

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 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(c))	
)	
Petition of Verizon For Forbearance Under)	WC Docket No. 07-273
47 U.S.C. § 160(c) From Enforcement of)	
Certain of the Commission's)	
Recordkeeping and Reporting)	
Requirements)	

QWEST CORPORATION'S OPPOSITION TO APPLICATIONS FOR REVIEW

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QWEST CORPORATION’S OPPOSITION TO APPLICATIONS FOR REVIEW

Qwest Corporation (“Qwest”), on behalf of Qwest and its incumbent local exchange carrier (“ILEC”) affiliates¹ (hereafter referred to jointly as Qwest), hereby opposes the Applications for Review (“AFRs”) filed in these proceedings, respectively, by the AdHoc Telecommunications Users Committee (“AdHoc”) and COMPTTEL [Qwest hereafter refers to AdHoc and COMPTTEL jointly as AdHoc and refers to their AFR as the “AdHoc AFR”]² and by the National Association of State Utility Consumer Advocates (“NASUCA”) and the New Jersey

¹ Qwest’s Compliance Plan also covers Malheur Home Telephone Company (“Malheur”) and The El Paso County Telephone Company (“El Paso”), which are wholly-owned subsidiaries of Qwest Corporation.

² Errata and attached Jan. 30, 2009 Application for Review of Action Taken Pursuant to Delegated Authority by the AdHoc Telecommunications Users Committee, filed herein on Feb. 2, 2009.

Division of Rate Counsel (“NJRC”) [Qwest hereafter refers to NASUCA and NJRC as NASUCA and refers to their AFR as the “NASUCA AFR”].³

I. INTRODUCTION AND SUMMARY

The AdHoc AFR and the NASUCA AFR seek review of an approval granted by the Chief of the Wireline Competition Bureau (the “Bureau”) of the cost assignment forbearance compliance plans filed by Qwest, Verizon, and AT&T in order to meet the requirements, respectively, of the *ARMIS Forbearance Order*⁴ in which the Federal Communications Commission (“Commission” or “FCC”) exercised its authority to forbear from enforcing its Cost Assignment Rules against Qwest and Verizon and the *Cost Assignment Forbearance Order*⁵ in which the Commission previously granted this same relief to AT&T [hereafter jointly referred to

³ 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, filed Jan. 30, 2009.

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*, WC Docket Nos. 08-190, 07-139, 07-204, 07-273 and 07-21, Memorandum Opinion and Order, 23 FCC Rcd 13647 (2008) (“*ARMIS Forbearance Order*”), *pets. for recon. pending* (Oct. 6, 2008), and *appeal pending sub nom. NASUCA v. FCC*, No. 08-1353, Order Granting Motion to Hold Case in Abeyance and to Consolidate with No. 08-1226 (D.C. Cir. Feb. 13, 2009).

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.*, WC Docket Nos. 07-21 and 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (“*Cost Assignment Forbearance Order*” or “*AT&T Cost Assignment Forbearance Order*”), *pet. for recon. pending*, (May 27, 2008) 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).

as the “*Forbearance Orders*”].⁶ In the *Forbearance Orders*, the Commission granted long overdue relief from the asymmetrical regulatory obligations imposed by the Cost Assignment Rules. In doing so, the Commission recognized, among other things, that there was no longer any federal need for the rules since price cap regulation severed the link between regulated costs and prices.

In the AFRs, AdHoc and NASUCA simply re-fashion the arguments they previously asserted in opposing the underlying forbearance granted in the *Forbearance Orders* -- arguments that the Commission expressly rejected in detailed analysis in the *Forbearance Orders*.⁷ In other words, AdHoc and NASUCA simply attempt to re-argue the merits of whether the Cost Assignment Rules are necessary. These arguments should be rejected. While the Commission, in the *Forbearance Orders*, conditioned forbearance on the Bureau’s approval of an acceptable compliance plan, this condition cannot be interpreted as a requirement to re-impose all or part of the Cost Assignment Rules or to adopt a new set of Cost Assignment Rules, as AdHoc and NASUCA imply. In fact, applying such a requirement would be fundamentally inconsistent with the relief that has been granted.

The Commission should also reject AdHoc’s and NASUCA’s contention that the Bureau’s approval of the compliance plans violated the Administrative Procedure Act (“APA”).⁸

⁶ Qwest uses the terms “Cost Assignment Rules” herein as that term is used in the *ARMIS Forbearance Order* and the *Cost Assignment Forbearance Order* -- *i.e.*, to describe the various Commission rules as to which forbearance was granted in those proceedings. *ARMIS Forbearance Order*, 23 FCC Rcd at 13652 ¶ 7, 13661-64 ¶¶ 26-32; *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307-08 ¶ 12.

⁷ *See, e.g.*, Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 07-21, filed Mar. 19, 2007 incorporating its Reply Comments, filed Feb. 13, 2006 in WC Docket No. 05-342; Opposition of the AdHoc Telecommunications Users Committee, WC Docket No. 07-21, filed Mar. 19, 2007.

⁸ 5 U.S.C. §§ 500, 551, *et seq.*

To begin with, it is well recognized that some administrative or ministerial acts of agencies are not subject to the APA in any respect. In all events, contrary to their assertions, the Bureau's approval is not subject to the "substantial evidence" test or other more rigorous procedural requirements applicable to either formal adjudications or rulemaking proceedings. The approval was, at most, in informal adjudication under the APA. And, as discussed more fully below, the Bureau's approval satisfied any procedural requirements applicable to informal adjudications.

II. BACKGROUND

It is essential, in evaluating the AFRs, to keep in mind the context of the underlying forbearance grant accomplished by the *Forbearance Orders*. In the *Cost Assignment Forbearance Order*, which initially granted forbearance relief to AT&T, the Commission found that the Section 10 forbearance criteria were met and granted the requested relief because it concluded that "there is no current, federal need for the Cost Assignment Rules, as they apply to AT&T, to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest."⁹ Underlying this conclusion was the Commission's fundamental recognition that AT&T's interstate rates are now generally regulated under price caps and that price cap regulation severs the direct link between regulated costs and prices.¹⁰ And, in granting forbearance, the Commission expressly discussed and rejected the arguments of forbearance opponents that forbearance should be denied because cost allocation between regulated and non-regulated activities and related third party audits were still necessary, because the reform of separations must first be completed, and because the requirements of Section 254 could not be satisfied without the Cost Assignment Rules, as well as

⁹ *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307 ¶ 11.

¹⁰ *See, id.* at 7306 ¶ 10, 7311-12 ¶¶ 16-18.

a host of other purported hurdles to forbearance.¹¹ Subsequently, in the *ARMIS Forbearance Order*, the Commission found that the reasoning of the *Cost Assignment Forbearance Order* applied equally to Qwest and Verizon and extended the same relief to them.¹²

In the *Forbearance Orders*, the Commission conditioned the relief extended to Qwest, Verizon and AT&T on the requirement that each carrier submit and obtain approval of a compliance plan containing the following:

- 1) a description of how the carrier would 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;
- 2) a description of how the carrier would maintain and provide accounting data in study areas where it receives rural high-cost universal service support sufficient to justify the support;
- 3) a description of the carrier'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*,¹³ and related procedures to ensure compliance with these requirements;¹⁴
- 4) a description of the carrier'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;¹⁵ and

¹¹ See, *id.* at 7316-17 ¶ 25, 7319 ¶ 30, 7325-26 ¶¶ 41-44.

¹² *ARMIS Forbearance Order*, 23 FCC Rcd at 13652 ¶ 7, 13661-62 ¶¶ 26-27.

¹³ *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*, WC Docket No. 02-112, CC Docket No. 00-175, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) ("*Non-Dominant Order*").

¹⁴ 47 U.S.C. § 272(e)(3).

¹⁵ 47 U.S.C. § 254(k).

5) a description of the transition process that the carrier will undertake to implement the procedures in their compliance plan.¹⁶

The Commission also, in the *Forbearance Orders*, delegated authority to the Bureau to both “prescribe the administrative requirements of the filing” of a compliance plan and to approve the plans after submission.¹⁷ The Commission noted that this delegation of authority to the Bureau was consistent with existing procedures for carrier cost allocation manual (“CAM”) modifications (*i.e.*, Rule 64.903(b), allowing 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).¹⁸ And, the Commission instructed that, upon approval of a compliance plan, the Bureau should release a public notice notifying the public of approval of the plan.¹⁹

Qwest, Verizon and AT&T filed compliance plans with the Commission on September 24, 2008, September 19, 2008, and July 24, 2008, respectively.²⁰

The Bureau invited comment on each of the plans and, in connection with each plan, reminded commenting parties:

that any comments filed in response to this Public Notice should be limited to [the] Compliance Plan and its consistency with the requirements of the [] *Cost Assignment Forbearance Order*. Comments filed in response to this Public

¹⁶ *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320 ¶ 31; *see also ARMIS Forbearance Order*, 23 FCC Rcd at 13663 ¶¶ 29-30.

¹⁷ *Id.*

¹⁸ *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320 ¶ 31 & n.115.

¹⁹ *Id.* at ¶ 31 & n.114.

²⁰ *Ex Parte* from M. Newman, Qwest to D. Shaffer, FCC, WC Docket Nos. 07-204, *et al.*, filed Sept. 24, 2008 and attached Qwest Corporation’s Compliance Plan; *Ex Parte* from A. Berkowitz, Verizon to D. Shaffer, FCC, WC Docket Nos. 07-273, *et al.*, filed Sept. 19, 2008 and attached Cost Assignment Forbearance Compliance Plan of Verizon; Letter from T. Marcus, AT&T to D. Shaffer, FCC, WC Docket Nos. 07-21, *et al.*, filed July 24, 2008 and attached AT&T Compliance Plan.

Notice that go beyond its scope, such as comments addressing the merits of granting forbearance relief to [] in the first instance, will not be considered.²¹

AdHoc and NASUCA and several other parties filed nearly verbatim oppositions to each of the plans and several parties filed supporting comments.²²

On December 31, 2008, after the Qwest, Verizon, and AT&T plans had been under study for more than three months, the Bureau issued a public notice (the “Public Notice”) stating:

After review of the compliance plans filed by AT&T, Verizon and Qwest, and the record of this proceeding, the Bureau approves the three plans effective immediately. We now find that AT&T, Verizon and Qwest have satisfied the condition that they obtain Bureau approval of compliance plans describing in detail how they will continue to fulfill their statutory and regulatory obligations.²³

²¹ Public Notice, WC Docket No. 07-21, “Comment Dates Set on Qwest Compliance Plan for Forbearance Relief from Cost Assignment Rules,” 23 FCC Rcd 13976, 13977 (footnote omitted) (2008); Public Notice, WC Docket No. 07-21, “Comment Dates Set on Verizon Compliance Plan for Forbearance Relief from Cost Assignment Rules,” 2008 FCC LEXIS 6917, *2-*3 (footnote omitted) (2008); Public Notice, WC Docket No. 07-21, “Comment Dates Set on AT&T Compliance Plan for Forbearance Relief from Cost Assignment Rules,” 23 FCC Rcd 11560 (footnote omitted) (2008).

²² As to the Qwest Compliance Plan, Comments were filed on October 14, 2008 in WC Docket No. 07-21 by: National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel; Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTTEL, One Communications Corp. and tw telecom inc; and Reply Comments were filed on October 29, 2008 by Qwest Corporation. As to the Verizon Compliance Plan, Comments were filed on October 8, 2008 in WC Docket No. 07-21 by: National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel; Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTTEL, One Communications Corp. and tw telecom inc; and Reply Comments were filed on Oct. 23, 2008 by National Association of State Utility Consumer Advocates; Qwest Corporation; Verizon; Embarq. As to the AT&T Compliance Plan, Comments were filed on Aug. 18, 2008 in WC Docket No. 07-21 by: AdHoc Telecommunications Users Committee (Opposition); Sprint Nextel Corporation, COMPTTEL, tw telecom inc and One Communications Corp.; State Members of the Separations Joint Board; and Reply Comments were filed on Sept. 3, 2008 by National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel; Embarq; AT&T (Response); Verizon.

²³ Public Notice, WC Docket Nos. 07-21, 07-204 and 07-273, “Wireline Competition Bureau Approves Compliance Plans, 2008 FCC LEXIS 8903, *1-*2 (2008).

III. THE AFRs FAIL TO DEMONSTRATE A SUBSTANTIVE BASIS FOR OVERTURNING THE APPROVAL OF QWEST'S COMPLIANCE PLAN

Qwest's Compliance Plan addresses each of the Commission requirements set forth in the *Cost Assignment Forbearance Order*. Accordingly, the Bureau's approval of Qwest's Plan was wholly appropriate and AdHoc's and NASUCA's arguments to the contrary should be rejected.

In their AFRs, AdHoc and NASUCA simply re-fashion the arguments they previously asserted in opposing the underlying grants of forbearance -- arguments that the Commission rejected in detailed analysis in the *Forbearance Orders*. AdHoc and NASUCA now assert these same arguments as purported grounds for finding that Qwest's, Verizon's and AT&T's compliance plans fail to meet the requirements for such plans set forth in the *Cost Assignment Forbearance Order*. To summarize, the grounds asserted by AdHoc and NASUCA for overturning the approval of the compliance plan are:

Completion of the Commission's separations proceeding should have been a condition precedent to approval of the compliance plans. (AdHoc AFR, p. 7)

Compliance with Section 254(k) can not be assured without, essentially, re-imposition of the Cost Assignment Rules through a compliance plan. (AdHoc AFR, p. 7; NASUCA AFR, p. 8)

Third party audits are necessary. (AdHoc AFR, p. 7)

Cost allocation between regulated and non-regulated activities like that required under the Cost Assignment Rules (*e.g.*, direct assignment or up-to-date special studies) is still necessary. (AdHoc AFR, p. 7; NASUCA AFR, pp. 7-8)

Again, each of these issues was raised by AdHoc and NASUCA in comments filed opposing the underlying forbearance relief and was expressly discussed and rejected by the Commission in the *Cost Assignment Forbearance Order*. These re-arguments regarding the merits of whether the Cost Assignment Rules are necessary simply do not constitute a basis for refusing approval of the compliance plans. While the Commission conditioned forbearance on the Bureau's approval

of an acceptable compliance plan, this condition cannot be interpreted as a requirement to adopt a new set of Cost Assignment Rules, as AdHoc and NASUCA imply. In fact, such a condition would be fundamentally inconsistent with the relief that has been granted.

For these same reasons, the Commission should reject AdHoc's and NASUCA's arguments that the Bureau's failure to incorporate an alternative set of Cost Assignment Rules (*i.e.*, AdHoc's Blueprint Plan) is grounds to overturn the approval of Qwest's compliance plan. AdHoc and NASUCA both contend that the failure to incorporate the Blueprint Plan, in whole or in part, into the plans submitted by Qwest, Verizon and AT&T, means that those plans will not generate useable and timely data in the future. No one knows what type of accounting information the Commission may need for future regulatory proceedings. And, there is no reason to assume, as AdHoc and NASUCA have, that the Commission will need accounting data from the alternative cost assignment scheme that AdHoc 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 Commission in the future will be available and reliable."²⁴ Qwest's compliance plan does precisely this, without presuming (as AdHoc and NASUCA do) what type of cost assignment data the Commission might require in the future.

The Bureau properly found that Qwest's compliance plan satisfies the requirements of the Commission's *Forbearance Orders* and the AFRs demonstrate no substantive basis for overturning the approval of that plan.

²⁴ *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314-15 ¶ 21.

IV. ADHOC'S AND NASUCA'S PROCEDURAL ARGUMENT, BASED ON THE APA, SHOULD ALSO BE REJECTED

The Commission should also reject AdHoc's and NASUCA's contention that the Bureau's approval of the compliance plans violated the APA.

Both AdHoc and NASUCA rely upon the wrong legal standard when challenging the Bureau's approval on procedural grounds. To begin with, it is not at all clear that the Bureau's approval even rises to the level of an informal adjudication. It is well recognized that some administrative or ministerial acts of agencies are not subject to the APA in any respect.²⁵ And, here, it is reasonable to conclude that the *Cost Assignment Forbearance Order* merely charged the Bureau with ensuring that the compliance plans submitted by Qwest, Verizon and AT&T contained the required components set forth in that *Order*.

Even if the Bureau's approval were subject to the APA, it is contrary to the assertions of AdHoc and NASUCA, not subject to the "substantial evidence" test or other more rigorous procedural requirements applicable to either formal adjudications or rulemaking proceedings. In fact, AdHoc makes directly contradictory arguments on this point. First, NASUCA erroneously suggests that the Bureau's approval of the compliance plan is subject to the APA's rules applicable to formal adjudications (*i.e.*, those adjudications where a hearing is required by statute).²⁶ Inexplicably, NASUCA also cites, as authority for its contention that the Bureau failed to adequately explain its approval, a series of cases addressing the APA requirements applicable to agency rulemaking proceedings.²⁷ Similarly, AdHoc relies primarily on a United States

²⁵ See, e.g., *Aaipharma v. Thompson*, 296 F.3d 227 (4th Cir. 2002).

²⁶ NASUCA, n. 23 (citing APA Sections 554, 556, and 557, each of which is applicable only to formal adjudications).

²⁷ See *Mountain States Telephone and Telegraph Co. v. FCC*, 939 F.2d 1035, 1042 (D.C. Cir. 1991) (reviewing FCC rulemaking order, held FCC failed to adequately explain its promulgation of new rules); *La. Fed. Land Bank Ass'n v. FLCA*, 336 F.3d 1075, 1080 (reviewing agency

Supreme Court decision addressing the APA's requirements in the rulemaking context.²⁸ As discussed more fully below, these standards and authorities are inapplicable in this matter as the Bureau's approval was neither a formal adjudication nor a rulemaking.

The Bureau's approval was, at most, an informal adjudication under the APA. Section 551(6) of the APA defines an "order" "as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing."²⁹ Section 551(7), in turn, defines an "adjudication" as "agency process for the formulation of an order."³⁰ Accordingly, as the Bureau's approval was a final disposition in a matter other than a rulemaking, the agency process leading to its formulation was an adjudication. Since the APA makes clear that a formal adjudication is one where there is an applicable statutory requirement of a hearing and there is no such requirement in this context, it is also clear that the Bureau's approval constitutes, at most, an informal adjudication under the APA.³¹

And, the Bureau's approval of the compliance plans easily satisfied any procedural requirements applicable to informal adjudications. Indeed, informal adjudications generally fall outside the scope of the APA altogether. Certainly, there is no requirement equivalent to the

rulemaking order, held agency failed to adequately address relevant comment); *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 25 n. 58 (D.C. Cir. 1977) (discussing APA requirements in the rulemaking context). *See also*, NASUCA AFR, nn. 20-22.

²⁸ *Motor Vehicle Manufacturers Ass'n v. State Farm*, 463 U.S. 29 (1983)(discussing APA requirements in the rulemaking context). *See also*, AdHoc AFR, pp. 4-5. Contrary to AdHoc's contentions, the Commission's decision in *Telecom Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 19 FCC Rcd 12475 (June 30, 2004), also does not provide authority for imposing the rigorous procedural standards AdHoc seeks to impose here.

²⁹ 5 U.S.C. § 551(6).

³⁰ 5 U.S.C. § 551(7).

³¹ *See, e.g.*, 5 U.S.C. § 554(a).

“substantial evidence” test and other more rigorous procedural requirements applicable in rulemakings or formal adjudications.³² Rather, agencies, in informal adjudications such as the instant matter, are not required to respond in detail to comments submitted, need not give the detailed findings customarily provided in a rulemaking proceeding or a formal adjudication and are ultimately subject only to an “arbitrary or capricious” standard of review based on the entire record before the agency.³³ Here, particularly in light of the narrow scope of the required process spelled out for the Bureau in the *Forbearance Orders*, the Bureau’s findings reflected in the Public Notice together with the preceding opportunity for comment satisfied any applicable procedural requirements.³⁴

³² *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-417 (1971) (holding substantial evidence test only applicable to rulemakings and formal adjudications), which is referenced at p. 10, n. 22 of the NASUCA AFR, is reflective of these long-standing principles. In fact, the only APA requirement potentially applicable to informal adjudications is the following requirement in Section 555(e) for agency *denials*:

Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial. 5 U.S.C. § 555(e).

³³ See e.g., *Citizens to Preserve Overton Park, Inc.*, 401 U.S. at 413-417 (clarifying standard applicable to informal adjudications); *Camp v. Pitts*, 411 U.S. 138, 140-143 (1973)(same); *C.K. v. New Jersey Department of Health and Human Services*, 92 F.3d 171, 181-189 (3d Cir. 1996) (in denying APA challenge to federal agency’s grant of waiver to state agency, held no specific recitation or refutation of oppositions required; rather, court must consider materials before agency at time of decision and give “benefit of the doubt” that oppositions were considered).

³⁴ It is also noteworthy that, like the purported substantive grounds stated in the AFRs for overturning the Bureau’s approval discussed above, all of the comments filed in response to the Bureau’s request for comments on Qwest’s compliance plan merely re-argued challenges to the underlying forbearance request that were addressed in detail in the *Forbearance Orders* (e.g., the need of the Cost Assignment Rules for rural high cost fund support, for state regulatory purposes, for Section 254(k) compliance, or, alternatively, the need for an alternative compliance plan like the Blueprint Plan that, in fact, imposes more onerous cost assignment requirements than those reflected in the Cost Assignment Rules). See Comments on the Qwest Compliance Plan of Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTel, One Communications Corp., and tw telecom inc, WC Docket No. 07-21, filed Oct. 14, 2008 and

For these reasons, the Bureau's approval, reflected in a Public Notice, as the *Forbearance Orders* required, was more than adequate under applicable law.

V. CONCLUSION

For the reasons stated herein, the Commission should deny both the AdHoc AFR and the NASUCA AFR.

Respectfully submitted,

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attaching their Comments on the AT&T Compliance plan, filed Aug. 18, 2008 as Exhibit A; Comments of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel on Qwest Compliance Plan, WC Docket No. 07-21, filed Oct. 14, 2008 at 3 and their Reply Comments, referenced therein, on the AT&T compliance plan, filed Sept. 3, 2008.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST CORPORATION'S OPPOSITION TO APPLICATIONS FOR REVIEW** to be: 1) filed with the FCC via its Electronic Comment Filing System in WC Docket Nos. 07-21, 07-204 and 07-273; 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@bcpiweb.com.

/s/Richard Grozier

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