

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering	)	WC Docket No. 08-190
	)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements	)	WC Docket No. 07-139
	)	
Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)	)	
	)	
Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements	)	WC Docket No. 07-204
	)	
Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements	)	
	)	
Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement Of Certain of the Commission's Recordkeeping And Reporting Requirements	)	WC Docket No. 07-273
	)	
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
	)	

## OPPOSITION OF QWEST CORPORATION

Qwest Corporation and its affiliates (“Qwest”)<sup>1</sup> hereby submit this Opposition to petitions for reconsideration (“PFRs” or “petitions”) filed by Sprint Nextel Corporation, COMPTEL, tw telecom inc., and One Communications Corp. (jointly referred to as “Sprint” or “Sprint *et al*”) and AdHoc Telecommunications Users Committee (“AdHoc”)<sup>2</sup> requesting that the Federal Communications Commission (“Commission”) reconsider its *ARMIS Forbearance Order* forbearing from applying its cost assignment rules to Qwest and Verizon.<sup>3</sup> Specifically, AdHoc and Sprint (also referred to jointly as “forbearance opponents” or “opponents”) ask the Commission to reverse its decision to forbear from applying the cost assignment rules to Qwest and Verizon.

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<sup>1</sup> The term Qwest and its affiliates includes three Qwest incumbent local exchange carriers (“ILECs”): Qwest Corporation, The El Paso County Telephone Company and Malheur Home Telephone Company.

<sup>2</sup> AdHoc Telecommunications Users Committee Petition for Reconsideration, WC Docket Nos. 08-190, 07-139, 07-204, 07-273 and 07-21, filed Oct. 6, 2008. Sprint Nextel Corporation, COMPTEL, tw telecom inc., and One Communications Corp. Petition for Reconsideration, WC Docket Nos. 07-21, 07-204 and 07-273, filed Oct. 6, 2008.

<sup>3</sup> *In the Matter of Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements, Petition of Qwest Corporation for Forbearance from Enforcement of the Commission’s ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements, Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements, Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules.*, Memorandum Opinion and Order, (“*ARMIS Forbearance Order*”), WC Docket Nos. 08-190, 07-139, 07-204, 07-273 and 07-21(rel. Sept. 6, 2008).

## I. INTRODUCTION

On April 24, 2008, the Commission released the *Cost Assignment Forbearance Order*<sup>4</sup> granting AT&T and legacy BellSouth's (collectively, "AT&T") petitions for forbearance from Section 220(a)(2) of the Act (to a limited extent) and various Commission rules, including the Cost Assignment Rules (hereafter, referred to as the "Cost Assignment Rules"). Shortly thereafter, on May 27, 2008, AdHoc, Sprint, COMPTTEL, and Time Warner Telecom, Inc. filed a joint petition for reconsideration asking the Commission to reverse its decision to forbear from applying the Cost Assignment Rules against AT&T (hereinafter, the "May 27, 2008 Joint PFR").<sup>5</sup>

In the *ARMIS Forbearance Order* the Commission granted Qwest and Verizon the same relief that it had previously granted to AT&T in the *Cost Assignment Forbearance Order*.

Other than a few introductory comments,<sup>6</sup> the current petitions of AdHoc and Sprint are identical to the May 27, 2008 Joint PFR.<sup>7</sup> In fact, both PFRs incorporate the arguments opposing

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<sup>4</sup> *In the Matter of Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order ("Cost Assignment Forbearance Order" or "AT&T Cost Assignment Forbearance Order"), 23 FCC Rcd 7302 (2008), *pet. for recon. pending*, and *appeal pending sub nom. NASUCA v. FCC*, No. 08-1226 (D.C. Cir. June 23, 2008).

<sup>5</sup> Sprint Nextel Corporation, COMPTTEL, AdHoc Telecommunications Users Committee and Time Warner Telecom Inc. Petition for Reconsideration, WC Docket Nos. 07-21 and 05-342, filed May 27, 2008.

<sup>6</sup> The Commission should reject AdHoc's attempt to compare the current financial crisis and Securities and Exchange Commission regulation to the Commission's decision to forbear from applying its cost assignment rules to AT&T, Verizon and Qwest. *See* AdHoc PFR at 3-4. There is simply no parallel between what is happening in the financial markets and the Commission's decision to forbear from applying outdated regulations to price cap companies that were adopted when these companies were subject to pervasive rate-of-return regulation.

<sup>7</sup> The filing parties have been realigned somewhat with two PFRs being filed opposing forbearance granted to Qwest and Verizon in the *ARMIS Forbearance Order* -- with AdHoc filing a separate PFR and Sprint, COMPTTEL, tw telecom inc. and One Communications Corp. jointly filing a second PFR. The only difference in the filing parties between the May 27, 2008

forbearance in the May 27, 2008 Joint PFR in their current petitions.<sup>8</sup> Forbearance opponents' PFRs do not rely on any new facts or changed circumstances that would justify the Commission reconsidering its earlier decision.<sup>9</sup> Nor do opponents' PFRs demonstrate that the Commission's forbearance decision was based on erroneous conclusions of law.<sup>10</sup> Opponents simply disagree with the Commission's decision to forbear and repeat old arguments that have been considered and rejected by the Commission.<sup>11</sup> As such, the Commission should dismiss AdHoc's and Sprint's PFRs.<sup>12</sup>

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Joint PFR and the current PFRs is that One Communications was not party to the earlier joint PFR.

<sup>8</sup> “Given that the Commission’s rationale for granting AT&T cost assignment forbearance applies equally to Verizon and Qwest, the arguments raised in the Petition for Reconsideration of the *AT&T Cost Assignment Forbearance Order* apply equally to the *Verizon/Qwest Cost Assignment Forbearance Order* [also referred to herein as the *ARMIS Forbearance Order*] extending cost assignment forbearance to Verizon and Qwest. Accordingly, Petitioners attach as Exhibit A their Petition for Reconsideration of the *AT&T Cost Assignment Forbearance Order* and request that the arguments therein be applied to the *Verizon/Qwest Cost Assignment Forbearance Order* with respect to the grant of cost assignment forbearance to Verizon and Qwest.” See Sprint PFR at 2. AdHoc uses virtually the same words as Sprint in asking the Commission to incorporate arguments in the May 27, Joint 2008 PFR in its current PFR. See AdHoc at 1-2.

<sup>9</sup> 47 C.F.R. § 1.106(b)(3).

<sup>10</sup> 47 C.F.R. § 1.106(d)(2).

<sup>11</sup> “Under well established Commission[’s] precedent, a party seeking reconsideration must do more than rehash arguments previously made and considered.” See United States Telecom Association’s Opposition to Petitions for Reconsideration (“USTA Opposition”), WC Docket Nos. 07-21 and 05-342, filed June 11, 2008 at 2 (citing *WWIZ, Inc.*, 37 FCC 685 ¶ 2, *aff’d sub. nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert denied*, 383 U.S. 967 (1966)). Also see, Opposition of Verizon to Petition for Reconsideration (“Verizon Opposition”), WC Docket Nos. 07-21 and 05-342, filed June 11, 2008 at 2.

<sup>12</sup> In order to minimize the amount of repetition in this Opposition, Qwest requests that the Verizon Opposition and the USTA Opposition, mentioned in footnote 11, *supra*, as well as the Opposition of AT&T Inc. to Petition for Reconsideration, WC Docket Nos. 07-21 and 05-342, filed June 11, 2008, be incorporated into this Opposition and this proceeding since the issues are unchanged from those in the earlier PFR proceeding on the *AT&T Cost Assignment Forbearance Order*. These Oppositions are included in Attachment A.

## II. THERE IS NO CURRENT FEDERAL NEED FOR THE COST ASSIGNMENT RULES

In forbearing on its own motion from applying the Cost Assignment Rules to Qwest and Verizon, the Commission concluded that “there is no current, federal need for the Cost Assignment Rules, as they apply to Verizon and Qwest, to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest.”<sup>13</sup> AdHoc and Sprint have presented no evidence that the Commission has a current federal need for the Cost Assignment Rules as applied to Verizon and Qwest under price cap regulation. Forbearance opponents have simply reiterated the same arguments and speculative claims that they raised in opposing forbearance for AT&T.

As AT&T pointed out, the fact that the Commission may want or even need some cost information for regulatory purposes at some point in the future is not sufficient justification for retaining outdated regulations that have no current use.<sup>14</sup> In order to find that a regulation is “necessary” under Section 10 a “strong connection” must exist “between what the agency has done by way of regulation and what the agency permissibly sought [seeks] to achieve with the disputed regulation.”<sup>15</sup> In granting forbearance, the Commission could not find a “strong connection” between maintaining its cost assignment rules and “a possible need for the

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<sup>13</sup> *ARMIS Forbearance Order* ¶ 27 (citing *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd 7307 ¶ 11 where the Commission found that Section 10’s three forbearance criteria had been satisfied.).

<sup>14</sup> “The D.C. Circuit has made clear, however, that section 10 does 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.” See *AT&T Opposition* at 1-2, citing *Cellular Telecommun. And Internet Ass’n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (“*CTIA*”). Also see, *id.* at 1-5.

<sup>15</sup> *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7313-14 ¶ 20, also citing *CTIA* in footnote 14, *supra*.

information to modify rate regulation at some point in the future.”<sup>16</sup> AdHoc and Sprint have provided no evidence of a “strong connection” between continued enforcement of the cost assignment rules and any future needs for such information for regulatory purposes. Nor is the Commission’s decision to condition forbearance on a compliance plan a concession that the cost assignment rules remain necessary, as AT&T observed in its earlier Opposition.<sup>17</sup> In summary, AdHoc and Sprint have provided no evidence that there is a current federal need to continue to enforce the cost assignment rules against Qwest, Verizon or AT&T.

### **III. RATE-OF-RETURN-BASED COST ASSIGNMENT RULES ARE NOT NECESSARY TO ENSURE THAT PRICES ARE JUST AND REASONABLE UNDER PRICE CAP REGULATION**

Most of the cost assignment rules were adopted as a result of the Commission’s *Computer Inquiry III Decision* in 1987 which allowed ILECs to provide regulated and non-regulated services on an integrated basis.<sup>18</sup> At the time, Qwest and Verizon and most other ILECs were subject to cost-based, rate-of-return regulation at the federal level. In such a regulatory environment, the cost assignment rules helped to ensure that ILECs’ interstate rates were just, reasonable and not unreasonably discriminatory. This is no longer the case in today’s price cap environment.

The remnants of rate-of-return regulation that were part of the original price cap plan -- sharing and the low-end adjustment -- have long since been eliminated from price cap regulation of Qwest and Verizon. Likewise, any reasonable basis for claiming that the cost assignment

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<sup>16</sup> *Id.*

<sup>17</sup> AT&T Opposition at 4-5. Similarly, forbearance opponents’ argument that the compliance plan condition is somehow inadequate fails to hold water. *Id.* at 4-5 and 14-15.

<sup>18</sup> See *In the Matter of Amendment of Section 64.702 of the Commission’s Rules and Regulations*, Report and Order, 104 FCC 2d 958 (1986), *on recon.*, 2 FCC Rcd 3035 (1987), *on further recon.*, 3 FCC Rcd 1135 (1988), *second further recon.*, 4 FCC Rcd 5927 (1989) (subsequent history omitted).

rules are necessary under price cap regulation disappeared with the elimination of the sharing and low-end adjustment mechanisms. “The Petitioners’ [forbearance opponents] 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.”<sup>19</sup> Furthermore, there is no basis for Sprint’s claim that the Commission used cost assignment data to adjust price cap rates in the *CALLS Order*.<sup>20</sup> As AT&T stated, “[t]he actual rates and price caps in the CALLS Plan were established through an industry-wide negotiation and settlement process, and the Commission merely cited 1999 ARMIS data in a footnote as part of its explanation for approving the settlement.”<sup>21</sup> Thus, contrary to forbearance opponents’ claims, continued enforcement of the cost assignment rules against Qwest and Verizon is not necessary under price cap regulation.

Furthermore, forbearance does not relieve Qwest and Verizon of the obligation to provide cost accounting data that the Commission may request to fulfill its regulatory responsibilities in the future.<sup>22</sup>

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<sup>19</sup> AT&T Opposition at 5-6, citing the *Access Charge Reform Order*, 12 FCC Rcd 15982, 16107-08 ¶ 292 (1997); *USTA v. FCC*, 188 F.3d 521, 530 (D.C. Cir. 1999); and *Southwestern Bell Tel. v. FCC*, 153 F.3d 523, 546-47 (8<sup>th</sup> Cir. 1998).

<sup>20</sup> Sprint PFR at 7-9.

<sup>21</sup> AT&T Opposition at 8-9.

<sup>22</sup> “Even without the Cost Assignment Rules, the Act provides the Commission with ample authority -- including section 220 -- to require AT&T [Qwest and Verizon] to produce any accounting data that the Commission needs for regulatory purposes, including rulemakings or adjudications, in the future. We [the Commission] also expressly condition the forbearance granted in this Order on the provision by AT&T [Qwest and Verizon] of accounting data on request by the Commission for its use in rulemakings, adjudications or for other regulatory purposes. To the extent that the Commission requests such data, we require AT&T [Qwest and Verizon] to provide usable information on a timely basis.” *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314-15 ¶ 21 (footnotes omitted).

#### **IV. FORBEARANCE FROM ENFORCEMENT OF THE COST ASSIGNMENT RULES DOES NOT CONFLICT WITH THE SECTION 272 SUNSET ORDER**

In their PFRs, AdHoc and Sprint repeat the same arguments -- regarding conflict between cost assignment forbearance and the *Section 272 Sunset Order* -- they made in opposing AT&T's Petition for Forbearance. In adopting the *AT&T Cost Assignment Forbearance Order*, the Commission considered and rejected AdHoc and Sprint's arguments.<sup>23</sup> Therefore, these arguments should be dismissed as repetitious and without merit.

In rejecting opponents' arguments and finding that the *Section 272 Sunset Order's* requirements did not preclude granting forbearance to AT&T, the Commission concluded "that section 10 compels us to modify the [*Section 272 Sunset Order's*] framework where, as here, the three-prong statutory standard for forbearance is satisfied for AT&T."<sup>24</sup> The same finding applies equally to Qwest and Verizon.

#### **V. FORBEARANCE FROM ENFORCEMENT OF THE COST ASSIGNMENT RULES DOES NOT UNDERCUT ENFORCEMENT OF SECTION 254(K)**

AdHoc and Sprint argue that it is impossible to ensure that Qwest and Verizon (and AT&T) are in compliance with Section 254(k) of the Act if the Commission forbears from enforcing its cost assignment rules.<sup>25</sup> The Commission directly addressed this issue in the *AT&T Cost Assignment Forbearance Order* in response to earlier comments -- and considered and

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<sup>23</sup> "We [the Commission] do not, however, believe that the *Section 272 Sunset Order* precludes us from our actions in this Order [*AT&T Cost Assignment Forbearance Order*]." *Id.* at 7317-18 ¶ 27.

<sup>24</sup> *Id.* As AT&T noted in its Opposition, "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." AT&T Opposition at 12.

<sup>25</sup> May 27, 2008 Joint PFR at 16-18.

rejected these arguments.<sup>26</sup> The Commission found that Qwest and Verizon (and AT&T) remain subject to Section 254(k) and that they had satisfied Section 10's three-prong test for forbearance from the cost assignment rules.<sup>27</sup> In order to assure compliance with Section 254(k), the Commission conditioned forbearance (from the cost assignment rules) on annual certification by Qwest and Verizon (and AT&T) that they will comply with Section 254(k)'s obligations.<sup>28</sup> AdHoc and Sprint present no new facts or legal arguments that would justify the Commission modifying the *ARMIS Forbearance Order* on reconsideration.<sup>29</sup> They simply disagree with the Commission's findings. As such, AdHoc's arguments should be dismissed as repetitious.

## VI. CONCLUSION

As demonstrated in the foregoing sections of Qwest's Opposition and in the earlier Oppositions of AT&T, Verizon and USTA, AdHoc and Sprint have presented no new facts or evidence of changed circumstances that would justify the Commission reconsidering its decision to forbear, in accordance with Section 10 of the Act, from enforcing the cost assignment rules

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<sup>26</sup> "We [the Commission] also reject commenters' contentions that without the affiliate transactions rules, the Commission will be unable to prevent cross-subsidies between competitive and noncompetitive services.... With the continuing statutory obligation [section 254(k)] and this condition in place [annual certification], we are persuaded that the affiliate transactions rules are not needed to prevent cross-subsidies between competitive and noncompetitive services." *AT&T Cost Assignment Forbearance Order* ¶ 30.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* This certification is similar to certifications that the Commission requires mid-sized carriers to file in accordance with Section 64.905. 47 C.F.R. § 64.905.

<sup>29</sup> AT&T Opposition at 12-14.

against Qwest and Verizon. Accordingly, the Commission should deny AdHoc and Sprint's Petitions for Reconsideration.

Respectfully submitted,

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**ATTACHMENT A**

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 mid-sized 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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Dated: June 11, 2008

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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.

**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 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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Its Attorneys

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June 11, 2008

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 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	)	

**OPPOSITION OF VERIZON<sup>1</sup> TO  
PETITION FOR RECONSIDERATION**

Four parties petition for reconsideration to reestablish the antiquated cost assignment rules that the Commission correctly found serve no federal purpose.<sup>2</sup> Petitioners fail to raise any new arguments or facts that warrant reconsideration. The Commission should deny the Petition.

The Commission determined in the *Cost Assignment Forbearance Order* that eliminating the cost assignment rules would result in significant public interest benefits. The Commission found that the cost of continued compliance with these rules, which is ultimately passed on to consumers, cannot be justified because there is no continuing federal need for the rules under price cap regulation in today's competitive market. *Cost Assignment Forbearance Order* ¶ 16.

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<sup>1</sup> The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications, Inc. (collectively "Verizon").

<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) ("*Cost Assignment Forbearance Order*"); see *Petition for Reconsideration of Sprint Nextel Corporation, Ad Hoc Telecommunications User's Committee, CompTel, and Time Warner Telecom Inc.* (collectively "Petitioners"), WC Docket No. 07-21 (May 28, 2008) ("Petition").

The Commission held that eliminating the cost assignment rules will “promote competitive market conditions and enhance competition.” *Id.* ¶ 39. Conversely, the Commission concluded that to leave the cost assignment rules in tact would harm consumers because compliance with the rules hinders introduction and delivery of innovative products and services that consumers demand. *Id.* ¶ 42. Rather than rolling back forbearance relief as Petitioners suggest, the Commission’s holdings in the *Cost Assignment Forbearance Order* militate strongly in favor of expanding relief to other carriers, which the Commission also suggested. *Id.* ¶ 11.

Reconsideration is appropriate only when the petitioning party either demonstrates a material error or omission in the underlying order or raises additional facts not previously known or existing that the Commission failed to consider. *See* 47 C.F.R. § 1.106(c); *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). It is well established that reconsideration “will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken. The public interest in expeditious resolution of Commission proceedings is done a disservice if the Commission readdresses arguments and issues it has already considered.” *Policies Regarding Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations*, Memorandum Opinion and Order, 4 FCC Rcd 2276, 2277 ¶ 7 (1989). Consistent with this policy, the Commission routinely rejects reconsideration petitions that are nothing more than a restatement of arguments previously presented.<sup>3</sup>

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<sup>3</sup> *See e.g., Paging Systems, Inc., Assignor and American Telecasting of Oklahoma, Inc., Assignee*, DA 08-1084, Order on Reconsideration, 2008 FCC LEXIS 3883, at \*17 (May 6, 2008) (denying reconsideration petition that merely “rehashes arguments previously considered and rejected”); *Wireless Properties of Virginia, Inc., Assignor and Nextel Spectrum Acquisition Corp., Assignee*, DA 08-1085, Order on Reconsideration, 2008 FCC LEXIS 3884, at \*14 (May 7, 2008) (same); *Broadcast Entertainment Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 5431, 5432 ¶ 5 (2008) (“A petition for reconsideration that reiterates arguments that

The Commission should deny reconsideration here; Petitioners have done little more than repackage the same arguments they presented previously. Specifically, Petitioners insist that reconsideration of the *Cost Assignment Forbearance Order* is warranted because, according to Petitioners, the cost assignment rules are: (1) necessary to help “identify malfunctioning price caps” and serve “as a benchmark to help reset them” (Petition at 6-10); (2) required for “jurisdictional separations and intercarrier compensation reform” (*id.* at 11-12); (3) used by state regulators “for a wide variety of state regulatory oversight functions” (*id.* at 12); (4) mandated by the Commission’s *Non-Dominant Order*<sup>4</sup> (Petition at 12-15); and (5) required to ensure compliance with 47 U.S.C. § 254(k) (*id.* at 16-18).

However, Petitioners raised these identical arguments in their prior filings, and the Commission considered and properly rejected them.<sup>5</sup> In particular, the Commission concluded

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were previously considered and rejected will be denied”); *General Motors Corp. and Hughes Electronics Corp., Transferors and The News Corporation Ltd., Transferee for Authority to Transfer Control*, Orders on Reconsideration, 23 FCC Rcd 3131, 3135 ¶ 11 (2008) (noting that “the Commission has rejected petitions for reconsideration where the petitioner ‘essentially repeats the same arguments it relied upon in the comments and reply comments it filed’ and ‘fails to raise new arguments or facts that would warrant reconsideration of [the underlying] order’”) (quotation omitted).

<sup>4</sup> *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (“*Non-Dominant Order*”).

<sup>5</sup> *See, e.g.*, Opposition of Time Warner Telecom Inc. at 4-12 (filed March 19, 2007) (arguing that states “remain critically dependent” upon data developed under cost assignment rules); Opposition of the AdHoc Telecommunications Users Committee at 2-9 (filed March 19, 2007) (arguing that cost assignment rules are necessary to ensure just and reasonable special access rates); Reply Comments of the AdHoc Telecommunications Users Committee at 2-3 (filed April 9, 2007) (same); Opposition of Sprint Nextel Corporation at 8-13 (filed March 19, 2007) (arguing that cost assignment rules are necessary to ensure just and reasonable rates and are relied upon by the states “for their own regulatory purposes”); Reply Comments of Sprint Nextel Corporation at 5-6 (filed April 9, 2007) (arguing that cost assignment rules are “critical” for state regulatory purposes and for evaluation of “significant federal policy decisions,” such as “the general reform of intercarrier compensation mechanisms”); *Ex Parte* Letter from Jonathan

that: (1) it “no longer routinely need[s] the accounting data derived from the Cost Assignment Rules for rate regulation functions” (*Cost Assignment Forbearance Order* ¶¶ 18-19); (2) the need for data resulting from the cost assignment rules in other rulemaking proceedings, such as intercarrier compensation, was “speculative,” since such data “may not be relevant” “depending on the approach adopted by the Commission” (*id.* ¶ 45); (3) it had no authority to maintain the cost assignment rules “that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely” (*id.* ¶ 32); (4) the *Non-Dominant Order* did “not preclude” the granting of forbearance, particularly since “section 10 compels us to the modify the framework” when the statutory standard for forbearance has been satisfied (*id.* ¶ 27); and (5) AT&T remains subject to section 254(k), compliance with which AT&T can demonstrate “in the absence of the Cost Assignment Rules” (*id.* ¶ 30).

Petitioners erroneously assert that the *Cost Assignment Forbearance Order* represents an unexplained “departure” from the *CALLS Order*<sup>6</sup> in which the Commission allegedly “used cost data to uncover and help remedy price cap performance issues.” Petition at 8. But this assertion cannot be reconciled with the fact that the rates in the *CALLS Order* were the result of an industry-wide settlement; they were not established or adopted by the Commission using any

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Lechter, Counsel for Time Warner Telecom, to Marlene Dortch, Secretary, FCC (April 16, 2008) (arguing that cost assignment rules are required to ensure compliance with the *Non-Dominant Order* and section 254(k)); *Ex Parte* Letter from James Blaszak, Counsel for AdHoc Telecommunications Users Committee, to Marlene Dortch, Secretary, FCC (April 24, 2008).

<sup>6</sup> See *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”), *aff’d in part, rev’d in part sub. nom.*, *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

“cost data.” In the footnote cited by Petitioners, the Commission simply referenced 1999 cost data in explaining its rationale for approving the settlement that did not target rate reductions to the common line basket, as some commenters had proposed. *CALLS Order*, 15 FCC Rcd at 13033 ¶ 171, n.376.

Nor does the *Cost Assignment Forbearance Order* represent a “departure” from the Commission’s alleged “traditional” use of “benchmarking,” which Petitioners portray as “a cornerstone of its efficient enforcement approach for years.” Petition at 22; *see id.* at 9, n.28. This portrayal ignores the Commission’s decision in *AT&T, Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5755 ¶ 189 (2007) (“*AT&T/BellSouth Order*”), in which it concluded that benchmarking “does not represent as useful or important a regulatory tool as the Commission previously believed,” noting that, since its 1999 *Ameritech/SBC Order*<sup>7</sup> (upon which Petitioners rely), it has “rarely used benchmarking in either rulemaking or enforcement proceedings.” Petitioners do not address, let alone attempt to distinguish this conclusion. Similar to commenters in the *AT&T/BellSouth Order*, while stressing the purported importance of benchmarking to the Commission’s enforcement scheme, Petitioners do not cite a single enforcement decision in which the Commission referenced, let alone relied upon benchmarking evidence. *AT&T/BellSouth Order*, 22 FCC Rcd 5662, at ¶ 189.

Petitioners also complain generally about the Commission’s decision to condition forbearance upon AT&T’s providing accounting data as requested for future regulatory purposes and filing a compliance plan explaining how it will satisfy this condition. *Cost Assignment*

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<sup>7</sup> *Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) (“*Ameritech/SBC Order*”).

*Forbearance Order* ¶¶ 21 & 45. These complaints ring hollow. Notwithstanding Petitioners' suggestion to the contrary, these conditions do not "reaffirm [] that price cap regulation requires the cost assignment rules." Petition at 6. That the Commission may desire unspecified revenue and cost data for a regulatory purpose in the future cannot reasonably be read as an endorsement that the cost assignment rules should remain in place in perpetuity. Rather, as the Commission explained at great length, the cost assignment rules themselves are "overbroad" and are not necessary to ensure just, reasonable, and nondiscriminatory rates or to protect consumers in today's competitive environment. *Cost Assignment Forbearance Order* ¶¶ 10-11 & 44.

Moreover, there is no merit to Petitioners' argument that the Commission "is improperly relinquishing its regulatory responsibilities" to AT&T by conditioning relief on AT&T filing a compliance plan that is acceptable to the Wireline Competition Bureau. Petition at 20. This argument overlooks the role of the Bureau, to which the Commission has delegated: (i) the authority to prescribe the requirements of and approve the compliance plan; and (ii) the responsibility to determine that, in the absence of the cost assignment rules, "AT&T will implement a method of preserving the integrity of its accounting system ...." *Cost Assignment Forbearance Order* ¶ 31. The Commission found that this delegation was consistent with its rules and "existing procedures," *id.* – a finding that Petitioners do not and cannot dispute.<sup>8</sup>

Because the Bureau, acting on behalf of the Commission, ultimately will pass on the adequacy of

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<sup>8</sup> See 47 C.F.R. § 0.91(e) (listing the functions of the Bureau, including to "[d]evelop and administer rules and policies relating to incumbent local exchange carrier accounting."); 47 C.F.R. § 0.291 (delegating authority to the Bureau chief to "perform all functions of the Bureau"); 47 C.F.R. § 0.203 (directing that "[t]he person, panel, or board to which functions are delegated shall, with respect to such functions, have all the jurisdiction, powers, and authority conferred by law upon the Commission, and shall be subject to the same duties and obligations.")

the compliance plan before forbearance goes into effect, AT&T is not being permitted “to regulate itself,” as Petitioners maintain. Petition at 21.

Equally without merit is Petitioners’ claim that the compliance plan condition will make it more difficult to file complaints under section 208 because third parties will be denied access to cost assignment data that, according to Petitioners, serve “as objective evidence of unlawful conduct, such as price gouging or unlawful cross-subsidization ....” Petition at 22-24. First, this claim is a rehash of Petitioners’ argument that the cost assignment data are necessary to ensure just, reasonable, and nondiscriminatory rates – an argument that the Commission considered and properly rejected. *Cost Assignment Forbearance Order* ¶¶ 16-18.

Second, it is falsely premised on the notion that “earning levels” and costs are still relevant to evaluating whether rates established under price cap regulation are just and reasonable, which is not the case. *Cost Assignment Forbearance Order* ¶ 17 (“price cap regulation severs the direct link between regulated costs and prices”) (quoting *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, 7596 ¶ 55 (1991), *vacated in part sub. nom., California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert denied*, 514 U.S. 1050 (1995); and *United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir. 1993) (“[Price cap regulation] reduces any BOC’s ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling.”)); *see also Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 2035 ¶¶ 129-130 (2005) (questioning “reliance on accounting rate of return data to draw conclusions about market

power” and rejecting argument that such data support finding that special access rates “violate[] section 201 of the Communications Act”).

Third, there is no requirement, let alone any need for a party filing a section 208 complaint to rely upon cost data, particularly the antiquated data generated under the cost assignment rules. To the extent a party believes that a carrier is charging unjust or unreasonable rates, that party can bring a section 208 complaint based upon rate comparisons, benchmarks, or non-cost factors – evidence the Commission frequently uses to evaluate whether rates are just and reasonable. *See, e.g., AT&T Corp. v. Business Telecom, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12312, 12323-24 ¶ 23 (2001). Because forbearance from the cost assignment rules does not foreclose Petitioners or any third party from bringing a complaint based upon such evidence, the Commission’s finding that complaints under section 208 remain a “viable option for enforcing the provisions of the Act and the Commission’s rules” is entirely correct. *Cost Assignment Forbearance Order* ¶ 22.

For these reasons, the Commission should deny the Petition for Reconsideration.

Respectfully submitted,

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June 11, 2008

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **OPPOSITION OF QWEST CORPORATION** to be: 1) filed with the FCC via its Electronic Comment Filing System in WC Docket Nos. 08-190, 07-139, 07-204, 07-273 and 07-21; 2) served via e-mail on Alan Feldman, Industry Analysis and Technology Division, Wireline Competition Bureau at [alan.feldman@fcc.gov](mailto:alan.feldman@fcc.gov); 3) served via First Class United States Mail, postage prepaid, on the parties listed on the attached service list; and 4) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

/s/Richard Grozier

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