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

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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 No. 07-21
	)	
Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules	)	WC Docket No. 05-342

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2008 **Released: April 24, 2008**

By the Commission: Commissioners Tate and McDowell issuing separate statements; Commissioners Copps and Adelstein dissenting and issuing a joint statement.

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I. INTRODUCTION

1. In this Order, we address the petitions filed by AT&T Inc. on behalf of certain of its legacy SBC affiliates (Legacy AT&T) and BellSouth Telecommunications, Inc. (Legacy BellSouth) (jointly, "AT&T")[1] requesting that the Commission forbear, pursuant to section 10 of the Communications Act of

[1] Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21 (filed Jan. 25, 2007) (AT&T Petition); Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket Nos. 07-21, 05-342 (filed Feb. 9, 2007) (BellSouth Petition) (continued....)

1934, as amended (Act), from applying its "cost assignment" rules to AT&T.[2] For the reasons set forth below, we grant both petitions, subject to conditions.[3] We find that AT&T has demonstrated that the forbearance petitions meet the statutory criteria for forbearance.

II. BACKGROUND

2. Initially, incumbent local telephone companies were monopolies subject to rate-of-return rate regulation at both the federal and state levels. Under rate-of-return regulation, rates were targeted to levels that allowed carriers to recover their costs and earn a specific return on their regulated investment.[4] Because the same local network facilities were used to provide both interstate and intrastate services, as well as both regulated and nonregulated services, however, the Commission developed the rules described below, to standardize rate-of-return rate regulation. Specifically, the Commission created rules to assign or allocate the common costs to build and maintain the network, and the revenues derived from the array

(Continued from previous page)
(collectively, AT&T Petitions). AT&T filed an erratum to correct the captions of the AT&T Petition and the BellSouth Petition. *See* AT&T Erratum, WC Docket No. 07-21, at 2 (filed Feb. 16, 2007). On December 6, 2005, Legacy BellSouth filed a petition seeking forbearance from the Commission's cost assignment rules. *See* Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 05-342 (filed Dec. 6, 2005). While Legacy BellSouth's petition was pending, Legacy AT&T acquired Legacy BellSouth. *See AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (*AT&T/BellSouth Order*); Order on Recon., 22 FCC Rcd 6285 (2007). On February 9, 2007, AT&T Inc., on behalf of Legacy BellSouth, withdrew the original Legacy BellSouth petition and simultaneously resubmitted it with a request to synchronize the pleading cycle with the AT&T Petition. *See* Letter from Theodore Marcus, Senior Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-342, at 2 (filed Feb. 9, 2007). The Commission granted that request and incorporated the record from WC Docket No. 05-342 into WC Docket No. 07-21. *See Pleading Cycle Established for AT&T Inc. Petition for Forbearance from the Commission's Cost Assignment Rules*, WC Docket No. 07-21, Public Notice, 22 FCC Rcd 3332 (2007) (*Public Notice*); Appendix (appending a list of commenters). All pleadings cited are filed in WC Docket No. 07-21 unless otherwise noted.

[2] AT&T requests that the Commission forbear from section 220(a)(2) of the Act (to a limited extent) and various rules, including the following: section 32.23 (nonregulated activities); section 32.27 (transactions with affiliates); Part 64, Subpart I (allocation of costs); Part 36 (jurisdictional separations procedures); Part 69, Subparts D and E (cost apportionment); and other related rules that are derivatives of, or dependent on, the foregoing rules. *See, e.g.*, 47 C.F.R. §§ 32.23, 32.27, Part 64 Subpart I, Part 36, Part 69 Subparts D and E. Attachment 1 of the AT&T Petition lists each rule from which Legacy AT&T seeks forbearance. *See* AT&T Petition, Attach. 1. The affiliates for which Legacy AT&T seeks forbearance relief are listed in the AT&T Petition. *See* AT&T Petition at 1 n.1. Legacy BellSouth seeks forbearance from the same rules. *See* BellSouth Petition, App. 1 (listing each rule from which Legacy BellSouth seeks forbearance). We refer to the statutory provision and Commission rules from which AT&T seeks forbearance collectively as the "Cost Assignment Rules."

[3] On January 7, 2008, the Wireline Competition Bureau (Bureau) extended by 90 days, to April 24, 2008, the date by which the AT&T Petition shall be deemed granted in the absence of a Commission decision. The Bureau extended by 90 days, to May 9, 2008, the date by which the BellSouth Petition shall be deemed granted in the absence of a Commission decision. *See 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*, WC Docket Nos. 07-21, 05-342, Order, 23 FCC Rcd 102 (WCB 2008).

[4] *See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1300, para. 10 (1987) (*Joint Cost Order*), *petition for review denied, Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

of services offered over the network, by type of cost, type of service (regulated or nonregulated), jurisdiction (intrastate or interstate), and service categories.[5]

3. To record company investment, expense, cost, and revenue for rate-of-return rate regulation, the Commission adopted a Uniform System of Accounts (USOA).[6] Currently embodied in Part 32 of the Commission's rules, the USOA is a financial accounting system that discloses the results of operational and financial events in a manner that enables both the companies' management and regulatory agencies to assess these results.[7] First, the USOA sets forth a standardized chart of accounts and thereby directs companies how to record certain transactions in their books of account. Second, the USOA establishes rules for carriers' affiliate transactions. Third, the USOA specifies accounting treatment for depreciation expenses. Finally, the USOA requires carriers to maintain property records of all telecommunications plant in service.

4. Additionally, for companies to determine how to jurisdictionally separate their investment, expense, taxes, resources, operating revenues, and other income for accounting purposes, the Commission adopted jurisdictional separations rules. Separations procedures were performed by incumbent local exchange carriers (LECs) since the Supreme Court's 1930 holding that the "separation of intrastate and interstate property, revenues and expenses" is "essential to the appropriate recognition of the competent governmental authority in each field of regulation."[8] In 1947, the Commission created what is now known as the "NARUC-FCC Separations Manual," which was a result of cooperative efforts and studies undertaken by the industry, state regulatory agencies through the National Association of Regulatory Utility Commissioners (NARUC), and the Commission beginning in 1941.[9] After working with the states on separations guidelines for a number of years, the Commission ultimately adopted a set of legally binding separations procedures in 1969 that are now set forth in Part 36 of the Commission's rules.[10]

5. Further, in 1983, shortly before the AT&T divestiture, the Commission adopted Part 69 to govern how incumbent LECs calculate their access charge rates.[11] These rules help to ensure that incumbent LECs' access charges are just and reasonable, consistent with section 201 of the Act, and not unjustly or unreasonably discriminatory, consistent with section 202 of the Act.[12] For example, the Part 69 rules establish the rate structure for access charges to be paid by interexchange carriers to LECs for the

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[5] Thus, the various Commission accounting rules are intended to work together to help ensure the primary statutory goal of just and reasonable rates. *See Joint Cost Order*, 2 FCC Rcd at 1299, para. 1.

[6] 47 U.S.C. § 220.

[7] *See generally* 47 C.F.R. Part 32. *See also, e.g., Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules)*, CC Docket 78-196, Report and Order, FCC 86-221 (rel. May 15, 1986) (replacing the USOA in Parts 31 and 33 of the Commission's rules, originally adopted in 1935, with a new Part 32 USOA).

[8] *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930) (*Smith v. Illinois Bell*).

[9] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22125, para. 7 (1997) (*Separations Notice*) (citing *American Tel. & Tel. Co.*, 3 FCC 2d 307, 309-11 (1966)).

[10] 47 C.F.R. Part 36; *Prescription of Procedures for Separating and Allocating Plant Investment, Operating Expenses, Taxes, and Reserves Between the Intrastate and Interstate Operations of Telephone Companies*, Docket No. 17975, Report and Order, 16 FCC 2d 317 (1969).

[11] *See generally MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983) (subsequent history omitted).

[12] 47 U.S.C. §§ 201, 202.

origination and termination of long distance calls, as well as the access charges to be paid directly by end users. These rate structure rules establish the access charge rate elements as well as the nature of the charges, such as whether they are assessed on a per-minute or a flat-rate basis.

6. As a result of the Commission subsequently permitting post-divestiture AT&T and the regional Bell operating companies (BOCs) to offer "enhanced" or "information" services, which were treated as "nonregulated," the Commission addressed concerns of cost shifting. As telecommunications technology advanced, and as new technology was ubiquitously deployed, the Commission became concerned with the opportunities for carriers with market power to subsidize the development of new technologies with increased rates for noncompetitive services.[13] To address these concerns, the Commission adopted Part 64 to help ensure, among other things, that carriers could not impermissibly "impos[e] on ratepayers for regulated interstate services the costs and risks of nonregulated ventures."[14]

7. Together, these Commission rules establish a rational four-step process for recording and allocating incumbent LECs' costs and revenues associated with their regulated and nonregulated activities.[15] First, carriers record their costs, including investments and expenses, into various accounts in accordance with the USOA prescribed by Part 32 of the Commission's rules.[16] Second, carriers directly assign, or allocate if direct assignment is not possible, the costs and revenues associated with their regulated and nonregulated activities using the rules established by the Commission in Part 64 of its rules.[17] Third, interstate and intrastate costs and revenues are separated as provided in Part 36 of the Commission's rules.[18] Finally, the access charge rules in Part 69 require carriers to separate regulated interstate costs into interexchange costs and access costs, and then apportion the latter among the enumerated access elements.[19]

8. In 1991, in response to the concern that rate-of-return regulation had eliminated carriers' incentives to reduce costs and improve efficiency, the Commission implemented price cap regulation.[20] Price cap regulation is incentive-based regulation that focuses on the prices that a carrier may charge and the revenues it may generate from interstate access services.[21] Price cap regulation was a means for the

[13] *See Joint Cost Order*, 2 FCC Rcd at 1300, para. 10.

[14] *Id.* at 1298, para. 1; *see id.* at 1303, para. 37 (articulating the goals of the Commission's accounting rules as "protecting ratepayers from unjust and unreasonable interstate rates" and "ensur[ing] that ratepayers share in any savings achieved through the integrated provision of regulated and nonregulated activities").

[15] *See id.* at 1301, para. 15; *see also id.* at 1303, para. 37 ("We reaffirm that protecting ratepayers from unjust and unreasonable interstate rates is the primary purpose behind the accounting separation of regulated from nonregulated activities, just as it is the purpose behind all of our accounting and cost allocation rules.").

[16] *See* 47 C.F.R. Part 32.

[17] *See* 47 C.F.R. §§ 64.901-905.

[18] *See* 47 C.F.R. Part 36.

[19] *See* 47 C.F.R. § 69.4(b) (including the following elements: common line, local switching, information, tandem-switched transport, direct-trunked transport, special access, line information database, entrance facilities and recovery of contributions to the universal service support mechanisms by incumbent LECs).

[20] *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20, paras. 257-59 (1990) (*LEC Price Cap Order*), *aff'd*, *Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[21] *See Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12968, para. 15 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded*, *Texas* (continued....)

Commission to encourage regulated markets to produce results similar to highly competitive unregulated markets and as such ensure that consumers benefit from carriers' cost efficiencies.[22] As the Commission has explained, "price cap regulation severs the direct link between regulated costs and prices."[23] Price cap regulation was designed to encourage carriers "to improve their efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities, and develop and deploy innovative service offerings, while setting price ceilings at reasonable levels."[24] Pursuant to Part 61 of the Commission's rules, price cap indices, or ceilings, are designed to provide price cap carriers some pricing flexibility while ensuring that interstate rates remain just and reasonable.[25]

9. Since the adoption of price cap regulation, many carriers, including AT&T, have moved from rate-of-return rate regulation to price cap regulation, and the Commission has modified its regulation of price cap carriers over time to reflect changing circumstances. According to AT&T, both its interstate and intrastate rates are now regulated under price cap regulation, if at all.[26] However, price cap regulation always was intended to act "as a transitional regulatory scheme until the advent of actual competition makes price cap regulation unnecessary."[27]

III. DISCUSSION

10. In this Order, we grant AT&T's petitions for forbearance, subject to conditions, because we find that AT&T, as a price cap carrier generally not subject to rate-of-return regulation, has demonstrated that forbearance from enforcing the Cost Assignment Rules satisfies the standard for forbearance under section 10 of the Act. AT&T is a price cap carrier seeking forbearance from the Cost Assignment Rules, which were developed at a time when the LECs' interstate rates and many of their intrastate rates were set under rate-based, cost-of-service regulation. An integral part of the "pro-competitive, de-regulatory national policy framework"[28] established in the Act is the requirement, set forth in section 10, that the Commission forbear from applying any provision of the Act, or any of the Commission's regulations, if the Commission makes certain findings with respect to such provisions or regulations.[29] Specifically, the

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Office of Pub. Util. Counsel v. FCC, 265 F.2d 313 (5th Cir. 2001), *cert. denied*, 525 U.S. 986 (2002), *on remand*, *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, 18 FCC Rcd 14976 (2003); *see also CALLS Order*, 15 FCC Rcd at 12968-69, para. 16 n.15 (finding that price cap regulation was designed to encourage carriers "to improve their efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities, and develop and deploy innovative service offerings, while setting price ceilings at reasonable levels").

[22] *See Joint Cost Order*, 2 FCC Rcd at 1312, para. 111.

[23] *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571, 7596, para. 55 (1991) (*Computer III Remand Order*), *vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert denied*, 514 U.S. 1050 (1995).

[24] *See CALLS Order*, 15 FCC Rcd at 12968-69, para. 16 n.15.

[25] *See* 47 C.F.R. §§ 61.41-49.

[26] *See* AT&T Petition at 2; BellSouth Petition at 18, 22.

[27] *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 8965, para. 1 (1995), *petition for review denied, Bell Atlantic Tel. Co. v. FCC*, 79 F.3d 1195 (D.C. Cir. 1996).

[28] Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

[29] 47 U.S.C. § 160(a).

Commission is required to forbear from any statutory provision or regulation if it determines that (1) enforcement of the regulation is not necessary to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.[30] In making such determinations, the Commission also must consider pursuant to section 10(b) "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[31]

11. For the reasons explained below, we find that AT&T's request satisfies the three forbearance criteria with regard to the Cost Assignment Rules to the extent that AT&T complies with the conditions we set forth. Specifically, we conclude 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. Although we find in this Order that AT&T has demonstrated that forbearance from the Cost Assignment Rules satisfies the three-prong test under section 10, we conclude that this test is only satisfied to the extent that AT&T complies with conditions we impose here. Because we cannot conclude here that the Commission will never have any need for accounting data from AT&T in the future, we condition this forbearance on, among other things, the provision by AT&T of accounting data on request by the Commission for regulatory purposes, consistent with the Commission's statutory authority and AT&T's commitment in this proceeding. These conditions mitigate factors that would otherwise lead us to conclude that these rules remain necessary to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest. LECs similarly situated to AT&T are free to seek comparable forbearance relief.

12. ***Scope.*** In this Order, we grant forbearance, subject to conditions, from the statutory provision and Commission rules as requested in the Legacy AT&T and Legacy BellSouth petitions (collectively, "Cost Assignment Rules").[32] Specifically, AT&T seeks limited forbearance from section 220(a)(2) of the Act to the extent that this provision contemplates separate accounting of nonregulated costs.[33] AT&T also seeks forbearance from various Commission rules including the following: section 32.23 (nonregulated activities); section 32.27 (transactions with affiliates); Part 64 Subpart I, including the requirement to file Cost Allocation Manuals (CAMs)[34] (allocation of costs); Part 36 (jurisdictional separations procedures); Part 69, Subparts D and E (cost apportionment); and other related rules that are derivative of or dependent on the foregoing rules.[35] Finally, AT&T seeks forbearance from four of the

[30] *Id.*

[31] 47 U.S.C. § 160(b).

[32] The State Members ask us to clarify the scope of relief granted here with regard to the covered affiliates. *See* State Members Comments at 13. Specifically, the State Members note that, in the AT&T Petition, AT&T Inc. requested relief "on behalf of certain of its legacy SBC affiliates," which are listed by name in the petition. *Id.* (citing AT&T Petition at 1 & n.1). The Bureau released a public notice seeking comment on the AT&T Petitions. The *Public Notice* characterized the request as filed by AT&T Inc. "on behalf of itself and its affiliates." *Public Notice* at 1. It was not our intention to expand the scope of this proceeding beyond that requested by AT&T. Thus, we clarify that the scope of relief granted here is limited to the affiliates described by AT&T in the AT&T Petitions.

[33] *See* AT&T Petition at 1-2 n.2 (citing 47 U.S.C. § 220(a)(2)); BellSouth Petition at 1 n.1.

[34] 47 C.F.R. § 64.903.

[35] *See, e.g.*, 47 C.F.R. §§ 32.23, 32.27, Part 64 Subpart I, Part 36, Part 69 Subparts D and E. Attachment 1 of the AT&T Petition lists each rule from which Legacy AT&T seeks forbearance. *See* AT&T Petition, Attach. 1. Legacy BellSouth seeks forbearance from the same rules. *See* BellSouth Petition, App. 1 (listing each rule from which Legacy BellSouth seeks forbearance).

Commission's reporting requirements – the Access Report (ARMIS 43-04), the Rate of Return Monitoring Report (FCC Form 492), the Reg/Non-Reg Forecast Report (FCC Form 495A) and the Reg/Non-Reg Actual Usage Report (FCC Form 495B) – because forbearance from the Cost Assignment Rules renders these reports meaningless.[36] To be clear, AT&T generally does not seek, and we do not grant, forbearance from the Part 32 USOA.[37] Although AT&T seeks relief from section 220(a)(2) and a significant number of rules, we consider the Cost Assignment Rules together as a group under the statutory forbearance criteria because, as the Commission has concluded, the various accounting rules were intended to work together to help ensure the primary statutory goal of just and reasonable rates.[38] In addition, AT&T has represented that both petitions seek substantively identical relief for the Legacy AT&T and Legacy BellSouth affiliates.[39] To the extent that there could be any inconsistency between the petitions, it is our intention to grant the same relief for both petitions, and we expect uniform implementation across all of the AT&T affiliates subject to this relief, whether Legacy AT&T or Legacy BellSouth affiliates.

13. ***Rulemaking.*** The State Members of the Federal-State Joint Board on Separations (State Members) oppose the AT&T Petitions and urge us to allow the Federal-State Joint Board on Separations (Joint Board) "to continue its current efforts and not be effectively preempted by piecemeal forbearance decisions that would overthrow existing separations procedures . . . ."[40] The State Members argue that

[36] *See* AT&T Petition at 38 n.83. We note that AT&T requests forbearance from section 43.21(f) of the Commission's rules. *See* AT&T Petition at 1-2 n.2, Attach. 1 at 86. Rule 43.21(f) is implemented by requiring the filing of ARMIS Report 43-01. In the text of its petition, however, Legacy AT&T neither mentioned its obligation to file this report in its request for relief, nor expressly analyzed why such relief might be warranted. *See* AT&T Petition at 38 n.83, Attach. 6 at 1. We also note that in a separate petition seeking forbearance from certain ARMIS filing requirements, AT&T characterized the relief it requests through its cost assignment forbearance petition at issue here as including the ARMIS Report 43-03 reporting requirements. *See* 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, WC Docket No. 07-139, at 1 n.2 (filed June 8, 2007). In fact, the obligation to file ARMIS Report 43-03 is not included in the relief AT&T requests in this proceeding. *See* AT&T Petition at 38 n.83, Attach. 6 at 1. To be clear, we do not grant forbearance from these reporting requirements – ARMIS Reports 43-01 and 43-03 – in this Order, except to the extent that AT&T will no longer generate certain underlying data by virtue of the forbearance from the Cost Assignment Rules granted in this Order. We note that AT&T otherwise still will have the data and information necessary for those ARMIS reports.

[37] *See* AT&T Petition at 1-2 n.2 (citing 47 C.F.R. Part 32); BellSouth Petition at 4, 60-61, 71; AT&T Reply at 13; BellSouth Reply, WC Docket No. 05-342, at 3-4; Letter from Gary L. Phillips, General Attorney & Associate General Counsel, AT&T Services Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 07-21, at 2 (filed Apr. 18, 2008) (AT&T Apr. 18 *Ex Parte* Letter); Letter from Robert W. Quinn, Senior Vice President – Federal Regulatory, AT&T Services Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 07-21, at 4 (filed Apr. 22, 2008) (AT&T Apr. 22 *Ex Parte* Letter).

[38] *See Joint Cost Order*, 2 FCC Rcd at 1298, para. 1.

[39] *See* AT&T Reply at 1 n.1; Letter from Linda Vandeloop, Director-Federal Regulatory, AT&T Services Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, at 1 (filed Feb. 22, 2007) (AT&T Feb. 22 *Ex Parte* Letter).

[40] State Members Comments at 6; *see* NASUCA Comments at 3; Sprint Nextel Comments at 3-4; TOPC Comments at 2; TWTC Comments at 20-22; Wisconsin Commission Comments at 1-2; California Commission Reply at 1-4; NuVox *et al.* Reply at 7; Sprint Nextel Reply at 4; New Jersey Rate Counsel Comments, WC Docket No. 05-342, at 18-19; NASUCA Reply, WC Docket No. 05-342, at 2-4; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 2; *see also* Sprint Nextel Comments at 3 (advocating a proceeding of general applicability); TWTC Comments at 3, 19, 21 n.52 (advocating a proceeding of general applicability or reauthorization of and referral to the Federal-State Joint Board on Accounting); NuVox *et al.* Reply at 7; Letter from Gregory M. Kennan, Federal Counsel, One Communications Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, at 1 (filed Feb. 7, 2008); (continued....)

"even if the current petition is denied, AT&T would not be without relief for long" because reform will be necessary before the separations freeze ends in 2009.[41] Although we recognize the value that the Joint Board adds to our deliberation of these issues, section 10 does not allow us the leeway to choose our procedural vehicle and the timing of resolution outside the limitations of section 10.[42] Section 10 provides that the Commission shall forbear from applying any regulation or provision of the Act if it finds that the three-prong forbearance test is satisfied.[43] Notably, section 10(c) provides that "[a]ny [forbearance] petition shall be deemed granted" if the Commission does not "deny" it "for failure to meet the requirements for forbearance" within one year of receiving it (plus 90 days if the Commission extends the statutory period).[44] As the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has concluded, "an alternative route for seeking [relief] does not diminish the Commission's responsibility to fully consider petitions under [section] 10."[45] "The Commission has no authority to sweep [section 10] away by mere reference to another, very different, regulatory mechanism."[46] Thus, by the terms of the statute, we may not adopt the approach advocated by the State Members to deny these petitions in favor of referral to the Joint Board with presumably a rulemaking to follow, concluded well beyond the statutory deadline imposed by section 10. We are obligated to proceed with these petitions under the legal standard and the timeline established by Congress in section 10 of the Act.

14. ***Statutory backdrop.*** Following forbearance, AT&T will remain subject to a number of statutory safeguards that are important components of the regulatory framework that ensure that AT&T's rates and practices are just, reasonable and not unjustly or unreasonably discriminatory, as required by

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Letter from Jonathan Lechter, Counsel for TWTC, Cbeyond Inc. & One Communications Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 05-342, Attach. 1 at 2 (filed Feb. 21, 2008) (TWTC *et al.* Feb. 21 *Ex Parte* Letter); Letter from Daniel Mitchell, Vice President, Legal & Industry, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, at 2 (filed Apr. 14, 2008) (NTCA Apr. 14 *Ex Parte* Letter); Letter from Christopher J. White, Deputy Ratepayer Advocate, New Jersey Division of the Ratepayer Advocate, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-342, Attach. (filed June 20, 2006) (New Jersey Rate Counsel June 20 *Ex Parte* Letter). On April 15, 2008, the current state members of the Joint Board filed a letter indicating that during the pendency of this proceeding, the state membership of the Joint Board has changed but that the current state members and those that await confirmation continue to support the view of the State Members' comments. *See* Letter from Mark K. Johnson, State Chairman, Federal State Joint Board on Separations, *et al.*, to Deborah Taylor Tate, Commissioner, FCC, *et al.*, WC Docket No. 07-21, CC Docket No. 80-286, at 2 (filed Apr. 15, 2008) (State Members Apr. 15 *Ex Parte* Letter); Letter from Mike Gleason, Chairman, Arizona Corporation Commission, *et al.*, to Kevin J. Martin, Chairman, FCC, *et al.*, WC Docket Nos. 07-21, 05-342, 07-273, 07-204, at 2 (filed Apr. 22, 2008) (Arizona Commission Apr. 22 *Ex Parte* Letter); Tennessee Regulatory Authority *Ex Parte* Comments, WC Docket Nos. 07-21, 05-342, 80-286, at 2 (filed Apr. 22, 2008) (Tennessee Commission Apr. 22 *Ex Parte* Comments).

[41] State Members Comments at 6.

[42] We also appreciate the broad participation of states in this proceeding and have carefully considered their concerns. *See generally, e.g.*, Wisconsin Commission Comments; California Commission Reply; Letter from Cindy B. Miller, Senior Attorney, Florida Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-342 (filed Feb. 9, 2007) (Florida Commission Feb. 9 *Ex Parte* Letter).

[43] 47 U.S.C. § 160(a).

[44] 47 U.S.C. § 160(c).

[45] *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001); *see Sprint Nextel Corp. v. FCC*, 508 F.3d 1129, 1132 (D.C. Cir. 2007); *see also* AT&T Reply at 19-20; Ad Hoc Reply at 5; BellSouth Reply, WC Docket No. 05-342, at 11; AT&T Apr. 18 *Ex Parte* Letter at 7; AT&T Apr. 22 *Ex Parte* Letter at 3.

[46] *AT&T Corp. v. FCC*, 236 F.3d at 738.

section 10. In particular, AT&T will remain subject to section 251 obligations;[47] section 271 obligations, including the obligation to continue to comply with the market-opening requirements that AT&T had to meet in order to receive authority to provide in-region, interLATA services;[48] and the continuing general obligation to provide service on just, reasonable, and not unjustly or unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act.[49] Most significantly, AT&T will remain subject to dominant carrier regulation of its interstate exchange access services, including price cap regulation of most exchange access services.[50]

A. Charges, Practices, Classifications and Regulations

15. Section 10(a)(1) requires us to determine whether application of the Cost Assignment Rules is "necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory."[51] We find that AT&T demonstrates that forbearance from the Cost Assignment Rules, subject to conditions, satisfies this criterion.

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[47] 47 U.S.C. § 251. AT&T will remain subject to unbundling obligations pursuant to section 251(c)(3), which, as the Commission has found previously, provides "a check on special access pricing." *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2574-75, para. 65 (2004), *petition for review denied, Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

[48] 47 U.S.C. § 271(d)(6).

[49] 47 U.S.C. §§ 201, 202. Under section 202(a) of the Act, AT&T will remain obligated to provide any of its special access services that its competitors rely on as inputs for the competitors' own interLATA telecommunications service offerings on rates, terms, and conditions that are not unreasonably discriminatory. 47 U.S.C. § 202(a). Ad Hoc appears to argue that the three-prong test cannot be satisfied for forbearance from section 201(b) of the Act. *See* Ad Hoc Comments at 9-11. AT&T does not seek, nor do we grant, forbearance from section 201(b).

[50] BOCs are not subject to price cap regulation for (1) the exchange access services for which they have been granted phase II pricing flexibility; and (2) certain of their services that are provided pursuant to rate-of-return regulation. *See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98- 63, Fifth Report and Order and Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14225, paras. 4-5, 14301, para. 153, 14307, para. 166 (1999) (*Pricing Flexibility Order*), *petition for review denied, WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001); 47 C.F.R. § 65.1(b)(3). For example, as part of its annual access-tariff filing waiver petitions for its TIPToP service, AT&T has acknowledged that it is subject to cost-based regulation and commented that "[a]ny rate increases or change in terms or conditions for TIPToP must be filed on 15-days notice *with cost support*. Thus, the Bureau would continue to maintain significant regulatory oversight over TIPToP, and importantly, more regulatory oversight than over most services subject to price cap regulation." AT&T Reply Comments, WCB Pricing File No. 07-08, at 2-3 (filed April 16, 2007) (emphasis in original). The Bureau has agreed that "these rules require AT&T to justify any rate increases it seeks for its TIPToP service by providing cost and other supporting data in the tariff review process." *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 06-18, Order, 21 FCC Rcd 5968, 5970, para. 6 (WCB 2006); *see also AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 07-08, Order, 22 FCC Rcd 8666 (WCB 2007); *Comments Sought on AT&T Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 08-11, Public Notice, DA 08-781 (rel. Apr. 1, 2008) (seeking comment on AT&T's petition for waiver from the Commission's price cap rules for its TIPToP service for the upcoming 2008 annual access tariff filing).

[51] 47 U.S.C. § 160(a)(1).

16. ***Interstate rates.*** Because its interstate rates are now generally regulated under price caps, we agree with AT&T that the Cost Assignment Rules are unnecessary in determining whether its rates are just, reasonable, and not unjustly or unreasonably discriminatory.[52] AT&T argues in its petitions that technological advances have made the Cost Assignment Rules antiquated and unnecessary. Legacy BellSouth asserts that, as consumers demand new and innovative products, their competitors are able to quickly bring to market new product offerings because they are not subject to Cost Assignment Rules, while AT&T must "try to shoehorn compliance with cost assignment rules designed for an analog, single purpose, circuit switched network."[53] As such, AT&T contends that "the Commission's cost assignment rules no longer serve any useful purpose."[54] Specifically, AT&T argues that because its rates are not based on costs under price cap regulation, the Commission has no use for the information provided by the Cost Assignment Rules and, thus, the continued burden of providing this information is not justified.[55]

17. The Commission has articulated the goals of its accounting rules as "protecting ratepayers from unjust and unreasonable interstate rates," and "ensur[ing] that ratepayers share in any savings achieved through the integrated provision of regulated and nonregulated activities."[56] The Cost Assignment Rules were developed in a time when the incumbent LECs' interstate rates and many of their intrastate rates were set under rate-based, cost-of-service regulation. The rules therefore are quite detailed, designed to parallel the level of detail in the cost-of-service calculations that LECs performed to develop their rates for interstate access services.[57] Although not required to do so, many state commissions followed these rules for intrastate ratemaking purposes.[58] Since that time, however, our ratemaking methods and those of our state counterparts have evolved considerably.[59] As the Commission has recognized, this evolution has greatly reduced incumbent LECs' incentives to overstate the costs of their tariffed telecommunications services.[60] As the Commission has explained, "[B]ecause price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup misallocated non-regulated costs by raising basic service rates, thus reducing the incentive for the BOCs to shift non-regulated costs to regulated services."[61]

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[52] *See* AT&T Petition at 21; BellSouth Petition at 46; *see also* US Telecom Comments at 5-7; Verizon Reply at 5; Qwest Reply, WC Docket No. 05-342, at 2.

[53] BellSouth Petition at 25.

[54] AT&T Petition at 3; *see* BellSouth Petition at 23; AT&T Apr. 22 *Ex Parte* Letter at 1.

[55] *See, e.g.*, AT&T Petition at 3; BellSouth Petition at 3, 18, 21, 23, 54; *see also* US Telecom Comments at 5-6; AT&T Comments, WC Docket No. 05-342, at 3-4; Qwest Reply, WC Docket No. 05-342, at 3.

[56] *Joint Cost Order*, 2 FCC Rcd at 1303, para. 37; *see also Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14925, para. 131 (2005) (*Wireline Broadband Order*), *aff'd*, *Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007).

[57] *See Wireline Broadband Order*, 20 FCC Rcd at 14925, para. 132.

[58] *See id.*

[59] *See, e.g.*, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4153-55, paras. 70-72 (2004); *Wireline Broadband Order*, 20 FCC Rcd at 14925-26, para. 133; *see also* AT&T Petition at 27-29; BellSouth Petition at 3.

[60] *See Wireline Broadband Order*, 20 FCC Rcd at 14925-26, para. 133.

[61] *Computer III Remand Order*, 6 FCC Rcd at 7596, para. 55; *see California v. FCC*, 39 F.3d at 926-27; *United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir. 1993) ("[Price cap regulation] reduces any BOC's (continued....)

18. To the extent incentives remain, following forbearance, price cap regulation of AT&T's rates will remain in place to continue to protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classification and regulations.[62] We agree with AT&T and commenters that flourishing competition increasingly constrains prices.[63] We do not agree that current market conditions eliminate all need for rate regulation and possible future need for cost data.[64] Price cap regulation of AT&T's rates will continue. Therefore, we reject the notion of opposing commenters that by granting forbearance on the petitions before us, we are effectively deregulating interstate access service rates.[65]

19. Certain commenters contend that we must maintain the Cost Assignment Rules because accounting data derived from the Cost Assignment Rules would be needed for various functions even under price cap regulation, such as reinitializing price caps, reviewing exogenous adjustments, and setting the X-factor.[66] We agree with AT&T that the Commission's need for cost data for the purposes of price caps has been significantly decreased with the adoption of various reforms that eliminated features of the

(Continued from previous page)
ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling."); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21992, para. 181 (1996) (*Non-Accounting Safeguards Order*) (subsequent history omitted) ("[F]ederal price cap regulation reduces a BOC's incentives to allocate costs improperly."); *Wireline Broadband Order*, 20 FCC Rcd at 14925-26, para. 133.

[62] *See* AT&T Petition at 3 ("Under price cap regulation, consumers are protected by price cap ceilings and rate bands that prevent carriers with market power in a particular service from raising rates to unjust and unreasonable levels."). We also note that, under the conditions of the *AT&T/BellSouth Order*, no Legacy AT&T/Legacy BellSouth incumbent LEC may increase the rates for its interstate tariff special access services within the Legacy AT&T/Legacy BellSouth in-region territory for 48 months following the Legacy AT&T/Legacy BellSouth merger. *See AT&T/BellSouth Order*, 22 FCC Rcd at 5811; *see also* TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 1.

[63] *See* AT&T Petition at 29-32; BellSouth Petition at 72-75; US Telecom Comments at 9; AT&T Reply at 4, 5 n.13; Verizon Reply at 1-4; AT&T Comments, WC Docket No. 05-342, at 4-5; Verizon Comments, WC Docket No. 05-342, at 9-10; Qwest Reply, WC Docket No. 05-342, at 3; AT&T Apr. 18 *Ex Parte* Letter at 1, 6 n.12.

[64] *See* Ad Hoc Comments at 16; Ad Hoc Reply at 3-4; NuVox *et al.* Reply at 6; Sprint Nextel Reply at 8; Ad Hoc Reply, WC Docket No. 05-342, at 4-6; NASUCA Reply, WC Docket No. 05-342, at 7-8; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 10-11; *see also, e.g.*, TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 1; New Jersey Rate Counsel June 20 *Ex Parte* Letter, Attach.

[65] *See* Ad Hoc Comments at 17-18; NuVox *et al.* Reply at 6.

[66] *See* Ad Hoc Comments at 13-16; Sprint Nextel Comments at 9-11; TWTC Comments at 2-3, 5-6; Ad Hoc Reply at 2-3; NASUCA Reply at 3; NuVox *et al.* Reply at 3; Sprint Nextel Reply at 3-4; Ad Hoc Comments, WC Docket No. 05-342, at 14-17; New Jersey Rate Counsel Comments, WC Docket No. 05-342, at 10-11; TWTC Comments, WC Docket No. 05-342, at 7-9; Ad Hoc Reply, WC Docket No. 05-342, at 2-4; NASUCA Reply, WC Docket No. 05-342, at 5-6; *see also, e.g.*, Letter from Aryeh Friedman, Counsel for BT Americas Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, Attach. at 5-6 (filed Dec. 21, 2007) (BT Dec. 21 *Ex Parte* Letter); TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 2; Letter from David C. Bergmann, Chair, NASUCA Telecommunications Committee, National Association of State Utility Consumer Advocates, to Kevin Martin, Chairman, *et al.*, FCC, WC Docket No. 07-21 (filed Apr. 9, 2008) (NASUCA Apr. 9 *Ex Parte* Letter); Letter from Karen Reidy, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-273, Attach. at 6 (filed Apr. 11, 2008) (COMPTEL Apr. 11 *Ex Parte* Letter); New Jersey Rate Counsel June 20 *Ex Parte* Letter, Attach.; Letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Robert McDowell, Commissioner, FCC, WC Docket No. 07-21, at 1-2 (filed Apr. 22, 2008) (Ad Hoc Apr. 22 *Ex Parte* Letter); Letter from Karen Reidy, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, at 1-2 (filed Apr. 23, 2008) (COMPTEL Apr. 23 *Ex Parte* Letter).

original price cap regime that required rate-of-return regulation accounting inputs. For example, in 1997, the Commission eliminated the requirement that price cap LECs "share," or return to ratepayers, earnings above specified levels.[67] Similarly, the low-end adjustment mechanism is no longer generally applicable to AT&T as a result of its obtaining pricing flexibility relief.[68] Indeed, in the *Pricing Flexibility Order*, the Commission anticipated that its reforms "might enable the Commission to relax, for that LEC, any accounting rules necessitated only by the rate-of-return-based low-end adjustment mechanism."[69] Moreover, the Commission's price caps do not currently include a productivity factor, since the *CALLS Order* set the X-factor at the rate of inflation rather than at a rate to approximate productivity gains in LEC operations.[70] Because these changes have eliminated ongoing tinkering with price caps, we no longer routinely need the accounting data derived from the Cost Assignment Rules for rate regulation functions.[71] On the other hand, we do not concede, as AT&T urges, that there will never be any federal need for accounting information in the future to adjust our existing price cap regime or in our consideration of reforms moving forward.[72]

20. We do, however, conclude that section 10 does not allow us to find a regulatory requirement "necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not

[67] *Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 94-1, 96-262, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, 16700, para. 149 (1997), *aff'd in part, rev'd in part, USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999); *see also* AT&T Petition at 22-23; BellSouth Petition at 48. *But see, e.g.*, TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 2.

[68] *See, e.g.*, *Pricing Flexibility Order*, 14 FCC Rcd at 14304, para. 162 ("We eliminate the low-end adjustment mechanism for price cap LECs that qualify for and elect to exercise either the Phase I or Phase II pricing flexibility we grant in this Order."); *Ameritech Operating Companies Petition for Pricing Flexibility for Special Access and Dedicated Transport Services; Southwestern Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing File Nos. 06-8, 06-9, Order, 21 FCC Rcd 5172 (WCB 2006); *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing File No. 02-24, Memorandum Opinion and Order, 17 FCC Rcd 23725 (WCB 2002); *see also* AT&T Petition at 23; BellSouth Petition at 49; AT&T Reply at 18.

[69] *Pricing Flexibility Order*, 14 FCC Rcd at 14306-07, para. 166.

[70] *See CALLS Order*, 15 FCC Rcd at 12978, para. 40, 13016, para. 132; *see also* BellSouth Petition at 50; AT&T Reply at 6, 11; Letter from Mary L. Henze, Assistant Vice President – Federal Regulatory, BellSouth Corporation, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-342, Attach. at 11-12 (filed Sept. 27, 2006) (BellSouth Sept. 27 *Ex Parte* Letter). The Commission adopted the price cap formula's productivity factor (or X-factor) in the *LEC Price Cap Order*. *See LEC Price Cap Order*, 5 FCC Rcd at 6818-20, paras. 257-59. This factor represented "the extent to which the overall LEC productivity growth rate could be expected to exceed the productivity growth rate of the economy as a whole." *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*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1998, para. 11 (2005). For a history of the X-factor, see *id.* at 2007-09, paras. 31-37.

[71] *See, e.g.*, AT&T Apr. 18 *Ex Parte* Letter at 5-6; AT&T Apr. 22 *Ex Parte* Letter at 1. We note that AT&T concedes that "should AT&T's forbearance petitions be granted, it will no longer have any basis for seeking exogenous relief for investment reallocation . . . ." AT&T Reply at 11; *see* BellSouth Petition at 50-51; AT&T Apr. 18 *Ex Parte* Letter at 6; *see also* AT&T Reply at 17 ("a price cap ILEC raising a confiscation claim may find it more difficult to prove such a claim without separated cost data").

[72] *See* AT&T Petition at 2-3, 17, 19, 21 ("It is equally beyond dispute that the complicated tracking and allocation of investments and costs between regulated and non-regulated activities and the apportionment between interstate and intrastate jurisdictions play no role under price cap regulation in determining whether AT&T's rates are just, reasonable, and nondiscriminatory at either the federal or state level."), 22; AT&T Reply at 1, 4-5, 10, 12.

unjustly or unreasonably discriminatory" if it is not a current need.[73] As the D.C. Circuit concluded, "In the forbearance context, . . . it is reasonable to construe 'necessary' as referring to the existence of a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation."[74] Here, we cannot conclude that there is a "strong connection" between maintaining the Cost Assignment Rules in anticipation of a possible need for the information to modify rate regulation at some point in the future.

21. The Commission, however, will have continuing responsibilities under the Act to ensure that rates are just and reasonable, and not unjustly or unreasonably discriminatory, and we need the tools, possibly including accounting data, to accomplish our statutory responsibilities.[75] We can only reach our conclusion that the three-prong forbearance test is satisfied because we impose conditions that mitigate factors that would otherwise lead us to conclude that the Cost Assignment Rules remain necessary under section 10. We find a "strong connection" between the conditions we impose and our continuing responsibilities under the Act. Even without the Cost Assignment Rules, the Act provides the Commission with ample authority – including section 220 – to require AT&T to produce any accounting data that the Commission needs for regulatory purposes, including rulemakings or adjudications, in the future.[76] We also expressly condition the forbearance granted in this Order on the provision by AT&T of accounting data on request by the Commission for its use in rulemakings, adjudications or for other regulatory purposes.[77] To the extent that the Commission requests such data, we require AT&T to provide useable information on a timely basis. As noted above, AT&T generally has not sought relief from the Part 32 USOA requirements. AT&T states, for example, that its petitions will not affect its accounting for revenues but only deals with the assignment of costs (expense and investment), and its revenue can be identified by jurisdiction through the Part 32 accounts.[78] Thus, this USOA account data will continue to be maintained and available to the Commission on request. Further, we require AT&T to 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. As discussed below, we require AT&T to file a compliance plan that will, among other things, explain how it will satisfy this condition. We conclude that this

[73] 47 U.S.C. § 160(a)(1).

[74] *Cellular Telecommunications & Internet Ass'n v. FCC*, 330 F.3d 502, 512 (2003).

[75] *See* 47 U.S.C. §§ 160(a)(1), 201, 202.

[76] *See, e.g.*, 47 U.S.C. §§ 154(i), 208, 213, 218, 219, 220, 254(k), 403, 409; *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, CC Docket Nos. 00-199, 97-212, 80-286, 99-301, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911, 19980-81, para. 192 (2001) (*Phase 2 Order*) ("We note, however, that pursuant to section 220(c), the Commission has the authority to request further information or order an audit of any carrier's books to ensure compliance with our cost allocation requirements."). As discussed above, we forbear from applying section 220(a)(2) of the Act to AT&T but only to the extent that this provision contemplates separate accounting of nonregulated costs.

[77] *Cf. Phase 2 Order*, 16 FCC Rcd at 19980, para. 190 (eliminating annual CAM filing and biennial attestation audits for mid-sized carriers but stating that those carriers "like all other carriers, must be prepared to produce documentation of how they separate regulated from nonregulated costs to the Bureau, upon request").

[78] *See* AT&T Petition at 26; BellSouth Petition at 51. We also note that AT&T's Class A accounts will not be eliminated by the forbearance we grant here, and therefore, data needed for pole attachment rate formulas will remain available. *See* BellSouth Reply, WC Docket No. 05-342, at 4 n.8. *But see* TWTC Comments, WC Docket No. 05-342, at 12-13.

approach maintains the Commission's ability to obtain accounting information that may be necessary in the future, while providing a less costly and administratively burdensome alternative to AT&T.

22. ***Enforcement.*** As discussed above, we agree with commenters that accounting information could be critical to our efforts to enforce provisions of the Act, including sections 201 and 202.[79] Thus, we emphasize that our condition that AT&T provide accounting data on request by the Commission for use in its proceedings includes requests for accounting data to be used for the purposes of an enforcement action against AT&T, either a Commission investigation or a complaint proceeding under section 208.[80] Ad Hoc notes that, before the D.C. Circuit, the Commission opposed a petition for writ of mandamus related to the special access rules based, in part, on the grounds that complaints under section 208 of the Act would be an adequate remedy.[81] Ad Hoc asserts that forbearance from the Cost Assignment Rules "would put the Commission in an indefensible position" before the court because "[s]uch complaints would be impossible if [the] AT&T petition is granted . . . ."[82] We disagree. In this Order, we do not grant forbearance from section 208. Complaints under section 208 will remain an important mechanism for enforcing the provisions of the Act, including the justness and reasonableness of special access rates. Moreover, because we condition forbearance from the Cost Assignment Rules on AT&T's provision of accounting data on request by the Commission, including for the purposes of an enforcement proceeding, section 208 complaints will continue to be a viable option for enforcing the provisions of the Act and the Commission's rules.[83]

23. ***Different accounting regimes.*** We realize that our decision here will result in a different accounting regime for AT&T than for the other BOCs.[84] Although uniform regulatory treatment for similarly situated carriers is sometimes preferable, we do not think that is the case here with regard to the Cost Assignment Rules. First, we note that AT&T generally will continue to maintain its USOA accounts according to our rules. Second, uniform cost accounting rules are slow to change and may not adapt to the quickly evolving characteristics of competitive markets, particularly where those markets may vary from carrier to carrier. This uniform treatment could impose unnecessary regulatory burdens on carriers, which could in turn negatively affect the provision of new services to consumers. The forbearance we grant here, together with the conditions we impose, will provide AT&T flexibility to adapt its accounting procedures to changing market conditions in its region, while still ensuring that consumers are protected from unjust, unreasonable, and unjustly or unreasonably discriminatory rates. Further, we note that financial accounting generally does not require absolute uniformity. Specifically, AT&T is subject to Generally Accepted Accounting Principles (GAAP) for its financial accounting. GAAP is "[a] common set of accounting concepts, standards, and procedures by which financial statements are prepared."[85] It

[79] *See* Ad Hoc Comments at 5, 10; Sprint Nextel Comments at 11-12; Ad Hoc Comments, WC Docket No. 05-342, at 10-13.

[80] 47 U.S.C. § 208.

[81] *See* Ad Hoc Comments at 12 (citing Opposition of the Federal Communications Commission to Petition for Writ of Mandamus, No. 03-1397, at 26-27 (D.C. Cir. filed Jan. 9, 2004)); Ad Hoc Comments, WC Docket No. 05-342, at 13-14.

[82] Ad Hoc Comments at 12; *see* NASUCA Apr. 9 *Ex Parte* Letter, at 3 n.15.

[83] Section 208 will remain as a mechanism to enforce the Act with regard to allegations of price squeezes. *See* BellSouth Petition at 57-58. *But see* New Jersey Rate Counsel Comments, WC Docket No. 05-342, at 23.

[84] *See, e.g.*, TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 1.

[85] Stephen A. Ross, Randolph W. Westerfield & Jeffrey Jaffe, *Corporate Finance* 898 (7th ed. 2005).

does not, however, require uniform accounts among companies so long as the implementation is consistent with the principles.

24. ***Smith v. Illinois Bell.*** We agree with Time Warner Telecom[86] that *Smith v. Illinois Bell*, as well as the provisions of the Act,[87] required jurisdictional separations to allow states and the Commission to share their regulatory responsibilities under the dual federal-state regulatory framework established in the Act.[88] *Smith v. Illinois Bell*, a pre-1934 case, held that a telephone company must deduct the value of property attributable to interstate services before a court can consider a confiscation case claiming unconstitutional takings based on low intrastate rates.[89] The Court concluded that "separation of intrastate and interstate property, revenues and expenses" is "essential to the appropriate recognition of the competent governmental authority in each field of regulation."[90] The Court also explained that while the carrier and state could not "ignore altogether the actual use to which the property is put," "the difficulty in making an exact apportionment of the property is apparent and extreme nicety is not required, only reasonable measures being essential . . . ."[91] In the wake of *Smith v. Illinois Bell*, Congress passed the Communications Act of 1934, reserving state authority over intrastate communications and expressly authorizing – but not mandating – the Commission to promulgate separations rules.[92] In fact, the Commission first adopted a set of legally binding separations procedures in 1969, nearly 40 years after *Smith v. Illinois Bell*.[93]

25. As discussed above, jurisdictional separations, like other Cost Assignment Rules, have reduced significance under price caps because "price cap regulation reduces a BOC's incentives to allocate costs improperly."[94] Indeed, the Commission has acknowledged that statutory, regulatory, and

[86] *See* TWTC Comments at 9 (citing *Smith v. Illinois Bell*, 282 U.S. at 148-51); *see also* Ad Hoc Comments, WC Docket No. 05-342, at 17; TWTC Comments, WC Docket No. 05-342, at 10; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 2. As TWTC explains, the 2006 Biennial Regulatory Review staff report states that "WCB staff concludes that Part 36 remains necessary in the public interest, in some form . . . ." *FCC 2006 Biennial Regulatory Review*, WC Docket No. 06-157, Wireline Competition Bureau Staff Report, 22 FCC Rcd 2803, 2820 (WCB 2007) (*WCB Staff Report*) (*cited in* TWTC Comments at 9). We note that the staff also concluded that Part 36 "merits further consideration for possible amendment" and recommended that the Commission "consider . . . whether the Part 36 rules are necessary in the public interest." *WCB Staff Report*, 22 FCC Rcd at 2820. The staff also stated that "[n]othing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of [these] issues . . . ." *Id.* We also note that the section 11 legal standard differs from the legal standard we apply here under section 10. *Compare* 47 U.S.C. § 161, *with* 47 U.S.C. § 160. *See generally* BellSouth Reply, WC Docket No. 05-342, at 5-7.

[87] 47 U.S.C. §§ 152(b) (preserving state authority over intrastate communications), 221(c) (granting the Commission authority to classify property of carriers as interstate).

[88] 47 U.S.C. § 152; *see* Verizon Comments, WC Docket No. 05-342, at 6.

[89] *See Smith v. Illinois Bell*, 282 U.S. at 150-51.

[90] *Id.* at 148.

[91] *Id.* at 150-51 (citations omitted).

[92] *See* 47 U.S.C. §§ 152, 221(c) ("[T]he Commission *may* classify the property . . . used for wire telephone communication, and determine what property of said carrier shall be considered as used in interstate . . . service.") (emphasis added).

[93] 47 C.F.R. Part 36; *Prescription of Procedures for Separating and Allocating Plant Investment, Operating Expenses, Taxes, and Reserves Between the Intrastate and Interstate Operations of Telephone Companies*, Docket No. 17975, Report and Order, 16 FCC 2d 317 (1969).

[94] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21992, para. 181.

market changes since *Smith v. Illinois Bell* may have eliminated the need for federal separations rules generally.[95] We need not resolve that issue here. But for the narrow issue before us, we conclude that *Smith v. Illinois Bell* does not preclude us from finding that forbearance from these rules satisfies the three-prong statutory test with regard to AT&T. We believe that AT&T, working cooperatively with the state commissions in its region, can develop methods of separating costs, satisfying any remaining need states have for jurisdictional separations information.

26. ***Section 272 Sunset Order.*** We are not persuaded by commenters' arguments that forbearance from the Cost Assignment Rules is in conflict with the Commission's recent decision in the *Section 272 Sunset Order*.[96] In the *Section 272 Sunset Order*, the Commission modified its regulatory framework to provide nondominant treatment for interexchange services provided by BOCs on an integrated basis with dominant exchange access services, but continued to treat the costs and revenues of such interexchange services as nonregulated for accounting purposes, recognizing that the Commission's cost allocation rules protect against improper cost shifting.[97] In that order, the Commission specifically recognized that the BOCs and their independent incumbent LEC affiliates remain subject to the "Commission's accounting and cost allocation rules and related reporting requirements."[98]

27. We acknowledge that in that order, we concluded that each BOC, including AT&T, continues to have "[e]xclusionary market power within its respective regions by reason of its control over these bottleneck access facilities,"[99] and we made strong statements about the utility of existing nonstructural safeguards for protecting against anticompetitive discrimination and improper cost shifting.[100] We do not abandon those conclusions here. We do not, however, believe that the *Section 272 Sunset Order*

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[95] *See Separations Notice*, 12 FCC at 22123, para. 3; *see also id.* at 22126, para. 9 ("Due to statutory, technological and market changes in the telecommunications industry, today's network architecture and service offerings differ in many important ways from the network and services used to define the cost categories appearing in our current Part 36 separations rules.").

[96] *See, e.g.*, Letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, at 2-3 (filed Nov. 27, 2007) (Ad Hoc Nov. 27 *Ex Parte* Letter); BT Dec. 21 *Ex Parte* Letter, Attach. at 5-6; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 1; COMPTEL Apr. 11 *Ex Parte* Letter, Attach. at 2-4; Letter from Anne L. Hammerstein, Attorney for the Public Utilities Commission of Ohio, to Magalie Roman Salas, Secretary, FCC, WC Docket Nos. 07-21, 05-342, CC Docket No. 80-286, Attach. at 2 (filed Apr. 16, 2008) (Ohio Commission Apr. 16 *Ex Parte* Letter); *see also* TWTC Comments at 3, 17-18; Ad Hoc Reply at 4; TWTC Comments, WC Docket No. 05-342, at 13-14; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 5; New Jersey Rate Counsel June 20 *Ex Parte* Letter, Attach.

[97] *See 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 Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16486-87, paras. 93-94 (2007) (*Section 272 Sunset Order*); *see also* Letter from Theodore C. Marcus, Senior Attorney, AT&T Services Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 07-21, at 2 (filed Dec. 14, 2007) (AT&T Dec. 14 *Ex Parte* Letter).

[98] *Section 272 Sunset Order*, 22 FCC Rcd at 16484-85, para. 90 & n.260; *see also* AT&T Dec. 14 *Ex Parte* Letter at 2.

[99] *Section 272 Sunset Order*, 22 FCC Rcd at 16472-73, para. 64; *see, e.g.*, Ad Hoc Nov. 27 *Ex Parte* Letter at 2; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 1.

[100] *See, e.g.*, *Section 272 Sunset Order*, 22 FCC Rcd at 16481-82, paras. 84-85; *see, e.g.*, Ad Hoc Nov. 27 *Ex Parte* Letter at 2; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 1. *But see* AT&T Dec. 14 *Ex Parte* Letter at 2; AT&T Apr. 18 *Ex Parte* Letter at 7.

precludes us from our actions in this Order.[101] The *Section 272 Sunset Order* was a rulemaking of general applicability in which we discussed existing nonstructural safeguards, including the Cost Assignment Rules, as part of the regulatory framework that supported our decision to modify rules related to the provision of in-region, interexchange services by the BOCs. That rulemaking does not preclude us from granting forbearance to AT&T, and indeed, we conclude that section 10 compels us to modify the framework where, as here, the three-prong statutory standard for forbearance is satisfied for AT&T. With the conditions attached to the forbearance granted here, the forbearance standard is satisfied for AT&T and the modified regulatory framework will include sufficient nonstructural safeguards to continue to protect against anticompetitive discrimination and improper cost shifting by AT&T.

28. ***Section 272(e)(3).*** Although we forbear from the Cost Assignment Rules in this Order, AT&T must continue to comply with section 272(e)(3) of the Act. Section 272(e)(3) requires that each BOC charge its section 272 separate affiliate, or "impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service."[102] In the *Section 272 Sunset Order*, we concluded that the imputation requirement in section 272(e)(3) of the Act would continue to apply and we provided guidance to AT&T, Qwest and Verizon regarding the treatment of charges for any access services that their incumbent LEC affiliates provide their in-region, long distance operations.[103] In that order, we, among other things, directed each BOC to continue to impute to itself its highest tariffed rate for access, including access provided over joint-use facilities, in order to ensure the BOCs' continued compliance with their imputation obligations under section 272(e)(3).[104] We do not forbear from that requirement. We, however, agree with AT&T that "[t]he maintenance of the elaborate and pervasive blanket of regulations at issue in the instant AT&T petitions would constitute a substantially overbroad method of ensuring section 272(e) compliance."[105] We cannot justify maintaining overbroad Cost Assignment Rules when a more focused approach will ensure that AT&T satisfies the regulatory goals of section 272(e)(3).

29. As discussed below, we require, as a condition of this forbearance, that AT&T file a compliance plan, which must include, among other things, a description of its imputation methodology. AT&T must demonstrate that its access charge imputation methodologies remain consistent with section

[101] *See* AT&T Dec. 14 *Ex Parte* Letter at 2; AT&T Apr. 18 *Ex Parte* Letter at 7; AT&T Apr. 22 *Ex Parte* Letter at 3; *see also* AT&T Reply at 9-10 n.28.

[102] 47 U.S.C. § 272(e)(3). Imputation is an accounting and regulatory device that is used in recognizing intra-company transactions. In the context of access services, this Commission and state commissions have long recognized the potential for LECs to use their control over their local networks to impede competition in services for which local network access is a needed input. Imputation requirements address this concern by requiring the BOC to recognize for accounting and other regulatory purposes charges for local network access equal to the amounts that an unaffiliated third party would pay for comparable access. *See, e.g.*, *Section 272 Sunset Order*, 22 FCC Rcd at 16489-90, para. 99 n.287 (citing *Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services*, Memorandum Opinion and Order, FCC 85-172, 1985 FCC Lexis 3510, para. 9 & n.22 (Apr. 12, 1985) (requiring that LECs impute access charges to themselves in calculating their interstate, intraLATA toll rates); *1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Docket No. 98-131, Report and Order and First Order on Reconsideration, 14 FCC Rcd 12293, 12312, para. 53 (1999) (requiring that price cap LECs offering interexchange services impute to themselves the same access charges that they impose on interexchange carriers)).

[103] *See Section 272 Sunset Order*, 22 FCC Rcd at 16484-85, para. 90, 16489-92, paras. 99-105.

[104] *See id.* at 16490, para. 100.

[105] AT&T Reply at 9-10 n.28; *see* AT&T Apr. 18 *Ex Parte* Letter at 7.

272(e)(3). In the *Section 272 Sunset Order*, to facilitate transparency of each carrier's imputation of in-region, long distance costs, we required AT&T, Qwest, and Verizon, as a condition of that order, to include the imputation charges in their ARMIS filings, accompanied by an explanatory footnote for each line item identifying the amount imputed.[106] AT&T "will continue to journalize revenue to Account 5280" as required by section 32.5280(a) of the Commission's rules.[107] AT&T has not, however, sought forbearance from the relevant ARMIS reports in the petition before us, and therefore it will continue to report its imputation data as required by the *Section 272 Sunset Order* based on the imputation methodology approved in its compliance plan.[108] In particular, AT&T's compliance plan must describe how it will account for imputed tariff rates given the grant of the requested forbearance from section 32.5280(b) and (c) of the Commission's rules.[109]

30. ***Section 254(k).*** We also reject commenters' contentions that without the affiliate transaction rules, the Commission will be unable to prevent cross-subsidies between competitive and noncompetitive services.[110] Section 254(k) prohibits a telecommunications carrier from "us[ing] services that are not competitive to subsidize services that are subject to competition."[111] Although we forbear from our Cost Assignment Rules, including the affiliate transaction rules, we do not forbear from section 254(k) of the Act. We merely find that AT&T has demonstrated that it satisfies the three-prong test for forbearance with regard to these particular rules. AT&T remains subject to section 254(k) itself. We, therefore, condition the forbearance granted here on annual certification by AT&T that it will comply with its obligations under section 254(k) in the absence of the Cost Assignment Rules, and will maintain and provide any requested cost accounting information necessary to prove such compliance.[112] With the continuing statutory obligation and this condition in place, we are persuaded that the affiliate transaction rules are not needed to help prevent cross-subsidies between competitive and noncompetitive services.

31. ***Compliance plan.*** As discussed above, we condition the relief granted in this Order on approval of a compliance plan by AT&T describing in detail how it will continue to fulfill its statutory and regulatory obligations, including sections 272(e)(3) and 254(k), and the conditions of this Order. The relief granted in this Order will not become effective unless and until AT&T's plan is approved. As mentioned above, the plan must include proposed procedures to ensure continued compliance with sections 272(e)(3) and 254(k) of the Act. The plan must include a description of AT&T's imputation methodology that demonstrates that its access charge imputation methodologies remain consistent with section 272(e)(3) and the *Section 272 Sunset Order*. The compliance plan must also include AT&T's first

[106] *See Section 272 Sunset Order*, 22 FCC Rcd at 16491-92, para. 104.

[107] *See* AT&T Petition, Attach. 1 at 11; 47 C.F.R. § 32.5280(a).

[108] *See supra* para. 12 (describing the scope of the instant petition). These data values with explanatory footnotes are to be provided in FCC Report 43-01, ARMIS Annual Summary Report, table I, row 1045, columns (b) and (c); FCC Report 43-02, ARMIS USOA Report, table I-1, row 5280, column (b); and in FCC Report 43-03, ARMIS Joint Cost Report, table I, row 5280, columns (b), (d), and (j). *See Section 272 Sunset Order*, 22 FCC Rcd at 16492 n.300.

[109] *See* AT&T Petition, Attach. 1 at 11; 47 C.F.R. § 32.5280(b), (c); *see also* AT&T Apr. 22 *Ex Parte* Letter at 4 n.4.

[110] *See* Nebraska Companies Comments at 5; Sprint Nextel Comments at 7, 19-20; TWTC Comments at 3, 13, 18; NuVox *et al.* Reply at 5; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 2; COMPTEL Apr. 11 *Ex Parte* Letter, Attach. at 7; COMPTEL Apr. 23 *Ex Parte* Letter at 1.

[111] 47 U.S.C. § 254(k).

[112] *See* AT&T Apr. 18 *Ex Parte* Letter at 2, 6-7 ("AT&T is willing to commit voluntarily to provide an annual certification – similar to what midsized 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."); AT&T Apr. 22 *Ex Parte* Letter at 3; AT&T Apr. 22 *Ex Parte* Letter at 4 n.4.

annual certification that it will comply with its obligations under section 254(k) in the absence of the Cost Assignment Rules and will provide any requested cost accounting information necessary to prove such compliance. Pursuant to section 220 of the Act and as a condition of this Order, we require AT&T to include a proposal for how it will maintain its accounting procedures and data in a manner that will allow it to provide useable information on a timely basis if requested by the Commission to comply with any of the conditions of this relief and its commitment to the Commission.[113] Finally, the plan must include an explanation of the transition process that AT&T will undertake, including an expected schedule, to discontinue compliance with the Cost Assignment Rules and replace them with the procedures outlined in its compliance plan upon approval of the plan. We delegate authority to the Chief of the Wireline Competition Bureau (Bureau) to prescribe the administrative requirements of the filing and 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.[114] 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.[115]

32. ***State rates.*** Commenters disagree on the extent to which states rely on the data produced by our Cost Assignment Rules for intrastate rate regulation and other state regulatory purposes.[116] For example, AT&T asserts that all states in its region regulate AT&T's rates "under incentive regulation (including price cap) plans without regard to the information generated by the Commission's cost assignment rules."[117] In contrast, Sprint Nextel asserts that states rely on this data for ratemaking (including under state price cap regulation), determining intrastate universal service support, and setting rates for unbundled network elements (UNEs) under the Commission's TELRIC methodology.[118] We

[113] 47 U.S.C. § 220; *see* AT&T Apr. 18 *Ex Parte* Letter at 2; AT&T Apr. 22 *Ex Parte* Letter at 4. *But see* Ad Hoc Apr. 22 *Ex Parte* Letter at 2.

[114] Upon approval, the Bureau will release a public notice notifying the public of approval of the plan.

[115] *See* 47 C.F.R. § 64.903(b). More generally, the Chief of the Bureau has delegated authority to "[d]evelop and administer rules and policies relating to incumbent local exchange carrier accounting." 47 C.F.R. § 0.91(e); *see also* 47 C.F.R. § 0.291.

[116] *Compare* AT&T Petition at 25; BellSouth Petition at 22-23, 51, 60, App. 2; US Telecom Comments at 5-7; AT&T Reply at 13, 16-17; AT&T Apr. 18 *Ex Parte* Letter at 8-9, *with* Nebraska Companies Comments at 1-4; Sprint Nextel Comments at 12-14; State Members Comments at 6-7; TOPC Comments at 3-4; TWTC Comments at 3, 9-12; NASUCA Reply at 2; NuVox *et al.* Reply at 3-4, 5-6; Ohio Commission Reply at 3; New Jersey Rate Counsel Comments, WC Docket No. 05-342, at 5,7-8, 10, 23; TWTC Comments, WC Docket No. 05-342, at 11-12; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 4; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 2, Attach. 2 at 1-3; Florida Commission Feb. 9 *Ex Parte* Letter, Attach. at 3-4; COMPTEL Apr. 11 *Ex Parte* Letter, Attach. at 8; Ohio Commission Apr. 16 *Ex Parte* Letter, Attach. at 2-3; State Members Apr. 15 *Ex Parte* Letter at 2; Arizona Commission Apr. 22 *Ex Parte* Letter at 2-3; Tennessee Commission Apr. 22 *Ex Parte* Comments at 1-2.

[117] AT&T Petition at 25; *see* BellSouth Petition at 22-23.

[118] *See* Sprint Nextel Comments at 12-14; Sprint Nextel Reply at 4-5; *see also* Nebraska Companies Comments at 1-4; State Members Comments at 6-7; TOPC Comments at 3-4; TWTC Comments at 3, 9-12; NASUCA Reply at 2; NuVox *et al.* Reply at 3-6; Ohio Commission Reply at 3; New Jersey Rate Counsel Comments, WC Docket No. 05-342, at 5,7-8, 10, 23; TWTC Comments, WC Docket No. 05-342, at 11-12; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 4; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 1 at 2, Attach. 2 at 1-3; NASUCA Apr. 9 *Ex Parte* Letter at 3; Florida Commission Feb. 9 *Ex Parte* Letter, Attach. at 3-4; COMPTEL Apr. 11 *Ex Parte* Letter, Attach. at 8; Ohio Commission Apr. 16 *Ex Parte* Letter, Attach. at 2-3; State Members Apr. 15 *Ex Parte* Letter at 2. "TELRIC" is an acronym for Total Element Long Run Incremental Cost. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 374 (1999).

need not resolve this factual dispute. We conclude that we do not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely.[119] In the case of the Commission's Cost Assignment Rules, we conclude that these rules as applied to AT&T, a price cap carrier generally not subject to rate-of-return regulation, are not routinely needed to ensure that interstate charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory. Thus, because there is no current, federal need for the Cost Assignment Rules in these circumstances, and the section 10 criteria otherwise are met, we find that it would be beyond our authority to maintain these onerous regulatory requirements for AT&T.[120]

33. We recognize that state commissions may exercise their own state authority to conduct their rate and other regulation as permitted under state law.[121] We emphasize that we do not in this Order preempt any state accounting requirements adopted under state authority.[122] We recognize, as the State Members point out, that section 10(e) states that "[a] State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying" under section 10.[123] Although states will not have authority to enforce the federal Cost Assignment Rules as they apply to AT&T once this relief is effective, we do not read section 10(e) to prevent states from adopting similar provisions to the extent that they have authority under state law.[124] In the wake of this decision, we would expect that any states that may rely on the Cost Assignment Rules and resulting data for state regulatory purposes would assert their jurisdiction to obtain the needed information from AT&T.

34. Moreover, in addition to states' authority to obtain this information, AT&T has committed to work with the state commissions in its in-region territory to address state needs. As AT&T explained, "When a need exists for jurisdictional information for monitoring or other purposes, AT&T can develop such information to meet those state-specific requirements without continued compliance with the

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[119] 47 U.S.C. §§ 152(a), 160; *see* AT&T Petition at 25 n.44; BellSouth Petition at 51 n.77; Ad Hoc Reply at 5 ("Federal interests, however, exist independent of the States' interests."); AT&T Apr. 18 *Ex Parte* Letter at 8-9; *cf. Phase 2 Order*, 16 FCC Rcd at 19985, para. 207 ("We believe that, if we cannot identify a federal need for a regulation, we are not justified in maintaining such a requirement at the federal level.").

[120] As discussed above, we do not conclude here that there will never be any federal need for accounting data from AT&T in the future, and thus, we condition this forbearance on, among other things, the provision by AT&T of accounting data on request by the Commission for regulatory purposes, consistent with the Commission's statutory authority and AT&T's commitment in this proceeding.

[121] *See* AT&T Petition at 27.

[122] *See, e.g.*, NASUCA Reply, WC Docket No. 05-342, at 9. *But see* Verizon Reply at 6-7; Verizon Comments, WC Docket No. 05-342, at 7; Qwest Reply, WC Docket No. 05-342, at 5-6; Verizon Reply, WC Docket No. 05-342, at 1-3.

[123] 47 U.S.C. § 160(e); *see* State Members Comments at 7; Verizon Comments, WC Docket No. 05-342, at 7.

[124] *Cf. Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20751-52, para. 40 (1996) (subsequent history omitted) (finding that Commission forbearance to detariff interstate, domestic, interexchange services of nondominant interexchange carriers does not affect, under section 10(e), state tariff filing requirements for intrastate services); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11525-26, para. 48 (1998) (finding that although section 10(e) precludes a state from applying or enforcing provisions of federal law when the Commission has forborne, it does not preclude a state from imposing requirements derived from state law).

Commission's cost assignment rules."[125] In addition, AT&T states that total company cost information will remain readily available if needed for valid regulatory purposes.[126] Further, AT&T explained that, because its petitions affect cost accounting data only, AT&T will continue to provide intrastate revenue data to any state commission in its territory as needed.[127] Thus, we expect that states will be able to obtain from AT&T all cost accounting information needed for state regulatory purposes following our forbearance from the Cost Assignment Rules.

35. Finally, we recognize that there is undoubtedly a federal role in intrastate ratemaking for UNEs, reciprocal compensation, and resale under section 251.[128] Under the framework established by section 251, the Commission establishes pricing methodology principles, which are then applied by the state commissions.[129] Ratemaking for these elements and services remains a state responsibility. We, however, have an interest in ensuring that states can implement the Commission's methodology to satisfy federal responsibilities under section 251. Thus, we conclude that section 251 requires AT&T to continue to provide state commissions, on request, any accounting data that states need to implement our pricing methodologies under section 251.

B. Protection of Consumers

36. Section 10(a)(2) of the Act requires the Commission to determine whether continued enforcement of the Cost Assignment Rules is necessary to protect consumers.[130] For the reasons discussed above, consumers are protected from unjust, unreasonable, unjustly or unreasonably discriminatory interstate rates charged by AT&T through continued rate regulation in the form of price caps. Because we find that there is no current, federal need for the Cost Assignment Rules under the conditions set forth in this Order, we conclude, as discussed in more detail below, that the Cost Assignment Rules, in this case, impose costs that outweigh their benefits.[131] We believe that these costs likely distort the market for telecommunications services by diverting AT&T resources that would otherwise be directed to "positive activities that generate consumer benefit."[132] We agree with Legacy BellSouth that the Cost Assignment Rules could negatively affect "innovation, efficiency and competitiveness" of services provided to consumers.[133] Thus, rather than being necessary for the protection of consumers, we conclude that the Cost Assignment Rules could hinder consumer welfare, and we find that the second prong of the section 10 forbearance test is satisfied.

37. ***Universal service impact.*** We also conclude that consumers will not be harmed by any negative impact on the Universal Service Fund resulting from the forbearance we grant in this Order. We

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[125] AT&T Reply at 14 n.38; *see* AT&T Petition at 26; BellSouth Petition at 51.

[126] *See* AT&T Petition at 25 n.43.

[127] *See id.* at 26; BellSouth Petition at 51.

[128] 47 U.S.C. § 251; *see* TWTC Comments at 9-10; Ohio Commission Reply at 4; TWTC Comments, WC Docket No. 05-342, at 11-12; NASUCA Reply, WC Docket No. 05-342, at 7; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 4; New Jersey Rate Counsel June 20 *Ex Parte* Letter, Attach.; TWTC *et al.* Feb. 21 *Ex Parte* Letter, Attach. 2. *But see* BellSouth Petition at 59-60; BellSouth Reply, WC Docket No. 05-342, at 4 n.8.

[129] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 384.

[130] 47 U.S.C. § 160(a)(2).

[131] *See infra* para. 44.

[132] AT&T Petition at 39; *see* AT&T Comments, WC Docket No. 05-342, at 4, 6-7.

[133] BellSouth Petition at 2; *see id.* at 4.

do not agree with commenters that contend that we must retain the Cost Assignment Rules for AT&T because embedded cost inputs are needed for the non-rural high-cost support model.[134] Although the high-cost model initially required some historical cost data, those data are not needed on an ongoing basis.[135] Moreover, AT&T's Class A account data used for universal service purposes will remain available.[136] As discussed above, we expressly condition the forbearance granted in this Order on the provision by AT&T of accounting data on request, and therefore, the Commission will continue to have access to any accounting data it may need for developing non-rural universal service policy going forward.[137] As commenters note,[138] section 254(k) provides that:

> [t]he Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.[139]

As mentioned above, AT&T will remain subject to section 254(k) following forbearance from the Cost Assignment Rules, and its compliance plan, filed as a condition of this relief, will include a certification that it will comply with its obligations under section 254(k) and will provide any requested cost accounting information necessary to prove such compliance. We also reject Sprint Nextel's argument that AT&T's cost data are needed to set high-cost loop support levels for rural carriers.[140] Because AT&T does not receive high-cost loop support and the National Exchange Carrier Association (NECA) is not using AT&T's cost data to calculate the national average unseparated loop cost for purposes of calculating rural high-cost loop support,[141] AT&T's cost data are not currently needed for the purposes of the rural support mechanism.[142]

38. ***Financial accounting requirements.*** We agree with AT&T that the Cost Assignment Rules are not necessary to protect consumers by ensuring the integrity of AT&T's financial records through financial transparency or accountability.[143] GAAP, Securities and Exchange Commission, the Sarbanes-Oxley Act, and other financial accounting and reporting requirements will be unaffected by our forbearance here. These financial safeguards are critical to protect investors, particularly in the wake of a number of high-profile financial accounting scandals, including some in the telecommunications

[134] *See* TWTC Comments, WC Docket No. 05-342, at 10-11.

[135] *See* BellSouth Reply, WC Docket No. 05-342, at 13.

[136] *See id.* at 12.

[137] *See* AT&T Apr. 18 *Ex Parte* Letter at 8.

[138] *See, e.g.*, Nebraska Companies Comments at 4-5; NTCA Apr. 14 *Ex Parte* Letter at 3.

[139] 47 U.S.C. § 254(k).

[140] *See* Sprint Nextel Comments at 20.

[141] *See* 47 C.F.R. § 36.622(a), (c).

[142] *See* AT&T Reply at 18.

[143] *See* AT&T Petition at 4, 32-38; BellSouth Petition at 4, 61, 65-70; *see also* Sprint Nextel Comments at 19; TWTC Comments at 8-9 n.19; TWTC Comments, WC Docket No. 05-342, at 12; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 5.

industry.[144] At the same time, price cap regulation of rates and the conditions we adopt here will continue to protect consumers, in their role as ratepayers, as required by section 10.[145]

C. Public Interest

39. Section 10(a)(3) of the Act requires us to determine whether forbearance from the Commission's Cost Assignment Rules is consistent with the public interest.[146] In making this determination, section 10(b) of the Act directs us to consider whether forbearance from enforcing the provisions at issue will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.[147] If we determine that forbearance will in fact promote competition among providers of telecommunications services, that determination may be the basis for finding that forbearance is in the public interest.[148] We conclude that granting AT&T relief here will promote competitive market conditions and enhance competition as contemplated by section 10(b) and that forbearance is in the public interest.

40. ***Costs.*** We find that 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.[149] The Cost Assignment Rules impose a variety of significant costs, including administrative costs on both AT&T and the Commission.[150] Despite the costs, the Commission adopted the Cost Assignment Rules because it believed at the time that the rules, among other things, were needed to help protect consumers from improper cross-subsidization of competitive services when those services are provided on an integrated basis with noncompetitive services by dominant providers with individual market power.[151]

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[144] *See, e.g.,* Allison Fass, *Reforming The Boardroom: One Year Later, The Impact Of Sarbanes-Oxley* (July 22, 2003), *available at* http://www.forbes.com/2003/07/22/cz_af_0722sarbanes.html.

[145] *See* AT&T Petition at 4; BellSouth Petition at 4.

[146] 47 U.S.C. § 160(a)(3).

[147] 47 U.S.C. § 160(b).

[148] *Id.*

[149] *See* AT&T Petition at 4; BellSouth Petition at 7, 54 n.83; Qwest Reply, WC Docket No. 05-342, at 4-5; Letter from Mary L. Henze, Assistant Vice President – Federal Regulatory, BellSouth Corporation, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-342, at 1 (filed Sept. 8, 2006); AT&T Feb. 22 *Ex Parte* Letter at 1; AT&T Dec. 14 *Ex Parte* Letter at 2; *see also* State Members Comments at 3 ("[AT&T] plausibly asserts that cost allocation rules, including Part 36, continue to impose very significant costs upon its operations."). *But see* Sprint Nextel Comments at 21-22; New Jersey Rate Counsel Comments, WC Docket No. 05-342, at 12-13, 19-20; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 12; NASUCA Apr. 9 *Ex Parte* Letter at 3; NTCA Apr. 14 *Ex Parte* Letter at 3; Ad Hoc Apr. 22 *Ex Parte* Letter at 2.

[150] *Cf. Section 272 Sunset Order*, 22 FCC Rcd at 16479-80, para. 82. *See* AT&T Petition at 10-16; AT&T Apr. 18 *Ex Parte* Letter at 1-2.

[151] *See, e.g., Wireline Broadband Order*, 20 FCC Rcd at 14925, para. 131 (explaining that the purpose of the cost allocation rules "was to ensure that telephone ratepayers would continue to receive reasonable protections against improper cross-subsidization in the event the BOCs provided enhanced service on an integrated basis, rather than through separate subsidiaries"); *Joint Cost Order*, 2 FCC Rcd at 1304, para. 47; *Phase 2 Order*, 16 FCC Rcd at 19980-81, paras. 189, 191-92.

41. We now find, however, that when we consider the continuing costs of the Cost Assignment Rules for AT&T against protections afforded by price caps, the continuing applicability of USOA, and the conditions we impose here, the costs of these rules exceed the likely benefits of maintaining the rules for AT&T. We agree with AT&T that forbearance should allow it to compete more effectively with its rivals both by freeing it from unnecessary regulations to which its nondominant competitors are not subject and freeing capital for investments.[152]

42. First, AT&T asserts that the Cost Assignment Rules negatively affect consumers because, as consumers demand new and innovative products, its competitors are able to quickly bring to market new product offerings because they are not subject to the Cost Assignment Rules, while AT&T must "try to shoehorn compliance with cost assignment rules designed for an analog, single purpose, circuit switched network."[153] As Legacy BellSouth explains:

> For every new broadband service that it seeks to offer, [BellSouth] must conduct an exhaustive analysis of every part of the network and the other resources used to provide the service to ensure compliance with the Commission's cost allocation and affiliate transaction requirements. The more technologically involved the product or service offering, the more allocation decisions are involved: some complex services, in fact, can require up to 100 separate allocation decisions.[154]

For example, according to Legacy BellSouth, new services can be delayed to market by as much as six months due to compliance with the Cost Assignment Rules; some never get to market at all.[155] Based on the record before us, we conclude that these rules hinder AT&T's ability to expeditiously introduce new services, making it a less effective competitor. Thus, the forbearance we grant here will allow AT&T to compete more effectively with its rivals by operating more efficiently – without regulatory obligations that no longer produce benefits warranting their costs in terms of competitive advantage in the marketplace.

43. Second, we are persuaded that the Cost Assignment Rules require AT&T to direct considerable financial and personnel resources "to utilize a complex hierarchy to track, value and record affiliate transactions, to allocate costs of regulated and non-regulated services, to maintain, update and audit its Cost Allocation Manual, to jurisdictionalize intra and interstate costs and to apportion interstate costs to interstate service baskets . . . ."[156] For example, Legacy AT&T states that it spends $1.7 million per year on an outside auditor just to audit its CAM as required by our rules.[157] Overall, Legacy AT&T

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[152] *See* AT&T Petition at 4, 39; BellSouth Petition at 7, 76; *see also* US Telecom Comments at 8-9; Verizon Reply at 5-6; AT&T Comments, WC Docket No. 05-342, at 6-7. *But see* Sprint Nextel Reply at 7.

[153] BellSouth Petition at 25; *see id.* at 2 ("[T]he cost assignment rules at issue in this Petition stand in the way of technological innovation, efficiency and competitiveness . . . ."); *see also id.* at 4, 32-34, 63-65; AT&T Comments, WC Docket No. 05-342, at 6-7; Verizon Comments, WC Docket No. 05-342, at 3.

[154] BellSouth Petition at 4 (footnote omitted); *see id.* at 5 ("There is no good reason that [BellSouth's] customers should have to wait while [BellSouth's] products and services stand in a long, value-depleting line of regulatory cost assignment exercises."); Verizon Comments, WC Docket No. 05-342, at 9.

[155] *See* BellSouth Petition at 25.

[156] AT&T Petition at 39.

[157] *See* AT&T Petition at 15, 38-39; *see also* AT&T Comments, WC Docket No. 05-342, at 5. As AT&T points out, the Commission has exempted mid-size carriers from performing these independent audits to "significantly lighten regulatory burdens." AT&T Petition at 15-16 n.21 (citing *Phase 2 Order*, 16 FCC Rcd at 19980, para. 189).

estimates that it spends approximately $7 million annually in employee-related systems and audit costs associated with these activities to ensure compliance with these requirements.[158]

44. For these reasons, we are convinced that forbearance from the Cost Assignment Rules "will enhance competition among providers of telecommunications services."[159] At the same time, as discussed above, the modification of our regulatory framework applicable to AT&T does not remove all protections for consumers or competition. We find that the Cost Assignment Rules are an overbroad means of eliminating the risk of cost misallocation and price discrimination in today's market. On the basis of these findings, we conclude that the Cost Assignment Rules pose significant adverse consequences – in terms of competition and financial costs – that outweigh any potential benefits of enforcing the Cost Assignment Rules against AT&T, given the protections afforded to consumers and competition by remaining safeguards and conditions. Thus, we find that the likely savings to AT&T by elimination of the rules, in conjunction with AT&T's compliance with our remaining rules and conditions, including the price cap rules, supports a finding that forbearance from the Cost Assignment Rules at this time is in the public interest.

45. ***Open proceedings.*** We are not persuaded by commenters' arguments that it is consistent with the public interest to maintain these burdensome Cost Assignment Rules because the resulting data could be useful in pending rulemaking proceedings that broadly consider, among others, universal service, intercarrier compensation, special access, or other reform.[160] We do not deny that cost accounting data could be useful when the Commission moves forward with these and other comprehensive reform proposals. Significant records have already been compiled in these proceedings while this data has been readily available. We also recognize that depending on the approach adopted by the Commission, these data may not be relevant to adopted reforms at all. We believe that the Commission's possible need for this information in a proceeding at some future point is speculative.[161] At the same time, we recognize

[158] *See* AT&T Petition at 39.

[159] 47 U.S.C. § 160(b); *see id.* ("If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.").

[160] *See* Ad Hoc Comments at 3-4, 12, 19; Sprint Nextel Comments at 5; TWTC Comments at 3, 7-8; NASUCA Reply at 3; NuVox *et al.* Reply at 5; Ohio Commission Reply at 2; Sprint Nextel Reply at 5-6; Ad Hoc Comments, WC Docket No. 05-342, at 4-10; TWTC Comments, WC Docket No. 05-342, at 9-10; Ad Hoc Reply, WC Docket No. 05-342, at 4-7; New Jersey Rate Counsel Reply, WC Docket No. 05-342, at 4; NASUCA Apr. 9 *Ex Parte* Letter at 3; COMPTEL Apr. 11 *Ex Parte* Letter, Attach. at 5; Ohio Commission Apr. 16 *Ex Parte* Letter, Attach. at 3; Ad Hoc Apr. 22 *Ex Parte* Letter at 1-2. *But see* AT&T Reply at 6-7, 10; BellSouth Reply, WC Docket No. 05-342, at 8; Verizon Reply, WC Docket No. 05-342, at 5-6; AT&T Apr. 18 *Ex Parte* Letter at 2. Certain commenters allege that AT&T has earned supra-competitive profits on special access services and contend that the Cost Assignment Rules are particularly needed for monitoring rates of return of AT&T's special access services. *See* Ad Hoc Comments at 4-9; Sprint Nextel Comments at 14-17; NuVox *et al.* Reply at 6; Sprint Nextel Reply at 2-3, 5; Ad Hoc Comments, WC Docket No. 05-342, at 4-10; New Jersey Rate Counsel Comments, WC Docket No. 05-342, at 8-9, 16; Ad Hoc Reply, WC Docket No. 05-342, at 4; BT Dec. 21 *Ex Parte* Letter, Attach. at 2-5; COMPTEL Apr. 11 *Ex Parte* Letter, Attach. at 4. We note that in the *Special Access* proceeding, AT&T and other BOCs dispute the validity of using this data to calculate special access rates of return. *See, e.g.*, SBC Comments, RM-10593, at 19-22 (filed Dec. 2, 2002); BellSouth Comments, RM-10593, at 4-6 (filed Dec. 2, 2002); Qwest Comments, RM-10593, at 8-13 (filed Dec. 2, 2002); Verizon Comments, RM-10593, at 21-23 (filed Dec. 2, 2002); *see also* AT&T Reply at 7-9; BellSouth Reply, WC Docket No. 05-342, at 8-10; Verizon Reply, WC Docket No. 05-342, at 5-6; AT&T Apr. 18 *Ex Parte* Letter at 3-4; AT&T Apr. 22 *Ex Parte* Letter at 1-2. We do not resolve that issue here.

[161] *See* AT&T Petition at 21, 24 ("Thus, any claim that cost assignment rules are necessary 'just in case' the Commission decides to resurrect a productivity factor would rest entirely on speculation, which as noted does not demonstrate the necessity for a rule under the forbearance test."); AT&T Reply at 2.

that as the Commission moves forward with various policy initiatives, it could have a need for this information. As discussed above, we condition the forbearance granted here on AT&T providing accounting data as requested by the Commission for future regulatory purposes, including rulemakings or adjudications, as AT&T has committed to do in this proceeding.[162] Given this condition, 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, particularly when the conditions we adopt ensure that the Commission will have access to the data it needs for policymaking purposes going forward.

IV. CONCLUSION

46. For the reasons discussed above, we grant the AT&T Petitions, subject to the conditions described herein.

V. EFFECTIVE DATE

47. Consistent with section 10 of the Act and our rules, this Order shall be effective on Thursday, April 24, 2008.[163] The time for appeal shall run from the release date of this Order.

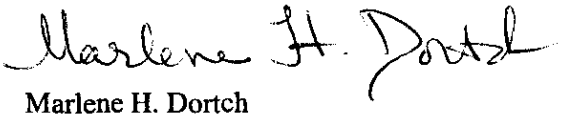
VI. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED that, pursuant to sections 10(c) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), 220, AT&T Inc.'s petition requesting the Commission to forbear from applying or enforcing its Cost Assignment Rules IS GRANTED, subject to conditions, to the extent described herein, and otherwise IS DENIED.

49. Accordingly, IT IS ORDERED that, pursuant to sections 10(c) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), 220, BellSouth Telecommunications, Inc.'s petition requesting the Commission to forbear from applying or enforcing its Cost Assignment Rules IS GRANTED, subject to conditions, to the extent described herein, and otherwise IS DENIED.

50. IT IS FURTHER ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the Commission's forbearance decision SHALL BE EFFECTIVE on April 24, 2008. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.13, the time for appeal SHALL RUN from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

[162] *See* AT&T Apr. 18 *Ex Parte* Letter at 2; AT&T Apr. 22 *Ex Parte* Letter at 4. *But see* Ad Hoc Apr. 22 *Ex Parte* Letter at 2.

[163] *See* 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.03(a) ("[T]he Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.").

APPENDIX

Comments to AT&T Petition & BellSouth Petition (WC Docket No. 07-21)
Ad Hoc Telecommunications Users Committee (Ad Hoc)
National Association of State Utility Consumer Advocates (NASUCA)
Nebraska Rural Independent Companies (Nebraska Companies)
New Jersey Public Advocate, Division of Rate Counsel (New Jersey Rate Counsel)
Public Service Commission of Wisconsin (Wisconsin Commission)
Sprint Nextel Corporation (Sprint Nextel)
State Members of the Federal-State Joint Board on Separations (State Members)
Texas Office of Public Utility Counsel (TOPC)
Time Warner Telecom Inc. (TWTC)
United States Telecom Association (US Telecom)

Reply Comments to AT&T Petition & BellSouth Petition (WC Docket No. 07-21)
Ad Hoc Telecommunications Users Committee (Ad Hoc)
AT&T Inc. (AT&T)
California Public Utilities Commission and the People of the State of California (California Commission)
National Association of State Utility Consumer Advocates (NASUCA)
NuVox Communications, Covad Communications Group, Inc., and XO Communications, LLC (NuVox *et al.*)
Public Utilities Commission of Ohio (Ohio Commission)
Sprint Nextel Corporation (Sprint Nextel)
Verizon

Comments to original BellSouth petition (WC Docket No. 05-342)
Ad Hoc Telecommunications Users Committee (Ad Hoc)
AT&T Inc. (AT&T)
New Jersey Division of the Ratepayer Advocate (New Jersey Rate Counsel)[1]
Time Warner Telecom (TWTC)
Verizon

Reply Comments to original BellSouth petition (WC Docket No. 05-342)
Ad Hoc Telecommunications Users Committee (Ad Hoc)
BellSouth Telecommunications, Inc. (BellSouth)
National Association of State Utility Consumer Advocates (NASUCA)
New Jersey Division of the Ratepayer Advocate (New Jersey Rate Counsel)[1]
Qwest Communications International Inc. (Qwest)
Verizon

[1] Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now Rate Counsel. *See* New Jersey Rate Counsel Comments at 1 n.1.

JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS AND COMMISSIONER JONATHAN S. ADELSTEIN
DISSENTING

Re: *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 No. 07-21; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules,* WC Docket No. 05-342.

The Enron and WorldCom-type accounting scandals earlier this decade are not so far behind us that we cannot remember the distress they wrought on the telecommunications industry and on the economy as a whole. But if those scandals seem too distant to recall, just open the morning newspaper to find lax financial standards and oversight implicated in the housing crisis and economic upheaval that too many hard-working Americans face today. It is in this context that we face the above-referenced Petitioners' requests for forbearance from the Commission's application of its cost assignment and allocation rules. At this moment, more information—not less—is what is needed to promote competition, consumer confidence, investor security and the public interest. Indeed, the Commission has a duty to ensure that the required system of accounts provides both state and federal regulators with the information they need to discharge their oversight responsibilities. Given the necessity of the rules at issue, now and in the future, we dissent from today's Order based on the Petitioners' failure to meet the statutory requirements set forth in section 10 of the Communications Act.

We disagree for a number of reasons with Petitioners' contention that the cost assignment rules are no longer necessary. First, the Commission remains under ongoing statutory obligation to ensure that telecommunications services are offered on rates, terms and conditions that are just, reasonable and not unjustly or unreasonably discriminatory. The Commission and market participants have repeatedly relied on the very cost assignment and allocation data at issue in these petitions to set rules to carry out that statutory duty and to monitor the Petitioners' compliance. For example, in the 2000 *CALLS Order*, the Commission used this data to set the current price cap rules that are designed to ensure that Petitioners provide rates that are just, reasonable and nondiscriminatory.[1] More recently, the Commission sought comment on a plan to succeed the *CALLS Order* and specifically asked parties to address how the Petitioner's cost accounting data should guide the Commission's analysis.[2]

Second, a unanimous Commission just last year established "a new regulatory framework for the BOCs' in-region, long distance service" and expressly concluded that "an important component of the regulatory framework . . . [is] the Commission's accounting and cost allocation rules and related reporting requirements."[3] The Commission in fact relied on the cost assignment and allocation rules to prevent

[1] *See generally Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 at ¶ 171 (2000) ("*CALLS Order*").

[2] *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*; WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking at ¶ 35 (2005).

[3] *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, FCC 07-159; Report and Order and Memorandum Opinion and Order at ¶¶ 89-90 (Aug. 31, 2007).

anticompetitive discrimination and improper cost-shifting. Despite Petitioners' promises to continue to comply with the statutory obligations of sections 272(e)(3) and 254(k), we fear that today's Order will render largely meaningless the important safeguards adopted less than a year ago. Such a conclusion is particularly surprising when we consider the fact that section 11 of the Act requires the Commission every two years (most recently in 2006) to review all of the cost assignment and allocation rules to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition."[4] While the Commission makes adjustments to these rules where appropriate, it has not, before today, found a reason for their elimination.

Third, the Commission must still tackle the widely-recognized need for comprehensive inter-carrier compensation and Universal Service Fund reform. The elimination of the cost assignment and allocation rules is likely to hinder the Commission's ability to effectively implement such reform no matter what policies are adopted, and such a hindrance is likely to result in harm to consumers and the public interest.

Fourth, it is clear from the record that there are many states that rely on this data in the performance of their duties. The Commission's ambivalence (or worse) towards the critical role of state commissions and the Federal-State Joint Board on Separations ignores the statutory responsibility to establish a uniform system of accounts and promote a viable federal-state partnership.

A decision to grant forbearance relief is not one to be taken lightly. Yet, the record is replete with comments from consumer advocates, state regulators and Commissions, Members of Congress, rural wireline companies, wireless companies, CLECs and telecom end-users all opposed to the elimination of the cost assignment rules. These comments should not have been ignored. While we recognize the need to continually examine and improve the Commission's cost assignment and allocation rules, Petitioners have not offered any alternative—other than a "trust us" approach—for ensuring that the public interest is protected. In this instance, we prefer to "trust but verify" and we are unable to conclude that Petitioners have met the burden for doing otherwise.

Finally, while not the basis for our dissent, we again believe it important to note that such sweeping revisions to the Commission's rules are best accomplished through industry-wide rulemakings, conducted under the balanced governance of the Administrative Procedures Act, rather than via the improvised and piecemeal route of forbearance petitions, unguided by meaningful procedural rules to ensure fairness and transparency. There are currently five related forbearance petitions statutorily due for determination by the Commission this year. While the particular circumstances faced by the industry as a whole when it comes to our cost assignment and accounting rules are not before us, today's decision will no doubt impact future decisions. For a Commission with limited resources and urgent demands, this is no way to set sound policy.

The telecommunications industry has not been immune from accounting malfeasance in the past and in fact the Petitioners' in certain instances suffered greatly from it. So we end where we began—more transparency and increased accountability to facilitate more effective federal and state oversight must be critical parts of any plan to put the country's economy on a sounder footing. Now is not the time to permit the Petitioners and those that follow them—who all play an enormous role in our economy—to shut their books and assume that's all they need to do.

[4] 47 U.S.C. § 161(a)(2).

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: 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 No. 07-21; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 05-342, Memorandum Opinion and Order.

An integral part of the pro-competitive, de-regulatory national policy framework established by Congress in the 1996 Act is the section 10 forbearance provision. The deregulation of record-keeping seems an inevitable consequence of today's increasingly competitive telecommunications marketplace. Since the adoption of price cap regulation in 1991, many carriers, including AT&T, have moved from rate-of-return rate regulation to price cap regulation, and the Commission has modified its regulation of price cap carriers over time to reflect changing circumstances. Because AT&T's rates are now regulated under price caps, there is no current federal need for the specific cost assignment rules as they apply to AT&T. Even without these outdated rules, the Commission has clear statutory authority to require AT&T to produce any accounting data that the Commission needs for regulatory purposes. Indeed, we expressly condition the forbearance granted in this Order on the provision by AT&T of accounting data on request by the Commission for use in rulemakings or adjudications, or for other regulatory purposes, such as reform of universal service, intercarrier compensation, or special access. Significantly, AT&T remains subject to a number of statutory safeguards - section 251 obligations, section 271 obligations, and section 201 and 202 obligations - and the other conditions adopted in this Order, subject to the compliance plan. I appreciate the broad participation of States in this proceeding and have carefully considered their concerns. Significantly, we do not in this order preempt any State's authority to obtain any information from AT&T for their own regulatory purposes, and AT&T has committed to provide such information.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rule,* WC Docket No. 07-21, *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules,* WC Docket No. 05-342, Memorandum Opinion and Order

I am supporting AT&T's request for relief in this forbearance petition. This request by a price cap local exchange carrier to eliminate cost allocation data collection and reporting requirements that were adopted in the all-analog, voice-only, rate-of-return regulatory environment of yesteryear appears to be just the type of relief Congress designed the forbearance process to address. Relief is especially appropriate as telecommunications traffic migrates toward an all-I.P. world. As we witness this rapid technological evolution, cost models are also changing. Yesterday's regulations are quickly outliving their usefulness. Given these developments, I look forward to granting comparable relief to similarly-situated carriers as soon as possible.

Opponents to this petition have argued passionately for preservation of the existing regime primarily out of fear that the Commission, and the public at-large, will not have at their disposal the proper information necessary to help make sound policy decisions regarding Universal Service reform, Intercarrier Compensation reform, Special Access reform, and the Separations Freeze, among others. However, no part of today's Order precludes the Commission - at any time - from compelling AT&T, or any other incumbent local exchange carrier, to provide promptly any and all information necessary to build a sufficient record for any regulatory purpose. In the meantime, most of this data has not been used by the Commission for several years. Additionally, for many years neither competitors nor end-users have filed complaints that call for the use of such data. Should they file complaints in the future, the Commission can compel production of all relevant data necessary for proper adjudication. Section 10 does not allow us to maintain a requirement merely "just in case" it is needed in the future, especially when we have at our disposal other means of gathering any data for a specific purpose.

In short, even without these rules, we continue to have sufficiently potent tools to protect consumers' interests. AT&T has also assured us that it will supply relevant state public utility commissions with any information they may request in pursuit of their policy objectives. Should AT&T not live up to this assurance, the Commission has the ability to compel the production of such data at any time and for any regulatory purpose.

Accordingly, I find that today's order granting relief meets the statutory obligations of Section 10 and, therefore, is in the public interest.