NASUCA
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

VIA ELECTRONIC DELIVERY

April 9, 2008

Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Deborah Tate
Commissioner Robert McDowell
Federal Communications Commission (via e-mail)

Re: Ex Parte Communication, *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*, WC Docket 07-21

Dear Chairman Martin and Commissioners:

As the (extended) period for review by the Federal Communications Commission ("FCC" or "Commission") of the above-caption petition for forbearance by AT&T Inc. draws to a close, the National Association of State Utility Consumer Advocates ("NASUCA")[1] would like to remind the Commission of the many reasons why this petition should be denied.

In the petition, AT&T requested forbearance, pursuant to 47 U.S.C. § 160, from many Commission rules, including 47 C.F.R. § 32.23 (Nonregulated activities), § 32.27 (Transactions with affiliates); the entirety of Part 64 Subpart I (referred to as the "cost

[1] NASUCA is a voluntary national association of more than forty consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

allocation rules"); the entirety of Part 36 (referred to as "jurisdictional separations rules"); Part 69, Subparts D and E (referred to as "cost apportionment rules"); and other related rules that are derivative of, or dependent on, the foregoing rules.[2] The petitions also seek limited forbearance from 47 U.S.C. § 220(a)(2) to the extent this provision contemplates separate accounting of nonregulated costs.[3]

NASUCA filed brief comments and reply comments in response to the Commission's Public Notice, opposing the petition. NASUCA had also filed reply comments in response to the initial comments on the similar BellSouth Petition in WC Docket No. 05-342,[4] and had asked the Commission to incorporate those reply comments into this docket.[5]

In the above-cited NASUCA reply comments, we specifically supported NJDRA's recommendation to refer the cost assignment rules implicated by BellSouth's (and now AT&T's) petition to a federal-state joint board. That still appears to be the best course for AT&T's petition as well. This would be accompanied by a denial of AT&T's petition.

The key here is that neither BellSouth nor AT&T in its turn provided any persuasive demonstration that all elements of the § 160 forbearance test have been met such that AT&T, its now-affiliate BellSouth, or any other ILECs should be relieved from the Commission's cost assignment rules. AT&T and BellSouth both merely made various unsupported claims that the separation rules at issue prevent innovation and are unnecessary due to price cap regulation.

Only one party supported AT&T's petition: the United States Telecom Association ("USTA").[6] USTA's comments asserted that the regulations under examination here are a "*direct detriment to consumers*, who shoulder the ultimate burden of regulation-driven market inefficiencies."[7] As the opposing comments showed, to the contrary, the regulations in question are still in fact needed to **protect** consumers from AT&T's continued market dominance.

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[2] See DA 07-731.

[3] Id..

[4] As indicated in DA 07-731, AT&T withdrew the BellSouth Petition and refiled it in this docket on February 9, 2007, along with AT&T's own Petition.

[5] NASUCA also supported the opposing comments and the talking points filed by its member New Jersey Division of the Ratepayer Advocate ("NJDRA").

[6] These supporting comments showed the dominance of AT&T over this national association. Comments opposing AT&T's petition came from a group of small rural companies.

[7] USTelecom Comments at 2 (emphasis in original).

The numerous oppositions came from consumers,[8] rural wireline telephone companies,[9] competitive telecommunications companies,[10] and wireless companies.[11] Serious questions were raised by state regulators, who would be limited in their activities by a grant of AT&T's petition.[12]

Among the key points raised by the opposing and questioning comments were:

- The continued reliance on allocated costs for state rate regulation, contrary to AT&T's claims.[13]
- The continued importance of allocated costs under federal price cap regulation.[14]
- The continued importance of allocation in the Commission's special access and other proceedings.[15]
- AT&T's (and other regional Bell Operating Companies') reliance on the use of allocated costs when it suits their purposes.[16]
- The fact that the cost of the supposedly burdensome regulations represented only 0.02% of AT&T's total revenues.[17]

As Sprint stated, "Cost data are essential not only to assess the efficacy of the current price cap plan and to recalibrate current price cap levels, but also to provide evidence regulators need to detect and take enforcement actions against anticompetitive conduct in

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[8] NASUCA, NASUCA member the Texas Office of Public Utility Counsel ("TOPC") and the Ad Hoc Telecommunications Users Committee ("Ad Hoc").

[9] Nebraska Rural Independent Companies ("NRIC").

[10] Time Warner Telecom Inc. ("Time Warner").

[11] Sprint Nextel Corporation ("Sprint").

[12] State Members of the Federal-State Joint Board on Separations ("State Members") and the Public Service Commission of Wisconsin ("PSCW").

[13] TOPC Comments at 2-3; NRIC Comments at 2-3.

[14] Ad Hoc comments at 13-15.

[15] Id. at ii-iii; see also Sprint Comments at 5-8; Joint Members Comments at 5. Indeed, as Ad Hoc pointed out, doing away with the allocation rules would conflict with the Commission's representations to the U.S. Court of Appeals for the D.C. Circuit regarding that proceeding. Ad Hoc Comments at 12.

[16] Id. at 6-7.

[17] NRIC Comments at 6.

deregulated environments."[18] And as Time Warner stated, "As long as the ILECs including AT&T retain market power and the Commission is statutorily bound to ensure that ILECs charge just, reasonable and not unjustly or unreasonably discriminatory rates, ILEC rates must be based to some extent on cost."[19] The Commission has not granted – and must not grant – forbearance for those fundamental consumer protections embodied in federal law.

AT&T has failed to show that it meets the statutory standards for forbearance. Its petition must be denied.

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
bergmann@occ.state.oh.us
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

CC: Daniel Gozalez, Ian Dillner, Scott Deutchman, Scott Bergmann, Chris Moore, John Hunter, Dana Schaffer, Christi Shewman, William Dever, Matthew Berry

[18] Sprint Comments at 2.

[19] Time Warner Comments at 2; see also NRIC Comments at 2.