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December 14, 2007

VIA ELECTRONIC SUBMISSION

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Ad Hoc Telecommunications November 27, 2007 *Ex Parte* Letter – WC Docket
No. 07-21**

Dear Ms. Dortch:

AT&T hereby responds to Ad Hoc Telecommunications Users Committee's November 27, 2007 *ex parte* submission. Ad Hoc's contentions are erroneous and misleading and, as such, cannot form the basis for denial of AT&T's Petitions.

The thrust of Ad Hoc's *ex parte* letter is that the Commission's recent *LD Non-Dominance Order* (rel. Aug. 31, 2007), and companion decision addressing AT&T's petition for forbearance from regulation of in-region, interexchange services,¹ "foreclose" the Commission's ability to grant AT&T's Cost Assignment Forbearance Petitions. The orders do no such thing. It is absurd to suggest -- as Ad Hoc does -- that the Commission presumptively has denied the Cost Assignment Petitions, especially considering that the Commission neither addressed nor even mentioned the Petitions or their merits *anywhere* in the two orders.

Ad Hoc's implied collateral resolution theory, as it were, not only offends fundamental notice and comment rulemaking norms, but also the letter and intent of Section 10, which requires the Commission to consider and decide forbearance petitions *on their respective merits*. Indeed, in order to deny a forbearance petition, the Commission must find a "strong connection" between maintaining the rule at issue and legitimate, current regulatory needs.² Ad Hoc does not even attempt to explain how the Commission could meet this standard with respect to AT&T's Cost Assignment Petitions. Instead, it argues for rejection based on its self-serving reading of Commission intent from smoke signals it claims were sent in different orders in different

¹ See *In the Matters of Section 272 (f) (1) Sunset of the BOC Separate Affiliate and Related Requirements, et ors.*, WC Docket No. 02-112, *et ors.*, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd 16440 (2007) (*LD Non-Dominance Order*); *In the Matter 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. 06-120, Memorandum Opinion and Order (2007) (*AT&T Order*).

² See *CTIA v. F.C.C.*, 330 F.3d 502, 512 (D.C. Cir. 2003) (a regulation is necessary in the forbearance context only if it has a "strong connection" to fulfilling a permissible regulatory purpose).

proceedings that did not address the arguments AT&T has raised in its Petitions. Ad Hoc's argument should be rebuffed on that basis alone.

Ad Hoc's attempt to divine Commission intent with respect to AT&T's Petitions from language in the non-dominance orders is, in all events, misguided. The Commission's eschewal of dominant carrier regulation and establishment of a "new framework" for BOCs' post-272 sunset provision of long distance services (whether on an integrated basis or through non-272 affiliates) in the *LD Non-Dominance Order*, did not carry with it the seeds for denial of the Cost Assignment Petitions. It is true that the *LD Non-Dominance Order* imposed certain accounting safeguards on the BOCs and independent incumbent LECs (*i.e.*, that costs and revenues associated with the covered long distance services be treated as nonregulated for accounting purposes). However, in so ordering, the Commission merely affirmed the regulatory *status quo* ("... in-region, interLATA ... services provided by the BOCs on an integrated basis *currently are required* to be treated as nonregulated for accounting purposes").³

The discussion that Ad Hoc seizes upon, thus, merely acknowledges existing requirements, nothing more; it did not make the kind of dramatic, impactful declaration that Ad Hoc touts. Indeed, it is reasonable to conclude that, in affirming the *status quo*, the Commission was merely keeping its decisional powder dry for carrier-specific issues that might arise in a Section 10 case, and with respect to which there may be valid reasons for distinguishing among the accounting treatment among LECs based on, for example, whether they are subject to pure price caps in all of their jurisdictions.

As AT&T has explained, rate-of-return regulation depends upon allocated, separated, historic, embedded cost data as grist for the ratemaking mill. Such data is necessary *in that regime* to address concerns about the potential for improper cost shifting or cross-subsidization between competitive operations and less competitive (or non-competitive) operations. Thus, rate-of-return regulation is fundamentally dependent upon the availability of cost allocation data. AT&T, however, is no longer subject to rate-of-return regulation. Instead, it operates under pure price caps both at the federal level and throughout its 22 state territory.

Price cap regulation focuses not on costs, but rather on the *prices* a carrier is permitted to charge, which encourages carriers to "improve their efficiency by harnessing profit-making incentives to reduce costs."⁴ By design, price cap regulation obviates the need for allocated cost data. Yet, AT&T continues to churn out the data -- and maintain an entire compliance apparatus for that purpose -- because the Commission's antiquated accounting requirements are out of step with the policy goals and practical realities of the price cap regime.

³ *LD Non-Dominance Order* at ¶ 93.

⁴ *In the Matter of Access Charge Reform, et ors.*, CC Docket No. 96-262, *et ors.*, Sixth Report and Order *et ors.*, 15 FCC Rcd 12962, 12969 (2000).

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Section 10 was tailor made for situations like this. Given the absence of any meaningful connection between price cap regulation and the Commission's cost allocation requirements, AT&T's Petitions must be granted.

Sincerely,

A handwritten signature in black ink that reads "Theodore C. Marcus". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Theodore C. Marcus
AT&T Services, Inc.