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

RE: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Accounting Rules*, WC Docket No. 07-21

Dear Ms. Dortch:

Nearly 15 months ago AT&T sought forbearance from anachronistic and burdensome cost allocation rules that were once used to set cost-based rates under monopoly-era rate-of-return regulation that has not applied to AT&T – in *any* jurisdiction – for more than a decade. The massive undertaking that is required for AT&T to comply with these outdated rules is entirely wasted: the Commission no longer uses *any* of this information regarding the historical "costs" of multi-use facilities to set rates, but it nonetheless continues to require AT&T to cut and re-cut cost data in countless ways through allocation exercises that economists have universally recognized as necessarily arbitrary and pointless. Moreover, AT&T competes today in the provision of all services with a broad range of intermodal and intramodal competitors, none of whom labors under any aspect of the Commission's monopoly-era regulatory accounting regime. Given that the Commission and every state in which AT&T operates as an incumbent LEC long ago responded to the emergence of competition by abandoning cost accounting-based constraints on rates (and, in some cases, removing *all* price regulation), a strong case could be made for repealing the Commission's historical-cost ARMIS accounting regime for AT&T altogether. But AT&T here seeks relief only from a small subset of the Commission's accounting rules that constitute the most absurd vestiges of the rate-of-return era.

Under these rules, AT&T must measure the floor space in thousands of buildings to allocate fixed building costs between "regulated" and "non-regulated" activities. AT&T is required to estimate the relative amounts of time its employees spend on such activities (and even has employees whose primary responsibility is to listen in on customer service calls to determine how much time service representatives spend on calls related to regulated and non-regulated activities). AT&T has to maintain a vast system of apportionment methods and thousands of tracking codes to allocate costs among the myriad accounts, and each time AT&T launches new services it must re-review the system and update its cost apportionment methods and tracking codes. AT&T must estimate allocated costs associated with tens of thousands of affiliate transactions. AT&T is required to prepare and maintain a cost allocation manual ("CAM") – which each year runs hundreds of pages that no one ever reads – documenting how it allocates its costs. And, after doing all this and more, AT&T must pay outside auditors to audit and bless its compliance. *And all of this is for nothing*.

These cost allocation rules are thus the quintessential outdated regulations for which the forbearance statute was passed: they no longer serve any legitimate Commission purpose and are patently contrary to the public interest and de-regulatory policies of the Act. Not surprisingly, the opponents of forbearance have not identified a single actual, current Commission use of these cost allocations as they relate to AT&T. Instead, their entire case is based on speculation that these burdensome cost allocations should be maintained on the off-chance that they *may* prove useful *someday* in some *future* proceeding *if* the Commission were to decide to pursue some theoretically *conceivable* courses of regulatory action, however unlikely or unlawful. But the D.C. Circuit has already held that such speculative uses are insufficient as a matter of law to postpone forbearance, because there must be a "*strong connection*" – not a someday-maybe possible connection – "between what the [Commission] has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation."[1] Our opponents' speculative claims are especially dubious here, because the regulatory scenarios in which they say the cost allocation data might one day be useful are entirely implausible. Indeed, in many cases, the regulatory changes upon which they premise the need for cost allocation data would be patently unlawful.

AT&T will continue to provide total company data for the many Part 32 accounts, as that data is outside the scope of its forbearance petition. Moreover, although the pure price cap regulation to which AT&T is subject in all jurisdictions has obviated any risk of cross-subsidization, AT&T commits that it will provide an annual certification, similar to what mid-sized carriers (some of which are still subject to rate-of-return regulation) provide under 47 C.F.R. § 64.905(c), that it does not improperly cross-subsidize And, of course, in the highly unlikely event the Commission somehow found a need for allocated costs in the future, AT&T would comply with any lawful requirement to that end within a reasonable time frame. But there is plainly no need and no lawful justification to require AT&T to continue to carry out the full-blown cost allocation process any longer given that it serves no present regulatory purpose.

With respect to possible future uses of the cost allocation data, the principal claim of the petition's opponents – mostly the usual CLEC groups that always claim that any regulation of their ILEC competitors remains vital no matter how useless and outdated it really is – is that booked, allocated historical costs might someday be used as a "check" on the reasonableness of the current price cap rules.[2] These claims are impossible to reconcile with the repeated holdings of the Commission and the courts that the central goal of incentive-based price cap regulation

[1] *Cellular Telecommunications And Internet Association* v. *FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (emphasis added) ("*CTIA*"). *See also* Order, *Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal Service High-Cost Loop Support Mechanism*, 22 FCC Rcd. 15801, ¶ 15 (2007); Order, *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, 20 FCC Rcd. 15095, ¶ 11 (2005).

[2] *See, e.g.*, Time Warner Comments at 4-13; Time Warner 2/21/08 *Ex Parte*, attachment, at 2-7.

was to sever the connection between rates and historical costs.[3] And the single example of data purportedly useful for evaluating the price cap rules – service-specific ARMIS rates-of-return – only confirms that any attempt to justify retention of the cost allocation rules on the ground that they may someday be "necessary" for the evaluation of price caps would earn a swift reversal by the court of appeals.

From the beginning of the price cap regime, the Commission has held that cost-allocated ARMIS data were never intended to and cannot be used to derive service-specific rates of return, because the cost allocation rules are too arbitrary to serve as an appropriate basis for service-specific ratemaking.[4] Indeed, in 2001 the Commission concluded that "rapid changes in telecommunications infrastructure" were causing "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," and rather than attempt to correct those imbalances, it froze the separations factors instead while it considered a better, long-term solution.[5] It has now been seven years since the Commission froze the already-out-of-date separations factors, and in the intervening years, ARMIS data has only become more unreliable and untethered from reality. This is no longer even debatable, because the data are now *facially* absurd. For example, notwithstanding that for the past two years AT&T has been subject to merger commitments requiring that special access rates be either frozen or reduced, and that AT&T's special access revenues grew by only 5% during those two years, ARMIS reports that AT&T experienced a 46% *increase* in special access returns during this time. Indeed, if ARMIS data were to be believed, AT&T would be losing money on everything other than special access. For example, according to ARMIS, AT&T's return on switched access is (*negative* 5%). There is only one explanation for this: the cost allocation rules on which AT&T spends millions of dollars every year are arbitrary, out-of-date and incapable of generating data that could be used for ratemaking purposes. That is why in the special access proceeding itself, the Commission has already specifically rejected arguments that it should use ARMIS data as the

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[3] *See, e.g.,* Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272*, 11 FCC Rcd. 18877, ¶ 136 (1996)) (price cap regulation "severs the direct link between regulated costs and prices") (internal citations omitted). Thus, although a number of commenters suggest that cost allocations are used to ensure just and reasonable rates, in fact the Commission abandoned the use of historical costs to judge the reasonableness of rates many years ago. *See*, *e.g.*, *USTA* v. *FCC*, 188 F.3d 521, 530 (D.C. Cir. 1999).

[4] *Policy and Rules Governing Rates for Dominant Carriers*, 5 FCC Rcd. 6786, ¶ 380 (1990) ("Price Cap Order") ("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"); 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").

[5] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, 16 FCC Rcd. 11382, ¶ 12 (2001) ("*Separations Freeze Order*"); *Separations NPRM*, 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).

basis for Commission-mandated rate reductions.[6] And in recent months, even the more ardent proponents of special access re-regulation have recognized that the Commission could not possibly defend rate reductions based on allocated ARMIS data in court and have largely abandoned such arguments in favor of proposals that do not depend on the use of allocated accounting costs.[7]

Hence even if the Commission wanted to use ARMIS data for such purposes, the existing allocations have been allowed to drift so far from reality that the Commission would have to create an entirely new system essentially from scratch to undo the effects of the separations freeze and to make substantial adjustments to the ARMIS data to bring them up to date. Given that the Commission acknowledged the inherent difficulties in making accurate cost allocations seven years ago, it is inconceivable that the Commission would re-open those issues now and attempt to re-establish "accurate" allocations. That is especially true now, in light of the fact that the inherently impossible task of accurately allocating costs has become exponentially more difficult as the LECs' multi-use networks are used to provide a wider variety of services than ever before. Indeed, AT&T now provides voice services over three platforms – wireless, wireline, and VoIP – and forcing AT&T to "track" its costs (*e.g.*, requiring sales representatives to track how much time they spend selling which product) would be an absurd waste of resources. Similarly, AT&T's U-Verse service now provides video, voice, and Internet services over a single platform, and it would be pointless to force AT&T to go to the time and cost of apportioning costs to these various components when AT&T's cable competitors do not have to comply with any of the Commission's monopoly era accounting rules at all.[8] But in the highly

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[6] *In Re Special Access Rates for Price Cap Local Exchange Carriers*, 20 FCC Rcd. 1994, ¶¶ 129-30 (2005) ("*Special Access Re-Regulation Notice*") ("Even if the Commission had enough data, moreover, we question [the] central reliance on accounting rate of return data to draw conclusions about market power. High or increasing rates of return calculated using regulatory cost assignments for special access services do not in themselves indicate the exercise of monopoly power").

[7] *See, e.g.*, Sprint 10/5/07 *Special Access Re-Regulation Ex Parte*, WC Docket No. 05-25, Att. at 44 (conceding that relying on ARMIS would require the Commission to conduct in essence a full rate-of-return proceeding); Level 3 11/29/07 *Special Access Re-Regulation Ex Parte*, WC Docket No. 05-25 (abandoning ARMIS-based proposals and seeking instead to freeze rates and to collect additional data).

[8] When the Commission declared wireline broadband Internet access services not to be a common carrier service, past practice would have dictated that the accounting classification of such services be changed from regulated to non-regulated. The Commission concluded that it just wasn't worth it: such changes in accounting classifications "would impose significant burdens" on the carrier "with little discernible benefit." *Wireline Broadband Internet Access Order*, 20 FCC Rcd. 14853, ¶ 131 (2005). The Commission noted that the cost allocation rules developed in the monopoly era "assume that meaningful measures of cost causality and usage will be available," but an accounting reclassification today would require carriers to develop new measures that "would have to reflect the evolution of the incumbent LECs' networks from traditional circuit-switched networks to IP-based networks," and that the development of such new measures would be "resource-intensive" and "likely to lead to arbitrary cost allocation results." *Id.* ¶ 134.

unlikely event that the Commission did decide to start back down that path after all these years, the Commission would have to do so in the context of an extremely complex rulemaking anyway, in which it could decide whether it wanted to apply the new rules to AT&T. For all of these reasons, there is thus not even a theoretical scenario in which the current allocations that AT&T asks the Commission to forbear from enforcing would be used.

Nor is there any realistic prospect that such wildly out-of-whack cost allocations could be useful in establishing a new X-Factor. The Commission's most recent attempt to establish a productivity factor – which, incidentally, was eleven years ago – relied on a total factor productivity methodology that used *total company*, not allocated and separated, data. *See Price Cap Performance Review for Local Exchange Carriers*, 12 FCC Rcd 16642, ¶ 113-14 (1997) (rejecting Ad Hoc's argument that total factor productivity should be measured on a "less-than-total-company basis," such as on a regulated services only basis). In that proceeding, the Commission specifically rejected both an interstate-only and regulated-only X-Factor because it found that it had no reliable way of segregating the costs.[9] When MCI appealed the decision not to use an interstate-only X-Factor, the D.C. Circuit expressly upheld the Commission's use of total company data, and agreed with the Commission that it was not "clear" that an interstate-only factor was "measurable, or even economically well-defined," because there was no "obviously meaningful way to segregate" the inputs. *USTA* v. *FCC*, 188 F.3d 521, 528 (D.C. Cir. 1999). And, given that no party to the pending special access proceeding has even bothered to respond to the Commission's 2005 invitation to produce any methodology for using the cost allocations to derive a service-specific X-Factor,[10] there is no possible X-Factor basis to require AT&T to continue to toil under the cost allocation rules.

Indeed, *any* attempt to use historical cost allocations as a basis for reinitializing the price cap rates would face a heavy presumption of illegality. Over the years, the Commission has consistently rejected proposals to reinitialize rates based on historical costs as fundamentally inconsistent with the price cap rules, "because the basic theory of our existing price cap regime is that the prospect of retaining higher earnings gives carriers an incentive to become more efficient, [and thus] rate of return-based reinitialization would have substantial pernicious effects on the efficiency objectives of our current policies." *Access Charge Reform Order*, 12 FCC Rcd. 15982, ¶ 292 (1997).[11] When MCI appealed the Commission's decision in 1997 not to

[9] *See id.* ¶ 110 (record did not "allow [it] to quantify the extent, if any, to which interstate productivity growth may differ significantly from total company productivity growth"); *Price Cap Performance Review for Local Exchange Carriers*, Fourth Notice of Proposed Rulemaking, 10 FCC Rcd. 13659, ¶ 69 (1995) ("it may not be possible to distinguish between the productivity associated with regulated services from that associated with nonregulated services").

[10] 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, ¶ 37 (2005).

[11] *See id*. (detailing other instances in which the Commission rejected return-based adjustments to price caps, and concluding that "a decision now to reinitialize PCIs to any specified rate of return would further undermine future efficiency incentives by making carriers less confident in the constancy of our regulatory policies").

implement a broad reinitialization of the caps, the D.C. Circuit affirmed that "it seems clear that a second extensive reinitialization would considerably aggravate" perceptions that the Commission's "regulatory policies unnecessarily lack constancy," and that "[u]niversal, complete reinitialization would impair the supposed incentive advantages of price caps – which derive from firms' supposing that their efficiencies will *not* come back to haunt them." *USTA*, 188 F.3d at 530 (emphasis in original); *see also Southwestern Bell Tel. Cos.* v. *FCC*, 153 F.3d 523, 546-47 (8^{th} Cir 1998) (upholding decision not to reinitialize price caps in part because of "long recognized regulatory problems associated with the allocation of common costs"). In short, the Commission could not lawfully deny forbearance on the ground that cost allocations may someday be used to "correct" the price caps.

Nor, as some suggest, is maintenance of the cost allocation rules at issue necessary to support future exogenous cost adjustments to price cap indices. Exogenous cost adjustments are governed by 47 C.F.R. § 61.45, which would be unaffected by AT&T's forbearance petition. Contrary to some commenters' suggestions, that rule does *not* require AT&T to justify exogenous cost adjustments on the basis of cost allocation data. Most exogenous cost adjustments are for changes that are purely external to AT&T's service. For example, changes in regulatory fees require exogenous adjustments, which are typically allocated on the basis of revenues, not costs. In all events, the burden of justifying exogenous cost increases is on the carrier, and if dismantling outdated cost allocation practices would prevent AT&T from supporting future exogenous cost adjustments, AT&T alone would bear those consequences. The reality, however, is that exogenous cost adjustments that truly required allocated cost support could be handled on a one-off basis limited to the particular accounts at issue. And the same is true of any attempt by AT&T to make an above-cap or above-band filing: AT&T would bear the burden of justifying any such rate increases without the help of the allocated cost data at issue here. But the fact that the petition's opponents attempt to support their arguments by complaining that granting the petition might make it more difficult for AT&T to *raise* rates demonstrates the extent to which they are grasping at straws to find some continuing justification for these rules.

Given that the cost allocation rules clearly have no relevance whatsoever – current or future – with respect to the price cap regime, opponents have begun roving around the U.S. Code and Commission rulemaking dockets looking for something – anything – that might plausibly have some link to the cost allocation rules. These efforts fail as well. Their main argument is that cost allocation data is needed to ensure compliance with section 254(k). Section 254(k) prohibits a telecommunications carrier from using "services that are not competitive to subsidize services that are subject to competition." 47 U.S.C. § 254(k). AT&T's rates, however, are governed solely by price caps. Under that system, the cost allocation rules play no role in determining what prices AT&T may charge for any service, competitive or non-competitive.[12] Accordingly, the cost allocation rules are completely irrelevant to Section 254(k), because even if AT&T were to "misallocate" costs to regulated services, such misallocations would have no effect on AT&T's rates and AT&T thus would not gain any ability or opportunity to subsidize any services. Nonetheless, even if the Commission had some residual concern on this issue,

[12] Moreover, it is far from clear that Section 254(k) has any continuing relevance, because all of AT&T's interstate services, including switched access services, are "subject to competition" from intermodal services.

AT&T is willing to commit voluntarily to provide an annual certification – similar to what mid-sized carriers (some of which are still subject to rate-of-return regulation) are required to provide under 47 C.F.R. § 64.905(c) – that it has not engaged in improper cross-subsidization. If rate-of-return carriers, for whom the cost allocation rules are still relevant to their rates, are allowed merely to file annual certifications instead of cost allocation manuals, the same procedures should be good enough for AT&T, a pure price cap carrier for whom the cost allocation rules are now irrelevant.

Recognizing that concerns about enforcement of Section 254(k) cannot satisfy the Section 10 standard, opponents try to suggest that the Commission has already effectively precluded forbearance in its recent *Section 272 Sunset Order*, 22 FCC Rcd. 16440, ¶ 94 (2007). That order does no such thing. In sunsetting the Section 272 requirements, the Commission merely acknowledged the remaining *status quo* – *i.e.*, that a number of rules remained in effect, including the cost allocation requirements. Considering that the *Section 272 Sunset Order* was a rulemaking order, it was entirely appropriate that the Commission said nothing that was meant either to address or prejudge AT&T's company-specific forbearance petition here – and that was especially appropriate given that Verizon and Qwest do remain subject to rate of return regulation in some areas. AT&T, however, is a pure price cap company at both the federal and state levels, and therefore the cost allocation rules have no conceivable relevance to any of AT&T's operations. Naturally, the imputation requirements of Section 272(e)(3) will continue to apply, but again, the cost allocation rules are not necessary to implement Section 272(e)(3) since that section requires AT&T to impute its rates, not its costs. If anything, by insisting that the *Section 272 Sunset Order* should trump the forbearance petition, the opponents are arguing for an interpretation of that order that would violate Section 10, since it is well-settled that the Commission must decide forbearance petitions on their merits regardless of its generic rulemaking agenda. *See, e.g., AT&T Inc.* v. *FCC*, 452 F.3d 830 (D.C. Cir. 2006); *Verizon Tel. Cos.* v. *FCC*, 374 F.3d 1229, 1235 (D.C. Cir. 2004); *AT&T Corp.* v. *FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001).

Nor does the possibility of changes to high cost universal service support mechanisms justify continued enforcement of the cost allocation rules with respect to AT&T. The high cost universal support mechanism determines eligibility and support on the basis of *forward-looking* cost models that use forward-looking inputs, not AT&T's (or any other carrier's) Part 32 or Part 69 historical costs. To be sure, a few parameters of those forward-looking cost models were *initialized* from ratios based upon embedded allocated cost data in 1990's, but those parameters have held up for nearly a decade, and there is no serious call for the Commission to re-initialize them. Rather, the Commission is proposing to replace the current mechanism altogether with a support mechanism based on reverse auctions that would not use any cost data at all.[13] But even if the Commission wanted some day to re-initialize the parameters in the current forward-looking cost models, it could do so with the non-allocated cost data that would remain unaffected by a grant of AT&T's Petition, as BellSouth has previously demonstrated.[14] Moreover, the universal service high cost models relied on only a small subset of the data that AT&T currently is

[13] Notice of Proposed Rulemaking, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, 23 FCC Rcd 1531 (2008).

[14] *See Ex Parte* Letter from Mary L. Henze (BellSouth) to Marlene Dortch (FCC Secretary), WC Docket No. 05-342 (filed Sep. 27, 2006), attachment at 7-10.

required to maintain and report under cost allocation rules. If the Commission later finds a use for that small subset of data, it could then ask AT&T to obtain and provide it at that time; there is no need maintain the full-blown cost allocation reporting regime merely on the off-chance the Commission may someday want that subset of data for an alternative universal service regime that no one today is contemplating.

Claims that proponents of the "Missoula Plan" – a plan for intercarrier compensation and universal service reform – "relied heavily on separations data and ARMIS reports" can only be designed to mislead the Commission.[15] None of the proposals set forth in the Missoula Plan in any way relies on the cost allocation data obtained from the requirements from which AT&T seeks forbearance. Rather, the petition's opponents are referring to the fact that some proponents of the Missoula Plan used separations and ARMIS data to model and estimate the *impact* of the plan. But even those models do not rely on the *cost* allocation data at issue here; they relied on ARMIS volume and revenue data reports,[16] which would not be impacted by a grant of AT&T's Petition.

Even more bizarrely, some commenters have erroneously suggested that the Commission should retain the cost allocation rules for AT&T in light of the fact that the Commission has a pending proceeding to reconsider its separations rules. Again, AT&T is a pure price cap carrier at both the federal and state level. Even if the Commission were to unfreeze and start changing the separations factors, those rule changes would not have any effect on any of AT&T's federal or state rates. But there is no realistic prospect that the Commission will unfreeze the separations factors. In 2001, the Commission froze the factors for a five-year period based on its recognition that those factors were already woefully out of touch with the changing realities of the marketplace and technology.[17] The Commission subsequently extended the freeze,[18] and it would make no sense for the Commission not to extend it again if intercarrier compensation reform has not been completed. Even if the Commission suddenly decided tomorrow that the jurisdictional separations process should be revived in earnest, however, it would have no impact on AT&T, and the Commission would have to initiate an extremely complex and lengthy rulemaking to re-establish accurate separations factors after the long period of the freeze. The pendency of the separations proceeding thus provides no basis for a denial of forbearance.

There is also no basis to retain cost allocation rules that serve no federal purpose on claims that states might use the data for their own purposes. At the outset, both the Commission and the D.C. Circuit have made clear that that a federal purpose is necessary – *i.e.*, there must be

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[15] *See, e.g.,* TWTC at 7-8.

[16] *See* Missoula Intercarrier Compensation Plan, CC Docket No. 01-92, at 102 (filed July 24, 2004 by NARUC) (explaining that ARMIS reports were used to obtain "rates, volumes, and revenues); *id.* at 107.

[17] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, 16 FCC Rcd. 11382, ¶ 1 (2001); *Separations NPRM,* 12 FCC Rcd 22120, ¶¶ 9-16 (1997).

[18] Order and Further Notice of Proposed Rulemaking, *Jurisdictional Separations and Referral to the Federal-State Joint Board*, 21 FCC Rcd. 5516, ¶¶ 1, 16 (2006) (extending the jurisdictional separations freeze by an additional three years). *See also* 47 C.F.R. § 36.3(c) and (d).

a "strong connection" to a permissible, *federal* regulatory purpose.[19] In any event, of the 22 states in AT&T's incumbent territory, only three – California, Wisconsin and Ohio – even filed comments in this proceeding. California did not claim to make use of AT&T's cost allocation data, but instead merely asked that AT&T's Petition be rejected on the grounds that the issues should be resolved in a rulemaking. As explained above, however, the D.C. Circuit has made clear that the Commission cannot lawfully reject a forbearance petition on the ground that the issues are more appropriate for a rulemaking.[20] The Public Service Commission of Wisconsin ("PSCW") admits (at 2, 4) that the "Part 32 accounts" it currently uses "will be preserved" if AT&T's Petition is granted, and it agrees that it is "unlikely" that AT&T will return to rate-of-return regulation in Wisconsin, such that Wisconsin would ever again need AT&T's cost allocation data. Wisconsin speculates (at 4) that AT&T's cost allocation data may one day be needed to address issues that might arise with respect to the subscriber line charge ("SLC"), but the Fifth Circuit and Commission have made clear that the SLC is unrelated to cost allocations.[21] Finally, Ohio asserts that it needs the cost allocation data because, it says, it is obligated by Section 252(d)(3) to estimate wholesale rates for resold services by deducting from the retail price avoided costs and that the avoided costs data comes from cost allocation accounts from which AT&T seeks forbearance. In fact, the Ohio PUC last established a discount factor for AT&T for this purpose more than a decade ago, and there is no indication that it intends to revisit the issue now. In all events, speculation about possible future use of the four ARMIS accounts relevant to resale discounts under 252(d)(3) could hardly justify retaining the entire cost allocation apparatus.

In short, no party to this proceeding has come close to justifying retention of these rules. Section 10's three-pronged test for forbearance is easily satisfied here: forcing AT&T to continue to comply with the cost allocation rules is manifestly "not necessary to ensure that . . . charges . . . are just and reasonable and are not unjustly or unreasonably discriminatory," "not necessary for the protection of consumers," and forbearance is clearly "consistent with the public interest."[22] In fact, the information generated by this outdated rules is not used at all. AT&T faces robust competition from cable companies, wireless carriers, and other intermodal providers of communications services, and the Commission has long held that such "competition is the most effective means of ensuring that the charges [and] practices . . . are just and reasonable, and

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[19] Report and Order and Further Notice of Proposed Rulemaking, *2000 Biennial Review*, 16 FCC Rcd. 19911, ¶ 207 (2001) ("if we cannot identify a federal need for a regulation, we are not justified in maintaining such a requirement at the federal level"). As noted, the D.C. Circuit construed the term "necessary" in the forbearance statute "as referring to the existence of a strong connection between what [the Commission] has done by way of regulation and what [the Commission] *permissibly* sought to achieve with the disputed regulation." *CTIA*, 330 F.3d at 512 (emphasis added). The Commission has authority to regulate only interstate and foreign communications and is prohibited from regulating intrastate service, 47 U.S.C. §§ 151, 152(b). Therefore, the only "permissible" regulatory purposes that could satisfy the Section 10 standard are *federal* regulatory purposes, not state purposes.

[20] *AT&T Inc.* v. *FCC*, 452 F.3d 830, 835-36 (D.C. Cir. 2006). *See also* AT&T Reply at 18-19.

[21] *TOPUC* v. *FCC*, 265 F.3d 313, 324 (5th Cir. 2001).

[22] *CTIA*, 330 F.3d 502 at 509.

not unjustly or unreasonably discriminatory."[23] In addition, eliminating unnecessary and costly regulations clearly is consistent with the public interest, particularly given the overriding de-regulatory policies of the Act, the strong interest in eliminating unnecessary regulatory costs, and the goal of establishing regulatory parity among competitors.[24] In these circumstances, there can be no legitimate dispute that the statutory test for forbearance is satisfied and that any failure by the Commission to carry out its corresponding "obligation" to forbear from these cost allocation rules would lead to swift reversal.

Respectfully submitted,

/s/ Gary L. Phillips

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[23] Memorandum Opinion and Order, *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance,* 14 FCC Rcd. 16252, ¶ 31 (1999).

[24] *See, e.g.,* Separate Statement of Commissioner Robert M. McDowell, Report and Order and Declaratory Ruling, *Telecommunications Services Inside Wiring Customer Premises Equipment*, 22 FCC Rcd. 10640 (2007) ("To help create an environment where investment, innovation and competition can flourish, it is imperative that government treat like services alike, preferably with a light regulatory touch").