like the ARMIS reports, the property rules were developed under rate-of-return regulation and serve no valid purpose under price cap regulation. These rules specify in detail meaningless information that an incumbent LEC must maintain for all plant accounts, including detailed descriptions of the property, location information, date of placement into service, and original cost data and supporting records. *See, e.g.,* 47 C.F.R. § 32.2000(f). Under price cap regulation, a carrier's interstate rates are unaffected by such minutia, and, in any event, other accounting safeguards and controls such as GAAP adequately ensure that assets are valued properly. As is the case with the ARMIS reports, forbearance from the Commission's property records rules also is in the public interest because the rules distort competition by imposing costs

on a small subset of competitors. Indeed, the rules operate as a regulatory exercise with no purpose.

The Commission concluded as far back as 2001 that the property records rules should be eliminated. *See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection Jurisdictional Separations Reform and Referral to the Federal-State Joint Board Local Competition and Broadband Reporting*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, ¶ 212 (2001) (“[W]e seek comment on eliminating our rules for continuing property records. . . .Incumbent LECs are subject to a number of other regulatory constraints and appear to have ample incentives to maintain a detailed inventory of their property. Moreover, the record shows that our detailed requirements, which include rigid rules for recording property, impose substantial burdens on incumbent LECs. In light of all these factors, we tentatively conclude that we should eliminate our detailed CPR rules in three years.”) (citations omitted). Yet seven years later, the property rules persist. And, given that passage in time, these rules are even more irrelevant today. The additional years under a regulatory regime where costs have no bearing on rates, and the fact that incumbent LECs have been subject to rapid growth in competition from cable and other VoIP competitors as well as from wireless providers, all of which are not subject to the Commission’s property records rules, makes continuation of these requirements affirmatively counterproductive and anticompetitive. Further, separate accounting requirements for securities regulations and other purposes have been strengthened substantially over the last several years, making the Commission’s property rules even more superfluous. *See, e.g.*, the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7211, *et seq.* The Commission should take the opportunity to eliminate these requirements now.

In addition, Ms. May, Ed Shakin, and Mr. Miller of Verizon spoke by telephone yesterday with Mr. Orlando. The purpose of the discussion was to address a recent filing by COMPTTEL and other parties in these proceedings.¹ The parties to the *COMPTTEL Letter* argue that the Commission should not grant relief from the remaining ARMIS reporting requirements because (1) the Commission needs the pole attachment data in ARMIS Report 43-01, and Qwest and Verizon’s agreements to continue to file pole attachment data are somehow “not good enough”; and (2) the Commission’s *Section 272 Sunset Order*² precludes forbearance. *COMPTTEL Letter* at 2-3. Both arguments are baseless.

¹ *See* Letter from Karen Reidy, COMPTTEL; Russ Merbeth, Integra Telecom; Richard Morris, Sprint; Mark Iannuzzi, TelNet Worldwide; and Don Shephard, tw telecom; to Marlene H. Dortch, FCC, WC Docket Nos. 07-204 and 07-273 (Dec. 9, 2008) (“*COMPTTEL Letter*”).

² *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) (“*Section 272 Sunset Order*”).

First, the argument that the Commission cannot accept Qwest and Verizon's voluntary commitments³ to still file pole attachment data if the Commission grants forbearance from the remaining ARMIS financial reports has no merit. *COMPTEL Letter* at 3-4. Verizon continues to dispute that ARMIS pole attachment data is necessary at all because pole attachment rates are largely the result of negotiated agreements. Nonetheless, if the Commission accepts these voluntary pole attachment commitments and grants forbearance, in its order the Commission may expressly condition relief on compliance with these voluntary commitments. Conditional grants of forbearance are common. For example, in the *Recordkeeping and Reporting Forbearance Order* just issued by the Commission, relief from other ARMIS reporting obligations was expressly conditioned on voluntary commitments by many carriers to continue to collect and publicly file service quality and customer satisfaction data for 24 months following the effective date of the order.⁴ Moreover, it is axiomatic that parties must comply with – and the Commission has authority to enforce – conditions adopted in Commission orders. See 47 U.S.C. § 416(c) (“It shall be the duty of every person, its agents and employees. . .to comply with [Commission] orders so long as the same shall remain in effect.”).

The related claim that Verizon “placed qualifications” on its voluntary commitment to continue to file pole attachment data is false. *COMPTEL Letter* at 3. Verizon committed to file pole attachment data so long as such data is actually used by the Commission. *Verizon Pole Attachment Letter* at 2. If, in the future, the Commission does not have use for pole attachment data derived from the ARMIS reports it would make no sense that Verizon be required to continue to file such data with the Commission.

Second, the parties to the *COMPTEL Letter* raised the same claim regarding the *Section 272 Sunset Order* and its potential preclusive effect on forbearance multiple times in filings leading up to the *AT&T Cost Assignment Forbearance Order*⁵ and the later *Recordkeeping and Reporting Forbearance Order*. *COMPTEL Letter* at 2-3. And the Commission expressly rejected these arguments:

³ See Letter from Melissa E. Newman, Qwest, to Marlene H. Dortch, FCC, WC Docket Nos. 07-204 and 07-245 (Oct. 23, 2008); Letter from Ann Berkowitz, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 07-204, 07-245, 07-273 (Nov. 21, 2008) (“*Verizon Pole Attachment Letter*”).

⁴ *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, 23 FCC Rcd 13647, ¶ 12 (2008) (“*Recordkeeping and Reporting Forbearance Order*”).

⁵ *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, 23 FCC Rcd 7302 (2008) (“*AT&T Cost Assignment Forbearance Order*”).

We are not persuaded by commenters' arguments that forbearance from the Cost Assignment Rules is in conflict with the Commission's recent decision in the *Section 272 Sunset Order*. . . We do not abandon those conclusions here. We do not, however, believe that the *Section 272 Sunset Order* precludes us from our actions in this Order. The *Section 272 Sunset Order* was a rulemaking of general applicability in which we discussed existing nonstructural safeguards, including the Cost Assignment Rules, as part of the regulatory framework that supported our decision to modify rules related to the provision of in-region, interexchange services by the BOCs. That rulemaking does not preclude us from granting forbearance to AT&T, and indeed, we conclude that section 10 compels us to modify the framework where, as here, the three-prong statutory standard for forbearance is satisfied for AT&T.

AT&T Cost Assignment Forbearance Order ¶¶ 26-27 (citations omitted). In the *Section 272 Sunset Order*, in conjunction with its decision to allow the former BOCs, including Verizon, to offer in-region long distance services on a non-dominant basis, the Commission provided guidance on how the former BOCs should calculate imputation of access charges connected with a long distance offering as required by Section 272(e)(3). *Section 272 Sunset Order* ¶ 99. In providing that guidance, the Commission also modified the former BOCs' annual Cost Allocation Manuals ("CAMs"), and added related footnotes in the ARMIS financial reports. *Id.* ¶¶ 102, 104.

The parties to the *COMPTEL Letter* now argue more specifically that the Commission should keep all of the ARMIS financial reports merely to retain these footnotes. *COMPTEL Letter* at 3.⁶ This makes no sense. The Commission addressed this same issue in the context of the changes to the CAM, concluding that it could not keep the otherwise unnecessary cost allocation rules merely to retain the CAM changes adopted in the *Section 272 Sunset Order*. "[T]he maintenance of the elaborate and pervasive blanket of regulations at issue in the instant AT&T petitions would constitute a substantially overbroad method of ensuring section 272(e) compliance. We cannot justify maintaining overbroad Cost Assignment Rules when a more focused approach will ensure that AT&T satisfies the regulatory goals of section 272(e)(3)." *AT&T Cost Assignment Forbearance Order* ¶ 28 (citations and quotations omitted). The same conclusion applies to the imputation footnotes in the ARMIS reports. The Commission cannot maintain the entire body of the ARMIS financial reports in order to preserve a few footnotes,

⁶ The parties to the *COMPTEL Letter* apparently believe that the CAM survives the cost assignment forbearance relief that the Commission already granted. *COMPTEL Letter* at 3 (complaining that imputation entries in Verizon's CAM are not sufficient because "these records are not publicly filed"). It did not. The Commission eliminated the CAM for AT&T in the *AT&T Cost Assignment Forbearance Order* and later extended the same relief to Verizon and Qwest. *AT&T Cost Assignment Forbearance Order* ¶ 12 (describing the scope of relief as inclusive of the CAM); *Recordkeeping and Reporting Forbearance Order* ¶ 23.

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which are unrelated to the vast majority of the data in these reports and have no impact on the underlying imputation requirements. Whether or not the former BOCs file ARMIS reports or a CAM, they are still required to properly account for imputation amounts associated with in-region long distance services. 47 U.S.C. § 272(e); *see also AT&T Cost Assignment Forbearance Order* ¶ 28 (“In that order, we, among other things, directed each BOC to continue to impute to itself its highest tariffed rate for access. . . We do not forbear from that requirement.”) (citations omitted).

If you have any questions, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Bender". The signature is written in a cursive, flowing style.

cc: Amy Bender
Scott Deutchman
Scott Bergmann
Greg Orlando
Nick Alexander
Al Lewis
Alan Feldman