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September 15, 2008

Via Electronic Submission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Communication
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

Dear Ms. Dortch:

The Wireline Competition Bureau's ("Bureau") review of AT&T's cost assignment compliance plan proposal has significant ramifications – the plan it approves will determine whether the Federal Communications Commission ("Commission") will be able to obtain the timely and useable cost assignment data it needs from AT&T to meet its statutory oversight obligations. Moreover, the plan it approves for AT&T will set precedent for Verizon and Qwest, which recently received cost assignment forbearance relief on the condition that they file compliance plans as well.[1] AT&T's reply comments, however, highlight serious problems with its proposal. Its response further demonstrates not only that its proposal lacks substance and accountability, but also that any Commission attempt to obtain data under its proposal will likely be met with fierce resistance or even flat refusal. Accordingly, the Bureau must reject AT&T's fatally flawed proposal and demand a plan that will ensure that the Commission and other stakeholders will have access to timely, useable cost assignment data.

AT&T's response seems to ignore that the Commission has placed the burden on AT&T to satisfy the Bureau that it "will implement a method of preserving the integrity of its accounting system in the absence of the Cost Assignment Rules."[2] AT&T's misguided attack on

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[1] *See Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Docket No. 07-139, FCC 08-203 (rel. Sept. 6, 2008) at ¶ 30.

[2] *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement Of Certain of the Commission's Cost Assignment Rules and 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 and 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*) at ¶ 31 (emphasis added), *pet. for recon pending, pet. for review pending*, NASUCA v. FCC, Case No. 08-1226 (D.C. Cir. filed June 23, 2008). The statutory provisions, Commission rules, and related reporting requirements from which AT&T obtained forbearance collectively will be referred to

the "Blueprint For A Compliance Methodology Cost Assignment Plan" ("Blueprint")[3] is a thinly veiled attempt to divert the Bureau's attention away from the true task at hand – to conduct a thorough and rigorous review of AT&T's compliance plan. The purpose of the Blueprint is to offer an outline for an alternative approach that would retain timely and useable data the Commission said it needed, while simultaneously reducing AT&T's burden. It is hardly a new cost assignment system and certainly does not undo the forbearance grant. The Blueprint uses existing assignment techniques, such as direct assignment where possible, and uses allocation only where necessary. In addition, it simplifies assignment by requiring assignment of costs only to the interstate access elements.

AT&T attacks the Blueprint in an attempt to distract the Bureau away from its own empty compliance plan proposal. As discussed in greater detail in earlier comments, AT&T's plan merely halts ongoing allocations and maintains in a file drawer old Methods and Procedures ("M&P") materials for making those allocations, while reserving for AT&T the right to update allocation ratios and conduct special studies whenever AT&T deems it necessary.[4] Thus, this plan fails to preserve anything meaningful, and any action taken would be subject to AT&T's sole discretion.

The Commission envisioned something more substantive than what AT&T is proposing. AT&T already is required by statute to provide the Commission data upon request. As the Commission noted in its *AT&T Cost Assignment Forbearance Order*, "[e]ven 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."[5] Indeed, the Commission invokes its statutory authority to obtain various types of data from carriers on a regular basis. Requiring a compliance plan *on top* of this general statutory requirement to produce data, however, clearly indicates that the Commission expects something more to ensure that this critical data will be available and reliable to serve its needs. The Commission expects AT&T to take affirmative, proactive measures to "implement a method of preserving the integrity – for both costs and revenues – of its accounting system."[6] AT&T's current compliance plan proposal, however, would not implement anything. Its proposal would simply let its current system lie dormant and eventually whither away without any alternative measures in its place that would guarantee that the Commission will be able to obtain the data it needs.

Furthermore, AT&T's response fails to address its plan's lack of accountability. Specifically, AT&T claims that it cannot provide details regarding future cost allocation ratio updates and special cost studies it would perform at its own discretion because such actions would depend on a host of variables.[7] While there are undoubtedly a number of scenarios under which cost studies would need to be updated or special studies would need to be performed, AT&T fails to respond to the fact that any process it undertakes using its proposed compliance plan would be *entirely subject to its own discretion* and thus vulnerable to manipulation.

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herein as the "Cost Assignment Rules." The data the Cost Assignment Rules generate will be referred to herein as "cost assignment data."

[3] "Blueprint For A Compliance Methodology Cost Assignment Plan" filed by AdHoc Telecommunications Users Committee, COMPTEL, tw telecom inc. and One Communications Corp. on July 7, 2008 ("Blueprint").

[4] *See* Comments of Sprint Nextel Corporation, COMPTEL, tw telecom inc., and One Communications Corp (filed Aug. 19, 2008).

[5] *AT&T Cost Assignment Forbearance Order* at ¶ 21.

[6] *Id.*

[7] AT&T Reply Comments at 5-7.

Accountability is necessary, regardless of the factors present. At a minimum, the compliance plan must include provisions for other parties to review and comment on any proposed updated studies, just as they now can review such updated studies in the Cost Allocation Manuals.

In addition, AT&T's telling response reveals that it has no intention of maintaining the data in a manner that the Commission required in the *AT&T Cost Assignment Forbearance Order*. AT&T apparently believes that taking any action to implement a compliance plan other than storing old software and manuals would be overly burdensome and costly. AT&T's stance should make it clear to the Bureau that if it approves AT&T's proposed plan as is, any future request the Commission makes for the data will likely be met with protest and claims that such requests are too costly and burdensome to satisfy.

Moreover, AT&T's rant about special access exemplifies exactly why access to cost assignment data under the compliance plan is so important. The Commission expressly stated that "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."[8] If the data would show that AT&T's special access rate of return is continuing to rise even further above 100% (which given the recent history of AT&T's reported special access earnings we expect it would), then the Commission should want to revisit its price cap plan for AT&T. Indeed, such a review of its policy appears to be one of the very purposes for which the Commission felt it needed to have the data available in a timely and useable manner through the compliance plan.

AT&T's reply also foreshadows potential problems the Commission can expect down the road if tries to obtain cost assignment data under this plan. AT&T states that "none of these cost assignments matter" with respect to special access.[9] Thus, it is reasonable to assume that any Commission request for what AT&T deems a "meaningless mass of data" [10] for this purpose will likely be met with objections and excuses as to why the data cannot be provided. Therefore, it is critically important that Bureau act now while it has some leverage to ensure that AT&T's compliance plan is substantive and reliable enough to generate the data the Commission undoubtedly will need to satisfy its statutory responsibilities. Unless and until AT&T comes up with a real cost assignment compliance plan, the Bureau cannot approve AT&T's current proposal.

Respectfully submitted,

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cc: Amy Bender
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[8] *AT&T Cost Assignment Forbearance Order* at ¶ 19.
[9] AT&T Reply Comments at 15.
[10] *Id.* at 16.