

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

<b>In the Matter of:</b>	)	
	)	
<b>Petition of AT&amp;T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules</b>	)	<b>WC Docket No. 07-21</b>
	)	
<b>Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules</b>	)	<b>WC Docket No. 05-342</b>

**EMBARQ’S REPLY COMMENTS**

In its April 24, 2008 order,<sup>1</sup> the Commission conditionally granted AT&T Inc.’s and Bellsouth Telecommunications, Inc.’s (together, “AT&T”) petitions for limited forbearance from section 220(a)(2) of the Act<sup>2</sup> and from various outdated and unnecessary cost assignment rules.<sup>3</sup> The Commission conditioned the forbearance grant on the Wireline Competition Bureau’s approval of a compliance plan describing how

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<sup>1</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 Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (“*AT&T Cost Assignment Forbearance Order*”), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, D.C. Cir. Case No. 08-1226 (filed June 23, 2008).

<sup>2</sup> 47 U.S.C. § 220(a)(2).

<sup>3</sup> These include 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, those rules.

AT&T will continue to fulfill its statutory and regulatory obligations.<sup>4</sup> AT&T filed its compliance plan on July 24, 2008.<sup>5</sup>

The Compliance Plan meets the requirements set out in the *AT&T Cost Assignment Forbearance Order*. The plan sets out a reasonable methodology that shows that its access charge imputation processes will be consistent with Section 272(e)(3)<sup>6</sup> and the *Section 272 Sunset Order*,<sup>7</sup> and it includes procedures to ensure ongoing compliance with their requirements. The plan includes annual certification and other procedures to ensure Section 254(k)<sup>8</sup> compliance. It describes how AT&T will maintain accounting procedures and data to enable it to provide useable information on a timely basis, and includes a commitment to provide accounting data for regulatory purposes to the Commission on request. Finally, the plan also explains how AT&T will transition from existing Cost Assignment Rules to the procedures outlined in the Compliance Plan.

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<sup>4</sup> *AT&T Cost Assignment Forbearance Order* at ¶ 31.

<sup>5</sup> Letter from Theodore Marcus, AT&T, to Dana Shaffer, FCC, WC Docket Nos. 07-21, 05-342 (filed July 24, 2008) (“Compliance Plan”).

<sup>6</sup> 47 U.S.C. § 272(e)(3).

<sup>7</sup> *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 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 00-175, WC Docket 06-120, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007).

<sup>8</sup> 47 U.S.C. § 254(k).

**The Bureau should take notice of state authorities' approval of the Compliance Plan.**

In response to the Commission's public notice inviting comment on AT&T's compliance plan,<sup>9</sup> only four comments were filed. The Wisconsin Public Service Commission ("PSCW") observed that "AT&T's Compliance Plan is a reasonable attempt to reply to the granted forbearance and to address some continuing data needs."<sup>10</sup> The PSCW cautioned the Commission, however, to ensure that approval of the plan does not "inadvertently limit" access to data needed for regulatory purposes, nor restrict the authority of the Commission and state authorities to require data reporting.

The State Members of the Separations Joint Board likewise did not oppose any aspect of AT&T's Compliance Plan. They merely asked the Commission to "amplify ... that State commissions may exercise their own state authority to conduct their rate and other regulation," and to reiterate that it is not preempting any state from maintaining its own accounting requirements or cost allocation rules.<sup>11</sup> They also asked the Commission to clarify that AT&T must make available to state commissions on request the same categories of data that AT&T had filed publicly through ARMIS before the forbearance grant.

In the *AT&T Cost Assignment Forbearance Order*, the Commission rightly found that there is no federal need for the regulatory reporting requirements for which the

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<sup>9</sup> Public Notice, DA 08-1826 (July 31, 2008).

<sup>10</sup> Comments of the Public Service Commission of Wisconsin at 4.

<sup>11</sup> Comments of the State Members of the Separations Joint Board at 2-3.

Commission granted forbearance.<sup>12</sup> Nevertheless, in approving AT&T's Compliance Plan, the Bureau can reiterate that the order did not preempt state authority, and that these aspects of AT&T's plan will ensure that data and capabilities remain available, in the event the Commission or state authorities have legitimate future need.

The *AT&T Cost Assignment Forbearance Order* acknowledged that states continue to maintain their state authority over AT&T, and the Commission expressly declined to preempt any authority under state law to require data from AT&T that may be necessary for state regulatory purposes.<sup>13</sup> Accordingly, the order does not preclude states from adopting reporting requirements that may be permitted under state law. Moreover, to the extent AT&T has made any past commitments to state commissions to make particular data available, it has committed to maintain its accounting and data "in a manner that will allow it to provide useable information on a timely basis if requested by the Commission" and "to work with state commissions in its in-region territory to address state needs."<sup>14</sup>

AT&T will maintain Uniform System of Accounts ("USOA") books of account for all regulated operating companies that include account-specific investment, expense and revenue data for individual Part 32 accounts, and it will continue to record revenues and costs consistent with Part 32. This data will be available to the Commission on request. AT&T will maintain Cost Allocation Manual ("CAM") cost allocation ratios by

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<sup>12</sup> *AT&T Cost Assignment Forbearance Order* at ¶¶ 33-34.

<sup>13</sup> *Id.* at ¶¶ 11, 32, 36.

<sup>14</sup> *See* Compliance Plan at 11-13.

Part 32 account as of the data of Compliance Plan approval. In addition, AT&T will perform special cost studies if and when required by the Commission, and will keep records, systems, and personnel sufficient to maintain that capability in case it is needed. AT&T will maintain documentation of its existing methods and procedures for the recording of affiliate transactions, and will account for its affiliate transactions consistent with GAAP. Finally, AT&T has previously made clear that total company cost information will remain available for state regulatory purposes.<sup>15</sup>

**The Bureau should reject efforts to maintain burdensome and unnecessary reporting requirements.**

In contrast to the comments of these state authorities, there were two submissions that were critical of the Compliance Plan. The AdHoc Telecommunications Users Committee argued that AT&T's plan does not satisfy the requirements set out in the *AT&T Cost Assignment Forbearance Order*.<sup>16</sup> It contends AT&T simply expects the Commission to trust it to allocate cost properly, without any oversight. The plan is, AdHoc claims, "a do nothing plan" that would allow AT&T to use "cost assignments of its choosing in the future."<sup>17</sup> Embarq disagrees and urges the Bureau to reject AdHoc's argument.

Sprint Nextel, COMPTel, tw telecom, and One Communications (the Joint Commenters) filed comments echoing AdHoc and repeating their prior advocacy for their

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<sup>15</sup> AT&T Reply at 14 n.38.

<sup>16</sup> Ad Hoc Telecommunications Users Committee Opposition to AT&T's Compliance Plan at 1.

<sup>17</sup> *Id.* at 2.

so-called “Blueprint” for the *AT&T Cost Assignment Forbearance Order*.<sup>18</sup> Like AdHoc, they insist AT&T’s Compliance Plan is inadequate because it discontinues the very regulatory reporting requirements that the Commission found were unnecessary and warranted forbearance. The Joint Commenters fear AT&T would fail to provide useable and timely data if and when required, and believe AT&T could “manipulate” data and the results of any future cost study. Such fears are overplayed. Embarq also competes against AT&T, especially its wireless and long distance affiliates. Embarq does not share these concerns, and the Compliance Plan provides for data reporting whenever the Commission believes it is needed.

In reality, AdHoc and the Joint Commenters simply refuse to accept that the Commission has granted forbearance, however limited, from any cost assignment and reporting requirements, however obsolete. Instead, they push their own “Compliance Plan Blueprint,” which they submitted before AT&T’s plan was even filed.<sup>19</sup> Consistent with their opposition to any deregulatory measures, that “Blueprint” would entirely undo forbearance. While pretending to streamline requirements, it would effectively leave accounting and reporting obligations in place, simply because these parties contend AT&T cannot be trusted to account and report honestly and because they contend the Commission cannot provide effective oversight.

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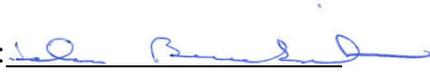
<sup>18</sup> Comments on the AT&T Compliance Plan of COMPTTEL, One Communications, Sprint Nextel, and tw telecom (“Joint Commenters”) at 3.

<sup>19</sup> Letter from James Blaszak, Counsel for AdHoc, to Marlene Dortch, FCC, WC Docket No. 07-21 (July 21, 2008).

Embarq believes the state commission commenters are closer to the mark. The Compliance Plan's approach is "a reasonable step in a changing regulatory environment."<sup>20</sup> AdHoc and the Joint Commenters need to recognize, as the Commission has recognized, that outdated accounting and reporting rules should not remain on the books indefinitely, especially when data will be available on an as needed basis. Accordingly, the Bureau should approve AT&T's Compliance Plan.

Respectfully submitted,

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September 3, 2008

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<sup>20</sup> PSCW Comments at 2.