

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

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|--|---|----------------------|
| In the Matter of                           | ) |                      |
|  | ) |                      |
| Petition of AT&T Inc. For Forbearance      | ) | WC Docket No. 07-21  |
| Under 47 U.S.C. § 160 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 | ) |                      |
| From Enforcement of Certain of the         | ) |                      |
| Commission’s Cost Assignment Rules         | ) |                      |

**THE UNITED STATES TELECOM ASSOCIATION’S  
OPPOSITION TO PETITION FOR RECONSIDERATION**

USTelecom<sup>1</sup> is pleased to submit its opposition to the petition filed by Sprint Nextel Corporation, Ad Hoc Telecommunications User’s Committee, CompTel, and Time Warner Telecom Inc. (collectively “Petitioners”) seeking reconsideration of the Commission’s recent order forbearing from application of its anachronistic cost assignment rules.<sup>2</sup>

The Commission should deny reconsideration because Petitioners do little more than repeat the same arguments the Commission already has considered and rejected. Furthermore, despite hundreds of pages of filings they have made in this proceeding, including in their petition for reconsideration (“Petition”), Petitioners fail to identify any current federal need for the cost assignment rules from which the Commission granted forbearance. To the extent the

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks.

<sup>2</sup> *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, Memorandum Opinion and Order (rel. April 24, 2008) (“*Forbearance Order*”).

Commission may have a future regulatory need for general accounting data, that need can be met with the data the Commission has required AT&T to maintain as a condition of forbearance, which further eviscerates any ongoing need for the cost assignment rules.

The standard for reconsideration is a high one – an issue Petitioners do not address. Under well established Commission’s precedent, a party seeking reconsideration must do more than rehash arguments previously made and considered.<sup>3</sup> Here, Petitioners ignore this precedent. Rather than raising new arguments or facts to justify reconsideration of the *Forbearance Order*, Petitioners essentially repeat the same arguments they relied upon in their comments, reply comments, and *ex parte* filings, which the Commission considered and rejected.

Furthermore, section 10 forbearance was designed precisely for circumstances such as those presented here – elimination of antiquated regulatory requirements that are no longer necessary to ensure reasonable rates or to protect consumers. 47 U.S.C. § 160(a). Indeed, elimination of such outdated rules is required to ensure that the pro-competitive, deregulatory goals of the Telecommunications Act of 1996 (“1996 Act”) are realized.<sup>4</sup> If regulations do not

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<sup>3</sup> See e.g., *See WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966); *Policies Regarding Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations*, Memorandum Opinion and Order, 4 FCC Rcd 2276, 2277 ¶ 7 (1989) (reconsideration “will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken”); *Wireless Properties of Virginia, Inc., Assignor and Nextel Spectrum Acquisition Corp., Assignee*, DA 08-1085, Order on Reconsideration, 2008 FCC LEXIS 3884, at \*17 (May 7, 2008) (denying reconsideration petition that merely “rehashes arguments previously considered and rejected”).

<sup>4</sup> See, e.g., *AT&T v. FCC*, 452 F.3d 830, 832 (D.C. Cir. 2006) (“Critical to Congress’s deregulation strategy, the [1996] Act added section 10 to the Communications Act of 1934”); *2000 Biennial Regulatory Review*, Notice of Proposed Rulemaking, 15 FCC Rcd 20008, 20008 ¶ 1 (2000) (“The major purpose of the 1996 Act is to establish ‘a pro-competitive, deregulatory national policy framework’ designed to make available to all Americans advanced telecommunications and information technologies and services ‘by opening all

currently serve any federal purpose, as is the case with the cost assignment rules at issue in the Commission's *Forbearance Order*, the Commission's forbearance authority is mandatory. 47 U.S.C. § 160(a) ("the Commission *shall forbear* from applying any regulation ...") (emphasis added).

In granting forbearance from continued application of the cost assignment rules, the Commission correctly concluded that price cap regulation and "flourishing competition," rather than those rules, would ensure just, reasonable, and nondiscriminatory charges, practices, classifications, and regulations. *Forbearance Order* ¶ 18. Petitioners offer nothing that warrants the Commission's revisiting this conclusion. Instead, Petitioners merely cling to their same tired refrain that the cost assignment rules are allegedly necessary to reinitialize price caps and to review exogenous adjustments – arguments the Commission considered and rejected. *Forbearance Order* ¶ 19. Furthermore, the Commission has given no indication that it intends to reinitialize price caps,<sup>5</sup> and, even if the Commission were to do so, any adjustments to the current price cap regime must be driven by today's competitive landscape and not a regressive analysis of carrier costs as Petitioners suggest.<sup>6</sup>

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telecommunications markets to competition.' Congress empowered the Commission with an important tool to realize this goal in Section 10 of the Act.") (citations omitted).

<sup>5</sup> *Special Access Rates for Price Cap Local Exchange Carriers*, Notice of Proposed Rulemaking, 20 FCC Rcd 1994, ¶ 59 (2005) (soliciting comments "as to whether it is necessary for us to reinitialize rates to ensure that they are just and reasonable") ("*Special Access NPRM*").

<sup>6</sup> Petitioners' falsely imply that the Commission has concluded "in the recent past that price cap levels may be set too high for special access services," pointing to the *Special Access NPRM* in which the Commission noted the disparity between "special access accounting rates of return" reported by the Bell Operating Companies and the 11.25 rate of return prescribed for "rate of return LECs." Petition at 6, citing *Special Access NPRM* ¶ 35. However, the Commission has drawn no such conclusion and in fact rejected the notion that "[h]igh or increasing rates of return calculated using regulatory cost assignments for special access services" are an indication of market power or unjust or unreasonable special access rates. *Id.* ¶¶ 129-130.

The Commission also found that the cost assignment rules, which were once used to set cost-based rates under monopoly-era rate-of-return regulation, were no longer necessary to protect consumers because: (i) under price cap regulation, costs recorded on AT&T's books as a result of these rules have no bearing on interstate rates; (ii) the rules "impose costs that outweigh their benefits" and thereby "distort the market for telecommunications services ..."; and (iii) as a publicly held company, AT&T is subject to other financial accounting and reporting requirements – GAAP, Securities and Exchange Commission, the Sarbanes-Oxley Act – that ensure the integrity of its "financial records through financial transparency or accountability." *Forbearance Order* ¶¶ 36 & 38. Petitioners do not challenge these findings or even address the consumer protection prong of the section 10 forbearance analysis.

Because of the increased costs associated with complying with its cost assignment rules, the Commission also found the forbearance would be consistent with the public interest because it would allow AT&T "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." *Forbearance Order* ¶ 41. According to the Commission, it is "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 ...." *Id.* ¶ 45. Petitioners have nothing to say in response to the Commission's findings, opting instead to regurgitate their argument, which the Commission expressly rejected, that "jurisdictional separations and intercarrier compensation reform efforts require the continued availability of cost assignment data." *Compare* Petition at 11 *with Forbearance Order* ¶ 45 (noting that "depending upon the approach adopted by the Commission, these data may not be relevant to adopted reforms at all").

At bottom, the Commission concluded that section 10 requires the existence of a current federal need for a rule in order to justify continued application of that rule – a conclusion Petitioners do not dispute. *See Forbearance Order* ¶ 20. In fact, the Commission previously has acknowledged its lack of authority to maintain regulatory obligations that do not currently serve a federal purpose. In its *Phase Two Order* addressing accounting simplification, for example, the Commission noted that “if we cannot identify a federal need for a regulation, we are not justified in maintaining such a requirement at the federal level.”<sup>7</sup>

Here, some 16 months after AT&T sought forbearance from the cost assignment rules, Petitioners have yet to identify a current, federal need for such rules. Indeed, Petitioners cannot point to any use that the Commission has made of the data generated by AT&T under the cost assignment rules in the intervening 16 months – a vivid confirmation that the cost assignment rules currently serve no federal purpose.

For example, AT&T demonstrated that the cost assignment rules require that it measure the floor space in thousands of buildings to allocate fixed building costs between “regulated” and “non-regulated” activities, estimate the relative amounts of time its employees spend on such activities, maintain a vast system of apportionment methods and thousands of tracking codes to allocate costs among the myriad accounts, estimate allocated costs associated with tens of thousands of affiliate transactions, prepare and maintain a voluminous cost allocation manual

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<sup>7</sup> 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*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, ¶ 207 (2001) (“*Phase Two Order*”).

documenting how it allocates its costs.<sup>8</sup> Yet, these efforts are entirely for naught, as the Commission does not currently use any of this information, and Petitioners do not and cannot claim otherwise.

In the event the Commission may have a future regulatory need for general accounting data, that need can be met with the accounting data AT&T is required to maintain as a condition of forbearance. *Forbearance Order* ¶¶ 21 & 45. That is precisely the reason the Commission conditioned forbearance on AT&T's providing accounting data as requested for future regulatory purposes and filing a compliance plan explaining how it will satisfy this condition. The Commission delegated to the Chief of the Wireline Competition Bureau the authority "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," absent the cost assignment rules. *Id.* ¶ 31. Conditioning forbearance on AT&T's ability to provide suitable accounting data on an ongoing basis should address any concerns about the possible need for accounting data for use by the Commission "in rulemakings, adjudications, or for other regulatory purposes," as the Commission itself noted. *Id.* ¶ 21.

However, that AT&T must preserve general accounting data as a condition to forbearance is not an endorsement of the Commission's cost assignment rules, nor does it "reaffirm" that the rules are required under price cap regulation, as Petitioners claim. Petition at 6. Petitioners ignore the obvious differences between general accounting data that AT&T must maintain on a going-forward basis and granular detail dictated by the accounting gyrations in

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<sup>8</sup> 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, at 5-20 (filed Jan. 25, 2007); *Ex Parte* Letter from Gary L. Phillips, General Attorney & Associate General Counsel, AT&T, to Marlene Dortch, Secretary, FCC, at 1-2 (filed April 18, 2008).

which AT&T was required to engage in order to comply with the costly and “overbroad” cost assignment rules. *Forbearance Order* ¶¶ 43-44.

The cost assignment rules are the quintessential outdated regulations for which forbearance is not only appropriate but required. Accordingly, the Commission should deny the Petition for Reconsideration.

Respectfully submitted,

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