

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Inc. for Forbearance Under 47)	WC Docket No. 07-21
U.S.C. § 160 From Enforcement Of Certain of the)	
Commission's Cost Assignment Rules)	
)	
Petition of Verizon for Forbearance Under 47)	WC Docket No. 07-273
U.S.C. § 160 From Enforcement Of Certain of the)	
Commission's Cost Assignment Rules)	
)	
Petition of Qwest Corporation for Forbearance)	WC Docket No. 07-204
Under 47 U.S.C. § 160 From Enforcement Of)	
Certain of the Commission's Cost Assignment)	
Rules)	
)	

**OPPOSITION OF AT&T
TO APPLICATIONS FOR REVIEW**

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY..... 1

I. IT WAS NOT PROCEDURALLY IMPROPER FOR THE BUREAU TO FOLLOW THE COMMISSION’S DIRECTION TO DOCUMENT ITS APPROVAL OF THE COMPLIANCE PLANS THROUGH A PUBLIC NOTICE..... 5

II. THE COMPLIANCE PLANS SATISFY THE REQUIREMENTS OF THE FORBEARANCE ORDERS, AND APPLICANTS’ CONTRARY ARGUMENTS ARE IMPROPER (AND BASELESS) COLLATERAL ATTACKS ON THE FORBEARANCE RELIEF ITSELF..... 11

CONCLUSION..... 19

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**OPPOSITION OF AT&T
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Pursuant to section 1.115 of the Commission’s Rules, 47 C.F.R. § 1.115, AT&T submits this opposition to the applications for review of the Wireline Competition Bureau’s approval of the cost assignment forbearance plans submitted by AT&T, Verizon and Qwest.¹

INTRODUCTION AND SUMMARY

Nearly a year ago, the Commission recognized that its monopoly-era cost assignment rules no longer serve any ongoing regulatory purpose and that there was no conceivable basis for requiring carriers to incur the substantial direct and indirect costs that these rules impose.² The

¹ See Public Notice, *Wireline Competition Bureau Approves Compliance Plans*, WC Docket Nos. 07-21, 07-204, 07-273, DA 08-2878 (rel. Dec. 31, 2008).

² Memorandum Opinion and Order, *Petition of 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 ¶ 45 (2008) (“*Forbearance Order*”) (“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”).

Commission therefore granted AT&T (and subsequently Verizon and Qwest) forbearance from those rules subject to the submission of a compliance plan by each carrier to explain how it would maintain the *capability* to produce cost assignment data in the unlikely event that the Commission should ever need to examine such data in a future proceeding.³

In particular, the Commission's forbearance orders required a description of procedures to ensure continued compliance with sections 272(e)(3) and 254(k) of the Act, a description of the access charge imputation methodologies sufficient to show that they will be consistent with section 272(e)(3) and the *Section 272 Sunset Order*,⁴ a certification of compliance with the obligations under section 254(k), an explanation how carriers will maintain the ability to provide usable cost assignment information on a timely basis if it is ever requested by the Commission, and a description of the process of transitioning from the cost assignment rules to the new compliance plans. The Commission delegated to the Wireline Competition Bureau ("Bureau") the tasks of reviewing the compliance plans and, "when the Bureau [was] satisfied" that the plans contain the explanations required by the Commission's orders, issuing "a public notice notifying the public of approval of the plan[s]." *Forbearance Order* ¶ 31 & n.114.

AT&T filed its compliance plan on July 24, 2008. Verizon and Qwest followed suit on September 19, 2008 and September 25, 2008 with similar plans. Each of these compliance plans contained all of the explanations that the forbearance orders required. In particular, as directed by the Commission's orders, each carrier explained how it would preserve systems, data, and

³ *Id.* ¶ 31.

⁴ Report and Order and Memorandum Opinion and Order, *In Re 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, and 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*, WC Docket Nos. 02-112 and 06-120, CC Docket No. 00-175, 22 FCC Rcd. 16440 (2007) ("*Section 272 Sunset Order*").

expertise and employ existing or updated cost allocation factors or special studies to produce cost assignment data and make it available to the Commission if the Commission ever had a legitimate need for it in the future.

The Bureau invited public comment on whether the compliance plans comply with the terms of the Commission's orders. The Bureau reminded interested parties, however, that its delegation was limited to reviewing the plans for consistency with the express requirements of the Commission's orders granting forbearance, that the comments should *not* be viewed as an opportunity to reargue the merits of forbearance, and that any such arguments would not be "considered."

State commission commenters uniformly agreed that AT&T's compliance plan "addresses [their] concern[s]" and is a "reasonable attempt to reply to the granted forbearance and to address some continuing data needs."⁵ By contrast, the Applicants here (Comptel, Ad Hoc, NASUCA and the New Jersey Division of Rate Counsel) filed comments that urged the Bureau to ignore its mandate to satisfy itself that each carrier's compliance plan implemented "a method of preserving the integrity of its accounting system in the *absence* of the Cost Assignment Rules," *Forbearance Order* ¶ 31 (emphasis added), and instead to require each carrier to continue producing cost assignment data on an ongoing basis in direct contravention of the Commission's grant of forbearance. Indeed, in flagrant disregard of the Bureau's mandate and instruction, the Applicants proposed their own substitute "Blueprint" that would have created a vastly *more* complicated and onerous cost assignment regime than the rules from which the Commission granted forbearance.

⁵ See, e.g., Comments of the Public Service Commission of Wisconsin, WC Docket No. 07-21, at 4 (Aug. 14, 2008).

On December 31, 2008, the Bureau did exactly what the Commission had directed it to do, issuing a public notice stating that it had reviewed the plans and concluded that “AT&T, Verizon and Qwest have satisfied the condition that they obtain Bureau approval of compliance plans describing how they will continue to fulfill their statutory and regulatory obligations.”

Now, in a transparent attempt to further delay the elimination of regulations that outlived any legitimate purpose a decade ago, the Applicants contend that the Bureau violated the APA by following the process directed by the Commission and, in any event, erred in concluding that the compliance plans meet the requirements of the Commission’s forbearance orders. Both arguments are meritless.

The Applicants’ APA claims are misguided on a number of levels. The Bureau had no authority even to consider most of Applicants’ arguments, and thus the notion that the Bureau violated the APA by failing to address them is absurd. Moreover, the APA principles that Applicants invoke apply only to judicial review of final agency action; it would be pointless to remand to the Bureau for further explanation when the Commission could address the matter itself when it denies the applications for review. But in all events the Commission does not have the burden of explanation that Applicants assume. The very limited proceeding before the Bureau was at most an informal adjudication, and it is well-settled that an agency conducting an informal adjudication does not have to satisfy the traditional APA standards of explanation that apply in other contexts (or even make the evidence on which it is relying public). Moreover, accepting the Applicants’ contrary view could throw sand into the administrative gears of a whole range of routine activities by the Commission and its Bureaus that have never been subject to formal APA procedures.

Applicants' substantive claims concerning the compliance plans are also wholly meritless. AT&T's compliance plan (like those of Verizon and Qwest) explained in detail how AT&T would maintain the capability of providing requested cost assignment data in the event that the Commission should need it in the future, and AT&T and the other carriers have already rebutted each of the Applicants' criticisms. Applicants complain that the Bureau refused to adopt their alternative "Blueprint" cost assignment plan. But the Bureau's mandate was to review the *carrier*-submitted plans for compliance with the forbearance orders, not to design some alternative plan that third parties (or, indeed, the Bureau) might prefer. In any event, the "Blueprint" is nothing but a collateral attack on the *Forbearance Order* itself, since it would re-establish an ongoing and far more complex cost assignment system. The Bureau had no authority to adopt such a system. Moreover, the Blueprint's cost assignment philosophy is so different from anything the Commission does now that it would result in a costly boondoggle of immense proportions – all to create a burdensome reporting system that the Commission would not use for any regulatory purpose. The Applications should be denied.

I. IT WAS NOT PROCEDURALLY IMPROPER FOR THE BUREAU TO FOLLOW THE COMMISSION'S DIRECTION TO DOCUMENT ITS APPROVAL OF THE COMPLIANCE PLANS THROUGH A PUBLIC NOTICE.

The Applicants claim that the Bureau's decision should be reversed and that the matter should be remanded to the Bureau because it was allegedly under a duty to write a substantial order raising and rebutting each of these parties' arguments and because its failure to do so violated the Administrative Procedure Act's general requirement that administrative decisions be supported by reasoned explanations. *See* Application for Review of Action Taken Pursuant to Delegated Authority by the Ad Hoc Telecommunications Users Committee, WC Docket Nos. 07-21, 07-273, 07-204, at 4-6 (Jan. 30, 2009) ("Ad Hoc/Comptel"); Application for Review Filed by National Association of State Utility Consumer Advocates and the New Jersey Division of

Rate Counsel, WC Docket No. 07-21, at 10 (Jan. 30, 2009) (“NASUCA/NJDRC”). This claim is fundamentally misguided for several reasons.

First, the Applicants have things backwards, because the Bureau was, in fact, legally barred from even considering most of the Applicants’ claims. The bulk of Applicants’ arguments, both below and here, consist of their request that the Bureau adopt these parties’ “Blueprint” proposal or require some other form of ongoing cost allocations, which is a blatant collateral attack on the *Forbearance Order* itself and which would re-establish (in more complex form) the accounting rules from which the Commission has granted forbearance. The Bureau had no authority to adopt such a proposal, both because the Bureau is prohibited from reconsidering Commission policies on delegated authority (*see* 47 C.F.R. § 0.291) and also because the *Forbearance Order* itself specifically directed the Bureau merely “to approve the plan when the Bureau is satisfied that AT&T will implement a method of preserving the integrity of its accounting system in the absence of the Cost Assignment Rules.” *Forbearance Order* ¶ 31. Because of these legal limitations on the Bureau’s authority, the Bureau strongly admonished the parties, when it sought comment on the compliance plans, not to re-argue the predicate question whether forbearance was warranted. *See* Public Notice. Far from owing these parties a detailed rebuttal, the Bureau would have violated the forbearance orders if it had even entertained these proposals; Applicants were obligated to raise such proposals for ongoing cost assignment duties to the full Commission. And because the statute, the rules, and the forbearance orders all foreclosed any “opportunity” for the Bureau “to pass” on these issues, 47 U.S.C. § 155(c)(5) bars any consideration of those claims on an Application for Review. 47 U.S.C. § 155(c)(5) (prohibiting Commission from relying on “questions of fact or law” on which the authority below had been “afforded no opportunity to pass”).

Moreover, even to the extent that the Applicants have purported to contend that AT&T's compliance plan did not meet the requirements of the *Forbearance Order*, their APA arguments have no substance. All of the cases that Applicants cite in support of their position involve *judicial* review of agency action. *See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 40 (1983) (explaining the "scope of judicial review"). The APA's obligations apply to final *agency* actions. The Bureau is an arm of the full Commission, and it is the final action of the full Commission alone that is subject to the APA. The Applicants have resubmitted to the full Commission the same substantive criticisms that these parties made to the Bureau, and even if there had been some deficiency of explanation, the full Commission would discharge any APA obligations through an order rejecting these arguments.

More fundamentally, in this proceeding, the agency does not have the burden of explanation that Applicants imagine. The limited proceeding before the Bureau was at most an informal adjudication for purposes of the APA (because it clearly was not a formal adjudication governed by 5 U.S.C. § 554 or any sort of rulemaking). *American Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 (D.C. Cir. 2001) (informal adjudication "is the administrative law term for agency action that is neither the product of formal adjudication or a rulemaking"); *Camp v. Pitts*, 411 U.S. 138 (1973). Informal adjudications are *not* subject to the full array of APA obligations: *i.e.*, they "require[] neither agency findings of fact nor conclusions of law." *American Bioscience, Inc. v. Thompson*, 243 F.3d 579, 582 (D.C. Cir. 2001). Indeed, as the Supreme Court has held, the only procedural requirements for an informal adjudication are set forth in 5 U.S.C. § 555, which expressly requires a written explanation only in the case of a *denial* of a petition. *See* 5 U.S.C. § 555(e); *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 654-56 (1990). The APA establishes the "maximum procedural requirements that reviewing courts

may impose on agencies,” *id.* at 653, but in *PBGC* the Supreme Court held that the APA does *not* impose requirements in informal adjudications that the parties be “apprised . . . of the material on which [the agency] was to base its decision,” that it provide the parties “adequate opportunity to offer contrary evidence,” or that it provide “a statement showing its reasoning applying [ascertainable] standards.” *PBGC*, 496 U.S. at 653-55 (holding that judicial imposition of such procedures in an informal adjudication violated *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 524 (1978)).⁶

In the forbearance orders, the Commission structured the Bureau’s review of AT&T’s plan in exactly this informal manner. As the Commission noted, it envisioned Bureau review on the streamlined basis that the Bureau had always conducted for modifications to the carriers’ Cost Allocation Manuals – modifications that were routinely permitted without full-blown written orders. *See Forbearance Order* ¶ 31 (“This delegation of authority to the Bureau is consistent with existing procedures for CAM modifications that allow the Chief of the Bureau to suspend any changes for a period not to exceed 180 days and to allow the change to become effective or prescribe a different procedure”). Appropriately, the Bureau’s review of the compliance plans was narrowly circumscribed: it was to examine each plan and “to approve [it] when the Bureau is satisfied that [the carrier] will implement a method of preserving the integrity of its accounting system in the absence of the Cost Assignment Rules.” *Id.* Moreover, the forbearance orders were explicit even about how the Bureau was to signal its approval: “[u]pon approval, the Bureau will release a public notice notifying the public of approval of the plan.” *Id.* ¶ 31 n.114.

⁶ *See also Camp v. Pitts*, 411 U.S. 138 (1973) (per curiam); *Neighborhood Ass’n of the Back Bay, Inc. v. Fed. Transit Admin.*, 463 F.3d 50, 60 (1st Cir. 2006) (in informal adjudication “there is no specific requirement in the statute, the regulations or the APA that the [agency] provide detailed explanations for its decision or use any particular form of words signifying that it made an independent determination”).

The Bureau followed these very specific instructions to a tee – it examined the plans, determined that they met the requirements of the Commission’s orders, and issued a notice notifying the public of its approval of the plans. Given that the forbearance orders clearly provided that the Bureau would issue only a public notice, Applicants cannot now act surprised; indeed, if Applicants believed that reliance on a public notice was improper, they should have petitioned for reconsideration of the forbearance orders on that ground. But, of course, there is nothing surprising at all about the Bureau memorializing this type of action through a simple public notice rather than a formal written analysis. The Commission and its Bureaus take actions that are not explained in written orders in a wide variety of contexts. For example, although parties sometimes submit objections to tariff filings, the Commission frequently allows such tariffs to take effect without a written order. The reasonable approach that the Commission and the Bureau took here is no more a violation of the APA than the Commission’s “failure” to issue full opinions each time it is unpersuaded by tariff objections.

Indeed, courts have made clear that in informal adjudications, an agency is under no obligation even to provide the public with the record information on which the agency is relying. As the D.C. Circuit has explained, the administrative record in an informal adjudication “might well include crucial material that was neither shown to nor known by the private parties in the proceeding,” because (unlike rulemakings) there is no requirement in the APA that an agency conducting an informal adjudication expose the “critical factual material” on which it is relying to public refutation. *See, e.g., Ass’n of Data Processing Serv. Orgs. v. Bd. of Governors*, 745 F.2d 677, 684-85 (D.C. Cir. 1984). Here again, the Commission gave the Bureau substantial discretion, and directed the Bureau “to prescribe the administrative requirements of the filing.” *Forbearance Order* ¶ 31. It is well-settled that agencies have broad discretion to determine the

procedures they will use for informal adjudications, *see Pension Benefit Guaranty Corp.*, 496 U.S. at 654-56, and accordingly, the Bureau was not even under an obligation to make AT&T's proposed compliance plan public – much less seek comment on the plan and write a long order addressing each of Applicants' criticisms to their satisfaction. Moreover, given that the Commission is under no obligation to explain its reasons for a grant of forbearance in any event – it always has the option of simply letting the petition be deemed granted by operation of law⁷ – it is odd in the extreme to claim, as Applicants do, that the Bureau was nonetheless under some sort of obligation to write a long order merely to confirm the carriers' submission of qualifying compliance plans.

The Commission had already determined that the cost allocation data at issue were not necessary or useful to any ongoing regulatory purpose, and the point of the compliance plans was merely to have the carriers explain how they will comply with obligations that remain post-forbearance and how they will preserve the capability to provide the Commission with allocated cost information in the future if the *Commission* needs it for *its* regulatory purposes. The compliance plan review was thus a matter between the Commission and the carriers and designed to assure that the Commission's regulatory needs will be met. It was not a proceeding that was designed to protect some putative right of the Applicants to continue receiving information, as they seem to believe. For these reasons, determinations whether the plans satisfy the requirements of the forbearance orders was a matter for the Commission to discharge in the manner it found most efficient, free of any obligations of satisfying Applicants that their (largely irrelevant) claims had been fully considered.

⁷ *See* 47 U.S.C. § 160(c) (a forbearance petition “shall be deemed granted” if the Commission does not deny it within the statutory period).

Finally, it should be emphasized that the only thing that is even arguably at issue in these Applications are the compliance plans themselves, not the forbearance that has been granted. The *AT&T Forbearance Order* was very specific – it “condition[ed] the relief granted . . . on approval of a compliance plan by AT&T,” directed the Bureau on delegated authority “to prescribe the administrative requirements of the filing and to approve the plan,” and specified that “[u]pon approval, the Bureau will release a public notice notifying the public of approval of the plan.” Each of these conditions was satisfied, and the Bureau has issued its public notice approving the plan. Accordingly, the forbearance from the cost assignment rules is now effective and operative.

II. THE COMPLIANCE PLANS SATISFY THE REQUIREMENTS OF THE FORBEARANCE ORDERS, AND APPLICANTS’ CONTRARY ARGUMENTS ARE IMPROPER (AND BASELESS) COLLATERAL ATTACKS ON THE FORBEARANCE RELIEF ITSELF.

There is also no merit to the Applicants’ contentions that the carriers’ compliance plans did not satisfy the requirements of the forbearance orders, and that the Bureau acted arbitrarily and contrary to its delegation in ruling otherwise. Indeed, the Applicants again have it backwards. The Bureau would clearly have exceeded its authority and acted arbitrarily if it had accepted *their* proposals and had rejected any compliance plan that did not require full blown cost assignment on an ongoing basis.

The forbearance orders directed each carrier to explain “how it will maintain its accounting procedures and data in a manner that will allow it to provide useable information on a timely basis,” *Forbearance Order* at ¶ 31, if, at some point in the future, the Commission had a legitimate need for allocated cost data. The Applicants do not – and cannot – seriously contend that the compliance plans fail to do that. Each of the plans includes detailed descriptions of the data that will be preserved and available for use in connection with any cost allocations that may

be required, including accounting data, electronic systems, spreadsheets, software, methods and processes documentation, and training materials. Each of the plans explained how that data would be used to conduct any cost allocations that may hereafter be required, for the plans explained that the carriers would then use either preserved or updated cost allocation factors or special studies (if that were the appropriate means of satisfying the Commission's future request).

To argue that the plans nonetheless violated the forbearance orders, the Applicants rehash the same arguments that they presented before the Bureau. But AT&T, Verizon and Qwest provided point-by-point rebuttals to each of these makeweight criticisms, explained that the Bureau was not authorized by the Commission's orders to adopt the third-party "Blueprint" plan, and demonstrated that the "Blueprint" plan, in any event, violated the language and spirit of the those forbearance orders. The Applicants do not even acknowledge these point-by-point rebuttals, much less refute them. The Applicants' criticisms remain baseless.

A. The Compliance Plans Fully Satisfy The Requirements Of The Forbearance Orders. The Applicants contend that each of the compliance plans is "nothing more than a proposal" to "perform in the future what ever kind of cost allocation [the carrier] sees fit" and "would give [the carrier] unbounded discretion to allocate total company costs between regulated and unregulated services."⁸ In reality, AT&T explained in its Compliance Plan that it will continue to maintain all of its USOA accounts and will retain the latest cost assignment allocations that resulted from the application of the most recent cost allocation ratios. AT&T also explained that it will retain documentation of its existing systems used for cost assignment. Thus, if the Commission ever seeks this data for federal regulatory needs, AT&T could readily

⁸ Ad Hoc/Comptel at 7; *see also* NASUCA/NJDRC at 8.

apply the last available cost allocation ratios to the relevant USOA accounts and provide the Commission with the cost assignment data it needs – AT&T would not, as the Applicants imply, make up its own ratios. This approach is entirely reasonable. In the event of any future Commission request, the last available assignments would be the logical starting place. Indeed, as AT&T noted previously, many of these cost assignment ratios have already been frozen for years, and AT&T’s plan thus promotes constancy, not manipulation as Applicants suggest.⁹

Further, contrary to the Applicants’ claim, AT&T’s Compliance Plan specifically acknowledges that the current allocations could become less reliable over time and explains how that possibility will be addressed.¹⁰ Because it is conceivable that, in some circumstances, a different approach or different allocations would be preferable in response to a specific future Commission request, AT&T’s plan preserves the right to update the ratios to account for intervening events.¹¹ Remarkably, the Applicants fault AT&T for not explaining, today, exactly how it might make those future adjustments.¹² 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 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 any and all hypothetical

⁹ See AT&T Compliance Plan, WC Docket Nos. 07-21, 05-342, at 11-12 (July 24, 2008) (“AT&T Compliance Plan”).

¹⁰ See Ad Hoc/Comptel at 7-8; *see also* NASUCA/NJDRC at 8.

¹¹ AT&T Compliance Plan at 12.

¹² Ad Hoc/Comptel at 7-8; *see also* NASUCA/NJDRC at 8.

future proceedings and map out, right now, how AT&T might go about making such data more usable in any and all such speculative future events.

AT&T's Compliance Plan also anticipates that the Commission might ask AT&T for cost assignment data based on factors other than the allocation factors just discussed, and AT&T therefore indicated that it could perform special cost studies in such circumstances.¹³ To facilitate such special studies, AT&T explained that it will retain all of its methods and procedures manuals, and that it will use backup storage media to retain copies of its electronic systems, spreadsheets, and other software that it has previously used for cost assignment.¹⁴ The Applicants again criticize AT&T for not explaining exactly how it might go about performing such a special study,¹⁵ but, again, the proper way to conduct such a *special* study would depend entirely on a host of variables, targeted to the *specific* request that triggered the need for a study, and that cannot be known today.¹⁶ 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. In any event, as noted, AT&T's Compliance Plan states that AT&T will 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 These aspects of the Compliance Plan are also a complete answer to the

¹³ AT&T Compliance Plan at 12.

¹⁴ *Id.*

¹⁵ Ad Hoc/Comptel at 8; *see also* NASUCA/NJDRC at 8.

¹⁶ For example, it would depend on the specific nature of the Commission's request, whatever it may be, and it would depend on the types of costs at issue, the market developments that have occurred at the time, and other factors.

¹⁷ NASUCA/NJDRC fault the Compliance Plan for omitting "provisions permitting review by interested parties of the cost studies and the underlying data, work papers and other documentation associated with the special studies." But, again, whether third party review would assist the Commission and how it should be implemented will depend on the specific Commission request. Because the circumstances of

Applicants' assertion that today's cost allocation may become inaccurate because of a proportional increase in non-regulated services. The Compliance Plan provides the necessary flexibility to update allocations where appropriate.¹⁸

Finally, NASUCA/NJDRC's claimed concern about cross-subsidization is particularly baseless. AT&T's rates (both federal and state) are governed solely by price caps. Under that system, the cost assignment 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 somehow to "misallocate" costs to regulated services, such misallocations would have no effect on AT&T's prices and AT&T would not gain any ability or opportunity to subsidize any services.¹⁹

B. The Bureau Had No Authority To Consider, Much Less Adopt The Applicants' "Blueprint" Plan. Because the compliance plans did exactly what the Commission's forbearance orders required, the Applicants' claims are ultimately unlawful collateral attacks on those orders. The orders concluded that there was no basis to require cost assignment today. They provided (¶ 21) that the plans should explain how carriers will provide cost assignment data if, at some point "in the future," the Commission has a legitimate need for allocated cost data – which is the explanation that AT&T provided. To challenge the carriers' plans, the Applicants are reduced to faulting them because they did not prescribe the use of the Applicants' proposed "Blueprint" which would require the ongoing creation of cost assignment data. This claim is baseless.

such a request cannot be known today, it makes no sense to try to anticipate each and every possible circumstance and include a contingency plan for third-party audits in the Compliance Plan.

¹⁸ Ad Hoc/Comptel at 7-8; *see also* NASUCA/NJDRC at 8.

¹⁹ *See* AT&T Compliance Plan at 8-10.

Before the Bureau, AT&T, Verizon and Qwest demonstrated that the “Blueprint” would require carriers and the Commission to develop a very different, but in many ways much more complex, system of cost assignment than exists today. Indeed, the “Blueprint” 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 thus be burdensome, unnecessary, and arbitrary, for several reasons.

As a preliminary matter, the entire concept of the “Blueprint” is misguided. The Commission’s central holding in the forbearance orders was that the cost assignment system is not necessary and is not even today used for any regulatory purpose. Accordingly, the Commission granted *forbearance* from those rules, holding that requiring the carriers to maintain and report complex cost assignment data on an ongoing basis is not necessary to ensure just and reasonable rates, to protect consumers, or to promote the public interest.²⁰ In light of those holdings, all that is required now are reasonable steps that would allow AT&T, Verizon and Qwest to produce usable and timely cost assignment data in the event that the Commission would ever need to examine such data in a future proceeding.²¹ It would have been completely inconsistent with the forbearance that has been granted to read the forbearance orders as requiring a full-blown alternative cost assignment system that AT&T, Verizon and Qwest would be required to implement and to report publicly on an ongoing basis²² – much less the radically

²⁰ 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”).

²¹ *Id.* ¶ 31.

²² 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”).

different system envisioned by the “Blueprint” (under which carriers would report data in a format which is preferred by the Applicants but which bears no resemblance to anything AT&T or anyone else does now). The Commission is not going to use cost assignment data 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 cost assignment system.²³

In all events, 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 carriers maintain the capability to generate usable cost assignment data on the extremely small chance that the Commission may one day need it. Rather, the nakedly opportunistic purposes of the “Blueprint” proposal are to establish a new, substantive, intricate cost assignment system to replace what the Commission discarded and to force AT&T, Verizon and Qwest to generate a new set of data that the Applicants would then use to repeat their discredited advocacy that ARMIS-generated rate-of-returns for special access require those services to be re-regulated. Indeed, everything about the “Blueprint” is rigged to allocate costs away from special access services. That is why the “Blueprint” 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 non-regulated services. And that is why it arbitrarily assigns all investments used to provide broadband Internet access to non-regulated Internet access services.

Finally, although AT&T has addressed these parties’ special access arguments on numerous occasions, it bears repeating once again that *none of these cost assignments matter.*

²³ *Id.* ¶¶ 40-45.

There is no basis for using ARMIS-generated rate of return estimates as a ground for re-regulating special access. The Commission's ARMIS data were never intended to be used to calculate service-specific returns in the first place.²⁴ The Commission has thus repeatedly rejected claims that special access caps should be reinitialized on the basis of ARMIS-generated returns.²⁵ Further, because of the seven-year-old separations freeze (which the "Blueprint" would maintain), the inherently arbitrary cost allocations in ARMIS have become wildly inaccurate.²⁶ As the Commission correctly recognized in the forbearance orders, the Commission should not maintain cost assignment requirements and put itself and the carriers through the time, effort and expense of generating this meaningless mass of data just so the Applicants can misuse the data to make baseless arguments that special access should be re-regulated.²⁷

²⁴ 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.").

²⁵ *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").

²⁶ Report and Order, *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, 16 FCC Rcd. 11382 ¶ 12 (2001) ("rapid changes in the telecommunications infrastructure" will cause "cost shifts in separations results because these 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).

²⁷ The Bureau also clearly could not have lawfully adopted the "Blueprint's" proposal to implement new cost allocation requirements for high speed Internet Access. Indeed, that would have required the Bureau to adopt entirely new reporting requirements. AT&T has never been required to track facility detail for cost assignment purposes for loops used for DSL or U-verse services, or packet switching facilities. The

CONCLUSION

The Commission should reject the applications for review.

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Bureau likewise was not in a position to adopt new requirements to address the “financial crisis.” Ad Hoc/Comptel at 10.

CERTIFICATE OF SERVICE

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