

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of AT&T Inc. For Forbearance	)	WC Docket No. 07-21
Under 47 U.S.C. § 160 (c) From Enforcement	)	
Of Certain of the Commission’s Cost	)	
Assignment Rules	)	
	)	
Petition of BellSouth Telecommunications,	)	WC Docket No. 05-342
Inc. For Forbearance Under 47 U.S.C. § 160 (c)	)	
From Enforcement Of Certain of the	)	
Commission’s Cost Assignment Rules	)	

**OPPOSITION OF AT&T INC.  
TO PETITION FOR RECONSIDERATION**

Pursuant to 47 C.F.R. § 1.106, AT&T Inc. (“AT&T”) respectfully opposes the Petition for Reconsideration (“Petition”) filed by Sprint Nextel Corporation, Ad Hoc Telecommunications Users Committee, COMPTEL, and Time Warner Telecom, Inc. (“Petitioners”).

In its order granting AT&T forbearance from application of the Cost Assignment Rules,<sup>1</sup> the Commission reached a straightforward and obvious conclusion: with respect to AT&T, the Commission simply does not use the cost assignment data at issue for any regulatory purpose, nor has it used such data for years. Although they tried mightily and were given numerous opportunities, Sprint and the other opponents of forbearance could not identify a single, current regulatory use for these data; instead, they offered only dubious speculation that the information might someday prove useful. The D.C. Circuit has made clear, however, that Section 10 does

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<sup>1</sup> Petition of AT&T for Forbearance Under 47 U.S.C. § 160 From Enforcement Of Certain Of The Commission’s Cost Assignment Rules, Memorandum Opinion and Order, WC Docket Nos. 07-21, 05-342 (rel. April 24, 2008) (“*Order*”).

not permit the Commission to retain outdated regulations that have no *current* use, merely because there is a chance that they could be useful someday in some possible future proceeding. *Cellular Telecommun. and Internet Ass'n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (“*CTIA*”). Accordingly, in the end, this was not even a close case: Section 10’s three-pronged test was easily satisfied, and the Commission properly granted forbearance from the rules.

The petition for reconsideration is a rehash of the same speculative claims that the Commission has already considered and rejected. The Petition claims that the *Order* is arbitrary and capricious on the theory that the Commission effectively conceded that it still needs the Cost Assignment Rules when it required AT&T to submit a plan describing the accounting procedures AT&T will maintain to allow it to respond in the event the Commission ever identifies a future need for any allocated accounting cost data. This is a plain misreading of the *Order*. The Commission expressly found that there was *no* “current need” for the cost assignment data at issue, *Order* ¶ 20, and the compliance plan requirement does not reflect any assumption that the Commission will frequently or routinely (or, indeed, ever) need any such information, much less any concession that the Cost Assignment Rules themselves remain necessary for the protection of consumers or the public interest or to ensure that rates are just and reasonable. *See Order* ¶ 45 (“the Commission’s possible need for this information in a proceeding at some future point is speculative”).

The bulk of the Petition goes through the same list of possible, future uses for cost assignment data that opponents offered before – *e.g.*, reinitialization of price caps, exogenous cost changes, and enforcement of the *Section 272 Sunset Order* regulatory framework. The Commission rejected all of these claims in the *Order*, and the Petitioners provide no new reason why any of these extremely speculative claims would warrant reconsideration and a re-adoption

of the full-blown cost assignment regime. The Petitioners also argue that forbearance from the Cost Assignment Rules will make it impossible to bring a Section 208 complaint challenging AT&T's rates. Tellingly, they do not even attempt to explain how allocated accounting cost data that is a product of arbitrary freezes and myriad other distortions could even be relevant (much less necessary) to any section 201 rate unreasonableness claim, and the Commission itself has long recognized that such data cannot be used to calculate meaningful service-specific rates of return. But, in all events, here again the Commission considered this precise claim and explained that "Section 208 complaints will continue to be a viable option for enforcing the provisions of the Act and the Commission's rules," particularly given that the Commission has maintained the authority to request allocated cost data from AT&T in the future and that complainants remain free to proffer their own cost studies and expert testimony in complaint proceedings. *Order* ¶ 22; *id.* ¶ 21

1. The Petitioners' principal argument is that the *Order* is internally inconsistent because the Commission "conceded" an ongoing need for the cost assignment data by conditioning forbearance on the ability to ask AT&T in the future for accounting data if it finds a legitimate need for any such data. Petition at 6-7. In fact, the Commission expressly held that there is no "current need" for this data at all. *Order* ¶ 20. As the Commission explained – and the Petitioners do not dispute – all vestiges of rate-of-return regulation (such as sharing and the low-end adjustment) were eliminated from price cap regulation of AT&T many years ago. *Order* ¶¶ 17, 19. "Because these [regulatory] changes have eliminated ongoing tinkering with price caps," the Commission acknowledged that it "no longer routinely need[s] the accounting data derived from the Cost Assignment Rules for rate regulation functions." *Id.* ¶ 19. Moreover, the Commission recognized that because "price cap regulation severs the direct link between

regulated costs and prices,” AT&T no longer has any incentive to misallocate its regulatory accounting costs, because such misallocations have no impact on what prices AT&T can charge.<sup>2</sup>

The Commission recognized in the *Order* that Section 10 requires forbearance unless there is 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.” *Order* ¶ 20 (quoting *Cellular Telecommunications and Internet Association v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003)). Here, the Commission expressly found that the commenters had not identified any current uses for these data, but only “possible” uses “at some point in the future.” *Id.* The Commission was very clear that there could be no “strong connection” between the cost assignment rules and the purely speculative potential uses that commenters like Sprint, Ad Hoc, and Time Warner had identified – and therefore Section 10 required forbearance. *See Order* ¶ 45 (“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”).

To be sure, the Commission, out of an abundance of caution (in AT&T’s view an overabundance of caution), believed it was necessary to condition forbearance on a compliance plan that would preserve AT&T’s ability to provide relevant accounting data to the Commission in response to any specific requests in the future. *Order* ¶ 21. Contrary to the Petitioners’ contention, however, this is not a concession that the Cost Assignment Rules themselves remain necessary. The distinction the Commission was making is not hard to grasp: we do not need the full blown Cost Assignment Rules (because they are burdensome and are not used for any

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<sup>2</sup> *Id.* ¶ 17 (quoting *Computer III Remand Order*, 6 FCC Rcd. 7571, ¶ 55 (1991); *see also id.* ¶ 17 n.61 (collecting cases)).

regulatory purpose), but it is at least conceivable that we might want some information in some possible future circumstances (in which case we will just request that specific information at that time). As the D.C. Circuit has made clear, Section 10 does not permit the Commission to retain an outdated and burdensome regulatory regime such as this merely because *some* aspect of it *might* be useful someday in some conceivable circumstances. *CTIA*, 330 F.3d at 512. Section 10 thus unambiguously required forbearance, and the conditions the Commission imposed do not undermine that conclusion.

2. The bulk of the Petition is devoted to arguments that the Commission overlooked a number of actual, current uses of the cost assignment data, but the Petition just repeats all of the same arguments that Sprint and the other opponents of forbearance previously made in response to the forbearance petition. The Commission carefully considered and rejected all of these arguments in the *Order*, and repeating them virtually unchanged in a petition for reconsideration does not make them any more persuasive.

*Reinitialization of Price Caps.* The Petitioners claim that the Commission has an “ongoing obligation” to use rate-of-return data “to monitor the price cap system” and to reinitialize the caps periodically, and that this “obligation” renders the need for cost assignment data “*certain*, not speculative.” Petition at 9 (emphasis in original); *see also id.* at 6 (price caps must be “adjusted periodically”). In particular, the Petitioners want AT&T to continue to carry out all of the burdensome and unused cost allocations contemplated by the Cost Assignment Rules so that they can calculate service-specific rates of return and use those meaningless calculations to argue for reinitialization of price caps for special access services. *Id.* at 9-10.

The Petitioners’ contention that the Commission is obligated to maintain some sort of shadow scheme of rate-of-return regulation as a “check” on price caps is deeply antithetical to

the entire theory of the price cap regime and has been rejected repeatedly by both the courts and the Commission. As the Commission has explained, “because the basic theory of our existing price cap regime is that the prospect of retaining higher earnings gives carriers an incentive to become more efficient, [a] rate of return-based reinitialization would have substantial pernicious effects on the efficiency objectives of our current policies.” *Access Charge Reform Order*, 12 FCC Rcd. 15982, ¶ 292 (1997).<sup>3</sup> Both the D.C. and Eighth Circuits have also recognized that the Commission abandoned the use of historical accounting costs to judge the reasonableness of rates many years ago, and that price cap reinitializations would have harmful effects on incentives and undermine the entire price cap scheme. *See, e.g., USTA v. FCC*, 188 F.3d 521, 530 (D.C. Cir. 1999) (“it seems clear that a second extensive reinitialization would considerably aggravate” perceptions that the Commission’s “regulatory policies unnecessarily lack constancy,” and that “[u]niversal, complete reinitialization would impair the supposed incentive advantages of price caps – which derive from firms’ supposing that their efficiencies will *not* come back to haunt them” (emphasis in original)); *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 546-47 (8th Cir. 1998) (upholding decision not to reinitialize price caps in part because of “long recognized regulatory problems associated with the allocation of common costs”).

Moreover, there is no realistic prospect that the Commission could use the arbitrary figures generated by application of the Cost Assignment Rules to reinitialize price caps. It has long been recognized that the Cost Assignment Rules are inherently arbitrary; indeed, as early as 1990, the Commission made clear that allocated cost data were too arbitrary to be used to calculate service-specific returns. *See LEC Price Cap Order*, 5 FCC Rcd. 6786, ¶ 380 (1990).

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<sup>3</sup> *See id.* (detailing other instances in which the Commission rejected return-based adjustments to price caps, and concluding that “a decision now to reinitialize PCIs to any specified rate of return would further undermine future efficiency incentives by making carriers less confident in the constancy of our regulatory policies”).

By 2001, the Commission had concluded that “rapid changes in telecommunications infrastructure” were causing “cost shifts in separations results because these and other new technologies . . . as well as a competitive local exchange marketplace” have not been appropriately incorporated into the “current Part 36 rules.”<sup>4</sup> Instead of initiating what even then would have been an extremely complicated proceeding to correct those imbalances, the Commission decided that such an effort would be largely pointless, and so, seven years ago, it froze the separations factors.

For these reasons, in the special access proceeding itself, the Commission has already specifically rejected arguments that it should use ARMIS data as the basis for Commission-mandated rate reductions.<sup>5</sup> Indeed, even Sprint recently filed an *ex parte* letter in the special access proceeding recognizing that the Commission could not justify rate reductions based on allocated ARMIS data on appeal and urging the Commission instead to rely on proposals that do not depend on the use of allocated accounting costs.<sup>6</sup>

Although the Petitioners claim to show that the Commission has said that it needs cost assignment data as a check on price caps, their showing mis-cites cases left and right. For

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<sup>4</sup> *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, 16 FCC Rcd. 11382, ¶ 12 (2001) (“*Separations Freeze Order*”); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking, 12 FCC Rcd. 22120, ¶¶ 9-16 (1997) (acknowledging in the late 1990’s that a comprehensive review of the separations factors was necessary in light of the fundamental changes in telecommunications networks that had already taken place).

<sup>5</sup> *Special Access Rates for Price Cap Local Exchange Companies*, 20 FCC Rcd. 1994, ¶¶ 129-30 (2005) (“Even if the Commission had enough data, moreover, we question [the] central reliance on accounting rate of return data to draw conclusions about market power. High or increasing rates of return calculated using regulatory cost assignments for special access services do not in themselves indicate the exercise of monopoly power”).

<sup>6</sup> See, e.g., Sprint 10/5/07 *Special Access Re-Regulation Ex Parte*, WC Docket No. 05-25, Att. at 44 (conceding that relying on ARMIS would require the Commission to conduct in essence a full rate-of-return proceeding); see also Level 3 11/29/07 *Special Access Re-Regulation Ex Parte*, WC Docket No. 05-25 (abandoning ARMIS-based proposals and seeking instead to freeze rates and to collect additional data).

example, the Petitioners claim that the original *LEC Price Cap Order* – adopted in 1990 at the inception of price caps – recognized a need to maintain rate-of-return information as a check on price caps. Petition at 7-8 (citing *LEC Price Cap Order*, 5 FCC Rcd. 6786, ¶¶ 376, 380). In fact, the Commission made clear in that order that cost-allocated ARMIS data were never intended to and should not be used to derive service-specific rates of return, because the cost allocation rules were too arbitrary (even as of 1990).<sup>7</sup> Similarly, the Petitioners fault the Commission for failing to explain its “departure” from the *Ameritech/SBC Merger Order* “precedent,” 14 FCC Rcd. 14712, ¶¶ 133-34 (1999), in which the Commission is said to have held that “uniform cost assignment data reporting” allows “useful comparisons to monitor LEC performance.” See Petition at 9 n.28. In fact, the cited paragraphs do not deal with cost assignment data at all. Instead, the Commission was merely listing collocation space and service quality examples of regulatory “benchmarking,” a practice the Commission has since recognized it “rarely used” and which “does not represent as useful or important a regulatory tool as the Commission previously believed.” *AT&T/BellSouth Merger Order*, 22 FCC Rcd. 5662, ¶ 189 (2007).

Nor can the Petitioners find support in Footnote 376 of the *CALLS Order*. See Petition at 8 (citing *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd. 12962, ¶ 171 n.376 (2000) (“*CALLS Order*”). Contrary to the Petitioners’ suggestion, the Commission did not “use” the cost assignment data “to determine the appropriate rate for various ILEC access services” in that order. Petition at 8. The actual rates and price caps in the *CALLS Plan* were established through an industry-wide negotiation and settlement process, and the Commission merely cited

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<sup>7</sup> *LEC Price Cap Order*, 5 FCC Rcd. 6786, ¶ 380 (“the collection of rate of return data on an access category or rate element level is improper and unnecessary for price cap LECs”); see *id.* (there is “no need for disaggregated rate of return data”); *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, 6 FCC Rcd. 2637, ¶ 199 (1991) (category-specific returns reported in ARMIS “do[] not serve a ratemaking purpose”).

1999 ARMIS data in a footnote as part of its explanation for approving the settlement. And the Petitioners lose sight of the fact that the CALLS example dates from early 2000, *before* the Commission froze the separations factors and before it implemented pure price caps by eliminating the federal low-end adjustment. In other words, even the *CALLS Order* dates from a time when some rationale (albeit a slim one) still existed for using cost allocations for some regulatory purposes, notwithstanding their increasing flaws. The mere fact that the Commission mentioned ARMIS returns in the *CALLS Order* eight years ago thus provides no support for the notion that the Commission does, can, or should use that data today.

The Commission carefully considered the Petitioners' contention that cost assignment data could still perhaps be used one day to reinitialize price caps, and it concluded that the possibility of such use was too remote and too speculative to provide the "strong connection" necessary to retain the rules, and that if the day ever arrived in which the Commission concluded that cost assignment data could be used for that purpose, the Commission could request it then. *Order* ¶¶ 19-20. That conclusion was unquestionably correct, and the Petitioners' bevy of mis-citations to ten- and twenty-year-old orders provides no basis for reconsideration.

*Exogenous Cost Adjustments and Other Rate Reforms.* The *Order* expressly acknowledged that, with forbearance from the Cost Assignment Rules, AT&T would no longer have any basis for seeking exogenous cost adjustments based on changes in investment allocations. *Order* ¶ 19 n.71. Indeed, the Commission noted that, in that respect, forbearance could potentially hamper AT&T's ability to prove a confiscation claim. *Id.* The Petitioners, however, speculate that there could be future changes to the Separations Manual or the split between regulated and non-regulated costs that would warrant investment-related exogenous adjustments that decrease price caps. *Petition* at 9-10. In reality, however, the Separations

Manual allocations have been frozen since 2000, and AT&T's review of its records confirms that it has likewise experienced no exogenous cost changes (up or down) during that period related to reallocation of regulated/non-regulated investment.

Moreover, the Petitioners ignore that when the Commission declared wireline broadband Internet access services not to be a common carrier service, past practice would have dictated that the classification of such services be changed from regulated to non-regulated. The Commission concluded that it just wasn't worth it: such changes in accounting classifications "would impose significant burdens" on the carrier "with little discernible benefit." *Wireline Broadband Internet Access Order*, 20 FCC Rcd. 14853, ¶ 131 (2005). The Commission noted that the cost allocation rules "assume that meaningful measures of cost causality and usage will be available," but an accounting reclassification today would require carriers to develop new measures that "would have to reflect the evolution of the incumbent LECs' networks from traditional circuit-switched networks to IP-based networks," and that the development of such new measures would be "resource-intensive" and "likely to lead to arbitrary cost allocation results." *Id.* ¶ 134. Thus, Petitioners have, at most, merely identified another speculative "possible need" for the information "at some point in the future," and as the Commission held, Section 10 does not permit the Commission to keep these regulations merely on the off-chance that such an exogenous adjustment might one day be needed. *See Order* ¶ 20.

The Petitioners' suggestion that the Commission may need these data for possible separations and intercarrier compensation reforms is equally meritless. Petition at 11-12. First, although the Commission has an open rulemaking on separations reform, that rulemaking has been pending for many years, and there has been no indication from the Commission that new rules are forthcoming. Second, even if the Commission decided, at long last, to issue rules in

this long dormant proceeding, it is inconceivable that the Commission would need allocated cost data from AT&T to do so, since the separations process has no bearing on the rates of carriers, such as AT&T, that are subject to pure price caps. That is why the Joint Board recently acknowledged in a paper titled *Post-Freeze Options for Separations* that carriers subject to price caps “are obvious candidates to be exempted from separations[.]”<sup>8</sup>

Similarly, the claim that, in the intercarrier compensation reform proceeding, proponents of the “Missoula Plan” for intercarrier compensation and universal service reform “relied heavily on separations and other cost assignment data” is grossly misleading. Petition at 12. None of the Missoula Plan proposals relies on cost assignment data; rather, some proponents of the Missoula Plan used separations and ARMIS data to model and estimate the *impact* of the plan. But even those models did not rely on the cost assignment data at issue here; they relied on ARMIS volume and revenue data reports,<sup>9</sup> which are not impacted by the *Order*. See also *Order* ¶ 45.

*Section 272 Sunset Order and Section 254(k)*. The Petitioners also repeat their claims that the *Section 272 Sunset Order* precludes forbearance, and argue that the Commission did not explain “its complete reversal of course.” Petition at 12; see *Section 272 Sunset Order*, 22 FCC Rcd. 16440, ¶ 94 (2007). In fact, the Commission fully considered that claim and explained why it was rejecting it. The *Section 272 Sunset Order* “was a rulemaking of general applicability” that applied to all of the Bell Operating Companies. *Order* ¶ 27. The Commission acknowledged that, in that order, it had “discussed existing nonstructural safeguards, including

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<sup>8</sup> *Ex Parte* Letter from J. Ramsey to M. Dortch, Report at 12, CC Docket No. 80-286, May 1, 2006. Although the Wireline Competition Bureau may have concluded, years ago, that “Part 36 remains necessary in the public interest,” that was a generic statement applicable to the industry as a whole – and of course, many carriers are still at least partly governed by rate of return regulation and their rates remain directly impacted by separated data.

<sup>9</sup> See Missoula Intercarrier Compensation Plan, CC Docket No. 01-92, at 102 (filed July 24, 2006 by NARUC) (explaining that ARMIS reports were used to obtain “rates, volumes, and revenues”); *id.* at 107.

the Cost Assignment Rules, as part of the regulatory framework that supported [its] decision” there. *Id.* The record developed in this forbearance proceeding, however, demonstrated that the Cost Assignment Rules at issue were not necessary to the functioning of any of those nonstructural safeguards as they apply specifically to *AT&T*. As the Commission correctly held, where Section 10’s three-pronged test is met, the Commission *must* forbear; D.C. Circuit case law makes clear that the Commission would have violated Section 10 if it had simply cited the *Section 272 Sunset Order* as a ground for denying forbearance. *See Order* ¶ 27 (“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”); *see also AT&T Inc. v. FCC*, 452 F.3d 830, 832 (D.C. Cir. 2006); *Verizon Tel. Cos. v. FCC*, 374 F.3d 1229, 1235 (D.C. Cir. 2004); *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001).

The Petitioners complain that “the *Order* neither cites any evidence nor provides any legal analysis demonstrating that AT&T no longer holds exclusionary market power thus warranting a change in the new *Section 272 Sunset Order* framework,” Petition at 14, but this claim reflects a fundamental misunderstanding that pervades the Petition. As the Commission made clear, the *Order* does not completely deregulate AT&T; AT&T remains subject to price caps and a number of other regulatory safeguards. *See, e.g., Order* ¶¶ 18, 27. The Commission correctly found, however, that the Commission does not use the *cost assignment data* as part of any of those regulatory safeguards today. In other words, the question in this proceeding is not whether AT&T’s interstate services should be completely deregulated, but “does the Commission use *these* Cost Assignment Rules for any purpose with respect to AT&T?” Since the answer to the latter question is clearly “no,” Section 10 required forbearance. Indeed, the Commission specifically found that, “[w]ith 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.” *Order* ¶ 27.<sup>10</sup>

The Petitioners also complain that the Commission “provides no facts or legal analysis indicating exactly how” the forbearance standard was satisfied for the affiliate transaction rules. Petition at 16-17. That is not so. The Commission found that the affiliate transaction rules, like the other cost assignment rules, have no impact on any AT&T rates. Even if AT&T were to “misallocate” costs to regulated services, such misallocations would have no effect on AT&T’s rates and AT&T thus would not gain any ability or opportunity to subsidize any services. *Order* ¶ 17. As a result, those rules are no longer necessary under Section 10.<sup>11</sup>

Moreover, as the Commission noted, AT&T remains subject to the statutory prohibition on cross-subsidization in Section 254(k) itself, and the Commission conditioned forbearance on an annual certification from AT&T that it will comply with Section 254(k) and provide accounting information if requested. *Order* ¶ 30. Significantly, the Commission has relied on such certifications for years from midsized carriers, even though many of those carriers remain rate-of-return carriers whose rates *are* directly affected by historical accounting costs and the affiliate transaction rules (and who face much less competition than AT&T). *See* 47 C.F.R. §

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<sup>10</sup> The Petitioners’ invocation of the *AT&T Interexchange Forbearance Order*, 22 FCC Rcd. 16556 (2007), adds nothing to the analysis. Petition at 14-15. That order, like the *Section 272 Sunset Order*, simply noted the existing rules that still applied. The Commission found on this new record, however, that Section 10’s three-pronged test was satisfied as to the cost assignment rules, and therefore it was *required* to grant forbearance.

<sup>11</sup> Incredibly, Sprint repeats the claim that AT&T has incentives to misallocate costs today based on a consent decree that NYNEX entered into with the Commission *in 1990* that arose from a Commission investigation “into NYNEX’s misallocation of costs to its regulated ratebase.” Petition at 17 n.52 (citing *New York Tel. & Tel. Co.*, Consent Decree, 5 FCC Rcd. 5892 (1990), *aff’d*, *New York State Dep’t of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993)). The notion that this instance of NYNEX misallocating costs twenty years ago during the rate-of-return era has any relevance whatsoever to the realities of 2008 and beyond is simply absurd.

64.905. Thus, far from being inadequate, as the Petitioners claim, the certification requirement is, if anything, unnecessary overkill for a pure price cap carrier like AT&T. The Petitioners answer, literally, is that AT&T should have a “larger compliance burden” than midsized carriers simply because it is a larger company. Petition at 18. That kind of knee-jerk argument, devoid of intellectual rigor, carries no weight. Section 10 requires the Commission to focus on whether a regulation continues to serve a purpose (regardless of the size of the company), and here the Commission correctly found that the cost assignment rules (including the affiliate transaction rules) are no longer needed. *Order* ¶ 30 (“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”).<sup>12</sup>

3. Finally, the Petitioners claim that forbearance from the Cost Assignment Rules in favor of a compliance plan will hamper enforcement of the Act through Section 208 complaints. Petition at 19-25. Here again, the Commission carefully considered and rejected this claim. The Commission explicitly “disagree[d]” with the contention that, without publicly available cost assignment data, Section 208 complaints would be rendered “impossible.” *Order* ¶ 22. As the Commission explained, “we do not grant forbearance from Section 208.” *Id.* It found that complaint proceedings “will remain an important mechanism for enforcing the provisions of the Act, including the justness and reasonableness of special access rates,” and that specific information can still be requested in such proceedings. *Id.* But the Petitioners overstate the utility of the cost assignment data in such proceedings in all events. No one has brought a Section 208 complaint against AT&T based on allocated cost data in the modern era, and for

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<sup>12</sup> Petitioners also claim that Section 272(e)(3) “is no substitute” for the cost assignment rules, because the detailed accounting information is necessary to determine “whether existing access rates produce unreasonably high returns.” Petition at 15-16. As explained above, however, cost allocated data cannot be and were never meant to be used to determine service-specific returns.

good reason. Because of the separations freeze, the inherently arbitrary nature of the cost assignment rules, and the fact that those rules have not been kept current with the dramatic changes that have taken place in the market over the last ten to fifteen years, the Commission could not rationally rely on allocated cost data today as the basis for a finding that the rates for any particular interstate services are unjust and unreasonable. For all of these reasons, the Commission was unquestionably correct that forbearance from the Cost Assignment Rules has no effect on the viability of the Section 208 complaint process.<sup>13</sup>

### CONCLUSION

For the foregoing reasons, the petition for reconsideration should be denied.

Respectfully submitted,

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<sup>13</sup> The Commission should reject the Petitioners' footnoted request to make data generated under the compliance plan public. *See* Petition at 22 n.63. The whole point of forbearance was to eliminate burdensome reporting requirements, and thus to place AT&T at regulatory parity with its competitors, which are not required to report such information publicly. Moreover, the Petitioners' suggestion that publicly available cost assignment data provided the Commission with "real-time" information to "uncover violations" is curious at best. Apart from being arbitrary and useless, the cost assignment data are also reported after a significant time lag.