Levine Blaszak
Block & Boothby LLP

July 7, 2008

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* filing in WC Docket Nos. 07-21, 05-342

Dear Ms. Dortch:

On July 7, 2008, the attached written *ex parte* communications was made on behalf of the AdHoc Telecommunications Users Committee, COMPTEL, tw telecom inc. (formerly Time Warner Telecom Inc.) and One Communications Corp. by their respective attorneys

Please include these in the records of the above-referenced proceedings.

Respectfully submitted,

James S. Blaszak
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Counsel for Ad Hoc
Telecommunications Users
Committee

VIA ECFS

July 7, 2008

Ms. Dana Shaffer
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* filing in WC Docket Nos. 07-21, 05-342

Dear Ms. Shaffer:

The Commission has charged you with reviewing a compliance plan that AT&T has yet to file, but which you must approve before the forbearance relief that the Commission's granted AT&T from cost assignment rules can become effective.[1] To assist you in your review of AT&T's cost assignment plan, the undersigned submit the attached "Blueprint For A Compliance Methodology Cost Assignment Plan." The attached plan would greatly simplify AT&T's data collection duties, while requiring consistency and accountability. It also is in harmony with the Commission's long-held preference for causation-based direct assignment of costs to the maximum extent practicable. Service-specific cost assignments not needed for regulatory purposes would simply go to a residual category. We would welcome the opportunity to meet with you and your staff to discuss the attached Blueprint.

Your review of AT&T's compliance plan must be rigorous and searching. Market forces obviously cannot protect consumers and AT&T's competitors from AT&T's pricing because as the Commission reaffirmed, AT&T continues to possess exclusionary market power.[2] Thus, the Commission must exercise effective oversight of AT&T. The plan that you approve will determine the extent to which the Commission can satisfy that responsibility. The plan that you

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1 *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,* Memorandum Opinion and Order, WC Docket Nos. 07-21, 05-342, ¶ 31.

2 *Id.* ¶ 27

approve will determine the extent to which (1) the Commission respects the intent of Congress as manifest in the Communications Act,[3] and (2) consumers, public advocates and AT&T's competitors will have access useful data that they can utilize to protect their interests.[4]

It is mere common sense to realize that AT&T has an understandable motivation to advance its corporate interest, not the public interest. More than common sense, however, supports this judgment. Recently Verizon represented to the Commission that, *"Experience suggests that when there is an incentive for carriers to demonstrate high costs, they will do so."*[5] Verizon's statement was made in a proceeding considering reform of the high cost component of the Universal Service Fund (USF). The import of Verizon's statement extends, however, far beyond that proceeding.[6] Whether a carrier's incentive is to obtain greater USF high cost support, to cross-subsidize competitive and/or unregulated services from regulated and/or de facto monopoly services, to avoid rate decrease prescriptions for special access service, to avoid adjustments to price cap formulae, or to accomplish other objectives that may be in the carrier's interest, but not the public interest, Verizon's statement acknowledges that carriers have the ability and incentive to demonstrate the costs needed to accomplish a given objective. Indeed, given the context within which it was made, Verizon's statement seems reasonably to imply that carriers, including AT&T, will select data and methods that further their interests, whether or not the data present a fully accurate picture. In short, the Commission should expect AT&T to propose a compliance plan that will be biased to advance AT&T's interests. Accordingly, the Bureau should review AT&T's proposed compliance plan with a healthy degree of skepticism, and welcome public comment on it.

AT&T's compliance plan, and the Bureau's evaluation of it, will affect a broad spectrum of interests. The Bureau should inform the public when AT&T files its compliance plan and should give interested persons a reasonable opportunity to comment on AT&T's proposal. Procedural fairness demands nothing less. An *ex parte* filed on May 12, 2008 by tw telecom inc. (formerly Time Warner Telecom, Inc.), Integra Telecom, Inc. One Communications Corp, COMPTEL and Sprint Nextel Corporation more fully sets forth the rationale for public notice and comment on AT&T's compliance plan. Failure to provide public notice and an opportunity for comment would be an inexplicable departure from

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3 *See* 47 U.S.C. §§ 201(b), 202, 254(k)

4 *See* 47 U.S.C. §§ 206 -- 208

5 Reply Comments of Verizon and Verizon Wireless, at 13, *Federal-State Joint Board on Universal Service*, WC Docket No 05-337 and CC Docket No. 96-45, (high cost reform), June 2, 2008 (emphasis added)

6 More specifically, Verizon's statement was part of its criticism of a recent Commission decision to allow competitive eligible telecommunications carriers (CETCs) to seek Universal Service Fund (USF) subsidies greater than that allowed under the *Interim Cap Order* if the CETCs file cost data demonstrating their costs meet USF thresholds.

past Commission practice, would hinder the Bureau's evaluation of AT&T's compliance plan and would almost certainly harm the public interest.

Respectfully submitted,

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BLUEPRINT FOR A
COMPLIANCE METHODOLOGY
COST ASSIGNMENT PLAN

Prepared for:

AdHoc Telecomunications Users Committee
COMPTEL
tw telecom inc.
One Communications Corp.

FCC WC Docket 07-21
July 7, 2008

Introduction

Consistent with the *AT&T Cost Assignment Forbearance Order,*[1] the following principles should guide the development of a cost assignment methodology to replace the current rules and cost allocation manuals applicable to AT&T for purposes of determining its interstate costs.[2]

- Avoid unnecessary administrative costs.[3]
- Identify any cross-subsidization of competitive services and overpricing of monopoly and/or universal service elements to satisfy statutory obligations. [4]
- Use direct assignments of costs whenever reasonable. [5]
- Employ a consistent methodology to assign non-directly assigned costs.

In the absence of effective competition for regulated services, the FCC continues to need reliable cost assignment results for those services. The challenge is to develop a methodology that produces such results but does not impose unnecessary assignment and

[1] *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,* Memorandum Opinion and Order, WC Docket Nos. 07-21, 05-342 (rel. Apr 24, 2008) ("*AT&T Cost Assignment Forbearance Order"*).

[2] As its name indicates, the *AT&T Cost Assignment Forbearance Order* applies only to AT&T; only AT&T obtained relief under that order from the existing cost assignment rules. While Verizon, Qwest, and others have requested similar relief (Letter from Ann Berkowitz, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, filed May 23, 2008; Letter from Joshua Seidemann, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-21, filed June 24, 2008), they have not been granted such relief and therefore remain subject to the current rules. In the event that Verizon, Qwest, and/or others demonstrate that they satisfy the § 10 forbearance standards and obtain relief like that granted AT&T, the methodology set forth in this paper should be applied to them as well.

[3] *AT&T Cost Assignment Forbearance Order* at paragraph 21. "We conclude that this 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."

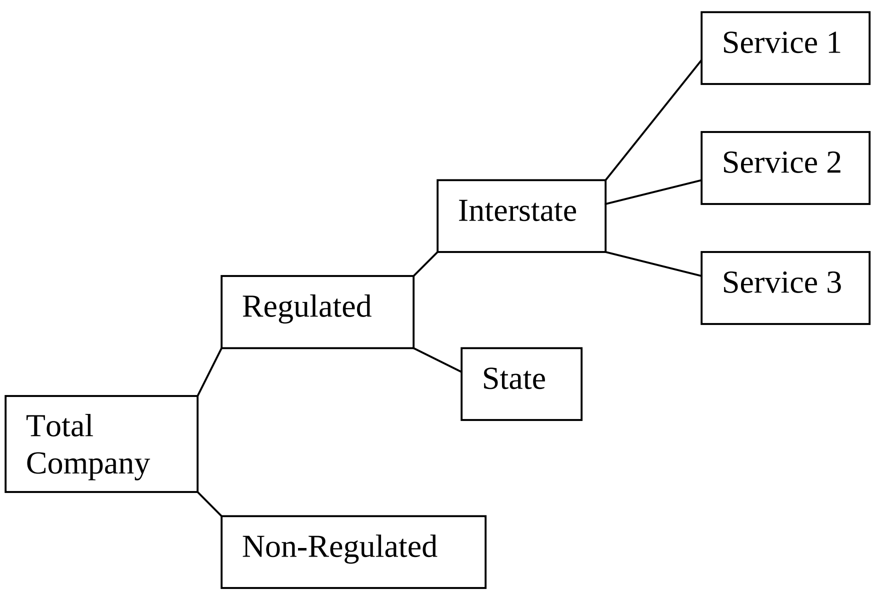
[4] *AT&T Cost Assignment Forbearance Order* at 30. "AT&T remains subject to 254(k)" and AT&T "will maintain and provide any requested cost accounting information necessary to prove such compliance." At paragraph 23 the *Order* describes the compliance approach as "still ensuring that consumers are protected from unjust, unreasonable, and unjustly or unreasonably discriminatory rates." *Id.*

[5] *AT&T Cost Assignment Forbearance Order* at paragraph 28. "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)." This is also consistent with the Commission's existing rules on the allocation of costs between regulated and non-regulated operations that are contained in 47 CFR Section 64.901(b)(2), which states that "[c]osts shall be directly assigned… whenever possible."

cost obligations on AT&T and other carriers that the Commission has found still possess exclusionary market power.

To meet these goals, the "compliance methodology" for determining jurisdictionally interstate cost results should be based upon a simplified service-specific *top-down* analysis. This new methodology can be radically simpler than the methodology used today – which begins with total company costs and divides all costs into smaller and smaller discrete categories (see diagram illustrating existing methodology below).

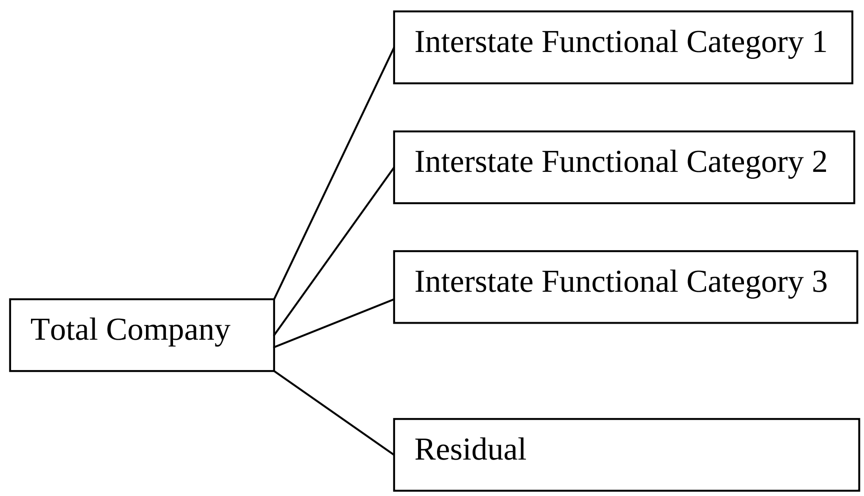
FCC EXISTING RULES METHODOLOGY



The new methodology proposed below – a much simpler and more direct approach – instead identifies and assigns the costs for the services for which results are required and leaves everything else in a residual category (see diagram illustrating proposed methodology below).[6]

[6] In the *AT&T Cost Assignment Forbearance Order* (at paragraph 44), the Commission expressed concern "that the Cost Assignment Rules are an overbroad means of eliminating the risk of cost misallocation." The proposed compliance methodology offers a less broad and more targeted approach.

PROPOSED SIMPLIFIED METHODOLOGY



The “compliance plan” cost assignment methodology should recognize the services offered over AT&T’s network facilities under terms that reflect both the reasons why the plant and equipment have been placed in service (and expenses have been incurred) and all of the uses to which they are put.

Major Steps

The “compliance filing” offers an excellent opportunity for the Commission to determine cost assignments in a manner that more accurately reflects the reasons why investments and expenses were incurred than do the present rules, and with less administrative burden on reporting companies. Consistent with the *AT&T Cost Assignment Forbearance Order*[7] and basic economic theory, the Commission’s guiding principal should be that all

[7] *AT&T Cost Assignment Forbearance Order* at paragraph 28. “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).”

costs that can be directly assigned to a particular service or functional category should be.[8]

A simplified replacement methodology would require only four major steps in the accounting process:

A. Determine service categories for which cost results are required using FCC rules establishing access service and interconnection categories.

B. Identify categories of functional equipment used to provision the services within each of the service categories.[9]

C. Identify categories of plant used to provision service within each of the functional categories identified in step B and assign plant and equipment costs associated with each of the service and functional categories.
   1. Identify categories of plant used to provision service within each of the functional categories.
   2. Determine whether the identified plant categories can be directly assigned to the functional or service categories based upon cost causation or use characteristics. Directly assign all costs that can be associated with a particular functional or service category.
   3. Examine remaining plant costs and develop appropriate allocators when necessary (only for the services identified in Step A) based upon cost causation and capacity usage where appropriate.
   4. Develop proportional overhead allocation factor for each functional category based upon the ratio of plant and equipment costs assigned to that category and total company plant and equipment costs for the totality of non-overhead categories.

D. Assign expenses.
   1. Determine whether expenses associated with plant and equipment that were directly assigned can also be directly assigned to the functional or service categories based upon cost causation or use characteristics.

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[8] An example is the direct assignment of loop costs for dedicated loops for switched and special access services (entrance facilities and channel terminations respectively).
[9] Examples would be loops, interoffice plant, and switches.

Directly assign all costs that can be associated with a particular functional category.
2. Develop proportional expense allocation factors for all expenses that cannot be directly assigned.

Details

Steps A and B below (identification of service and functional categories) must be completed only once and then will remain available for use throughout the remainder of the costing process itself.

Step A – identification of service categories

In order to fulfill its statutory obligations, the FCC must have available reliable cost and revenue data for the services falling within its jurisdiction. Service categories based upon existing access service rules as well as a category for services offered pursuant to interconnection agreements offer a logical starting point. The services include:

1. Services categories currently falling within the FCC's jurisdiction that have not been "deregulated"
   a. Subscriber Lines
   b. Switched Access
   c. Special Access Services at DS3 capacity and below (including those under both price caps and pricing flexibility)
   d. UNEs and other services offered pursuant to interconnection agreements
   e. Special Access Services at capacities greater than DS3 for which the FCC has forborne from enforcing full economic regulation but not other statutory requirements
   f. Broadband packet-switched special access services for which the FCC has forborne from enforcing full economic regulation but not other statutory requirements
2. Services currently falling within the FCC's jurisdiction that no longer are subject to FCC regulation but for which the FCC still has responsibility to prevent cross-subsidization from basic services.

Step B – identification of functional categories within service categories

Categories of functional equipment used to provision the individual services exist within each of the service categories. The functional categories are necessary to enable identification of direct assignment opportunities and to develop appropriate allocators. Functional categories must be identified once, prior to the actual assignment of costs. The proposed interstate functional categories are as follows:

- Dedicated loops (Special Access Channel Terminations (including wholesale broadband) and Switched Access Entrance Facilities) – As under current rules 100% of costs are interstate – FCC currently forbears from price regulating higher capacities.

- Dedicated transport interoffice facilities (Special Access Interoffice Mileage and Switched Access Dedicated Transport) – These are frequently mixed use in nature (interstate and intrastate) – FCC currently forbears from price regulating higher capacities.

- End-user Common line loops, voice (SLCs) – mixed use (interstate, intrastate, interstate non-regulated).

- Wholesale Common line loops, voice (UNEs and UNE-P replacements) – mixed use (interstate, intrastate, interstate non-regulated). Revenue reporting for this category should also include some interstate apportionment of UNE loop revenues.

- Common line loops, broadband internet access (DSL and U-Verse) - (interstate, intrastate, interstate non-regulated).

- Local switches – mixed use – (interstate and intrastate)

- Packet-switched special access facilities – mixed use – (interstate and intrastate) – FCC currently forbears from price regulating.

Step C – identification of categories of plant used in provision of functional elements and assign plant and equipment costs to functional and service categories

A precursor step to the actual assignment of costs to functional and service categories is the identification of the kinds of plant used in the provision of each of the functional elements. For example, loops and transport use Cable and Wire Facilities (coming from the USOA accounts AT&T is continuing to maintain) and switched access service uses switches (among other facilities).

Once the categories of plant and equipment that are used in the provision of each of the functional and service categories have been identified, all plant that can be "directly assigned" to the interstate portion of a functional category based upon dedicated use should be assigned in that manner. Examples include dedicated loop plant, muxing equipment, and broadband packet switching equipment.[10] All plant that can be directly assigned to the interstate portion of a functional category based upon the purpose for which a particular investment was undertaken should be assigned in that manner. Examples include fiber to the node (FTTN) deployed specifically in pursuit of AT&T's U-Verse service.[11]

Plant and equipment used in the provision of the functional or service categories that cannot be directly assigned, either because the investment was not made in pursuit of a specific service offering or because the plant is jointly used for the provision of a wide range of services, must be allocated in some manner under any costing methodology. Based upon the way the network is used today (with traditional circuit-switched voice services making up an increasingly smaller portion of the overall service base),

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[10] Some have claimed that "direct assignment" of special access facilities and other investments was discontinued at the time that the separations freeze for switched facilities was implemented in 2001 -- despite that fact that the *Separations Freeze Order* (16 FCC Rcd 11,382 (2001) required AT&T to continue directly assigning plant. (See Comments of NASUCA, NJRPA and ME OPC ("Joint Consumer Advocates") at 7 and attached Declaration of Robert Loube.) If AT&T has in practice continued to directly assign special access plant, then that practice should continue under the new Compliance Plan. If AT&T has discontinued that practice, then it would need to be re-instated. Additionally, an analysis of plant additions during the "freeze" period would need to be undertaken to allow "direct assignment" of the plant additions undertaken specially to support special access services during that time frame.

[11] Although it is likely that FTTN deployed specifically to make AT&T's U-verse service available may also be utilized for basic exchange access by customers that choose not to subscribe to U-verse, it is appropriate to assign the entire cost to the broadband category. AT&T reported that it invested $2.5 billion in U-verse-related capital in 2007 alone. Absent AT&T's desire to enter the video distribution business, that $2.5 billion would not have been spent. Moreover, there is no evidence that AT&T has been retiring the copper plant over which basic services were delivered pre-U-verse – so it is likely that plant remains on AT&T's regulatory books and would therefore be allocated to the common-line category under the proposed replacement plant.

movement away from the existing cost allocation rules to an approach that more accurately reflects the reasons why investments are made and how facilities are used will require a wholesale revamping of allocators. Appendix A details a capacity-based approach to an allocator to be used for the interoffice transport functional category. Once developed, however, the application of these allocators to the total company plant accounts will likely be both more streamlined (requiring less arduous recordkeeping) and more accurate than results generated by the existing rules.

Step D – assignment of expenses plant and equipment costs to functional and service categories

Expenses should be directly assigned where possible and otherwise should be apportioned in accordance with the relative plant weightings developed above.

APPENDIX A

Development of a plant and equipment allocator for interoffice transport facilities

For interoffice transport costs (facilities that now carry a vast array of traffic, including in some cases internet-bound and other unregulated traffic), direct assignment is generally inappropriate and a capacity-based allocation construct can be used.

Data necessary to develop allocators:

A. Total capacity used by dedicated: special access and switched access interoffice channels
B. Total capacity used by non-dedicated switched voice traffic
C. Total capacity dedicated to carrying internet access services
D. Spare capacity in the interoffice network
E. Total capacity in the interoffice network

Conceptually, the allocator for the SPAC and SWAC interoffice circuit functional category would be developed by:

(A / E) + ((A / E) * (D / E))

Conceptually, the allocator for the switched voice interoffice circuit functional category would be developed by:

(B / E) + ((B / E) * (D / E))

Conceptually, the allocator for the broadband internet access interoffice circuit functional category would be developed by:

(C / (E) + ((C / E) * (D / E))

In this way only the costs associated with the provisioning of a specific functional and service category need to be identified. All other costs would fall into a residual category that would not be examined.