

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of
Amendment of Certain of the
Commission's Part 1 Rules of Practice
and Procedure and Part 0 Rules of
Commission Organization

GC Docket No. 10-44

COMMENTS OF AT&T INC.

AT&T Inc. (AT&T) files the following comments in response to the Commission's *Notice* issued in this proceeding.¹

A. Reconsideration of Agency Decisions —

Delegated authority given to Bureau Chiefs to dismiss or deny petitions for reconsideration in rules 1.106 and 1.429 should be strictly limited.

The Commission is seeking comments on its proposal to amend its rules 1.106 and 1.429, pertaining to petitions for reconsideration, to delegate authority to the Bureau Chiefs to dismiss or deny petitions for both technical and substantive defects. To this end, the Commission has proposed a non-exclusive list of such defects that would be grounds for dismissal or denial.² The basis for this list is the Commission's initial conclusion that petitions suffering from such defects "do not warrant consideration by the full Commission."³

As a general proposition, the Commission's proposal is sound, especially if it will lead to the speedier resolution of such petitions. Too many petitions (see discussion below) languish for years on the Commission's shelf pending resolution. Nevertheless, the recommendation that the list of defects be "non-exclusive" is worrisome. It is reasonable to conclude that every viable reason for dismissing or denying petitions for reconsideration on delegated authority will be

¹ *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, Notice of Proposed Rulemaking*, __ FCC Rcd __, 2010 FCC LEXIS 1084 (2010) (*Notice*).

² *Notice* at ¶ 4.

³ *Id.*

illuminated in this proceeding. That being the case, the better practice would be to tighten up the delegated authority by making the list *exclusive* and thereby avoid any future hassle over the basis used by the Bureau Chief to dismiss or deny without benefit of a full Commission review.⁴

B. Docket Management —

1. The Commission’s proposal for expanded use of docketed proceedings is not entirely clear, but AT&T counsels against making an Enforcement Bureau investigation a docketed proceeding.

The Commission is seeking comment on expanding its use of docketed proceedings. Among the questions posed is whether there are “particular proceedings that do not lend themselves to the docket system and should continue to be handled in a non-docketed manner.”⁵ It is not clear from the *Notice* just how far the Commission is interested in extending the docket system. Regardless, the docket system should not be extended to include Enforcement Bureau investigations.

The Enforcement Bureau routinely investigates the activities of entities regulated by the Commission as a means of ensuring compliance with the Act and Commission Rules. Many of these investigations do not result in findings of wrongdoing or the issuance of a Notice of Apparent Liability. As such, it would be inadvisable to docket these investigations. The Commission should wait until a decision has been made to issue a Notice of Apparent Liability to raise the profile of such matters by employing the docket system.

2. Before terminating dockets, the Chief, Consumer and Governmental Affairs Bureau, should issue a public notice identifying the docket in question and the grounds for termination.

The Commission has proposed amending rule 0.141 to authorize the Chief, Consumer and Governmental Affairs Bureau (CGB), to “[p]eriodically review[] the status of open docketed

⁴ To this end, it is important to remember that under existing rules, decisions made under delegated authority are subject to review by the full Commission. *See* Commission Rule 1.115, petitions for review. Making the list exclusive might obviate future challenges under rule 1.115 based on a claim that the grounds relied on by the Bureau Chief to dismiss or deny a petition for reconsideration were improper.

⁵ *Notice* at ¶ 11.

proceedings and, in consultation with the relevant bureau or office with responsibility for a particular proceeding, close[] any docket in which no further action is required or contemplated.”⁶ As written, this proposal is woefully insufficient.

In addition to consulting with the relevant bureau or office, the CGB must give adequate public notice of its initial conclusion that a docket is a candidate for termination, including the basis for this conclusion, and allow interested persons reasonable opportunity to provide comments. “Reasonable opportunity” can depend on the circumstances surrounding the public notice—*e.g.*, the number of dockets listed, the basis for concluding that the docket is a candidate, the time of year, *etc.*⁷ The proposed amendment to rule 0.141 should provide these safeguards.

3. The fact that a docket may appear dormant does not mean that parties are not interested in the outcome of pending docketed proceedings.

The Commission has also asked whether “there [is] some minimum period of dormancy (*i.e.*, when no pleadings have been filed) that might indicate a particular docket is a candidate for termination.”⁸ AT&T opposes such termination if it means that the Commission would close a docket without taking action on pending matters and thus potentially deny interested parties the right to seek judicial review of them. The fact that no pleadings have been filed in a particular docket for some period of time does not necessarily mean that the docket is actually dormant or inactive, or that parties to a proceeding in that docket are no longer interested in a decision or that they have otherwise voluntarily relinquished their right to seek review of any adverse Commission action. The fact that no pleadings have been recently filed in a docketed matter could as easily mean that the matter is ripe for decision, but the Commission has decided not to act for reasons that have nothing to do with the legal, factual, and/or policy merits of the issues raised in that proceeding (such as, competing demands on Commission time and resources or

⁶ *Notice* at Appendix, Proposed Rules, § 0.141 Functions of the Bureau.

⁷ The Commission notes that it has “more than three thousand open documents.” *Notice* at ¶ 19. It is not inconceivable, therefore, that a public notice of termination could include a significant number of dockets to review and comment on.

⁸ *Id.*

political expediency). Indeed, meritorious petitions often languish for years in a docket without Commission or Bureau action.

AT&T's own experience illustrates the problem. On January 10, 2005, AT&T (then, SBC Communications Inc.) filed an "Application for Review of Action Taken Pursuant to Delegated Authority," challenging a decision by the Wireline Competition Bureau (WCB) affecting the significance of revisions to a carrier's Form 499-A Telecommunications Reporting Worksheet. With respect to Worksheet revisions not submitted within 12 months of the due date of the original filing, the WCB decided to reject such revisions as untimely if the revision would result in a *decrease* in a carrier's contributions to federal universal service support mechanisms, but to accept any such revisions if they would *increase* a carrier's contributions.⁹ Although the WCB couched its decision as being purely procedural, the order actually established a new, substantive rule that provides disparate treatment to Worksheet revisions depending on whether they would increase or decrease a carrier's USF contributions, and thus went to the substance of the underlying universal service program. As such, the WCB's action exceeded the scope of its delegated authority, and was unlawful. AT&T sought full Commission review of that decision because doing so is a prerequisite to seeking judicial review of the decision.

Although five years have now passed since the pleading cycle on AT&T's Application closed, the Commission has failed to take any action. In the interim, AT&T has, from time to time, contacted Commission staff to inquire about the status of its Application.¹⁰ The mere fact that some time has passed since AT&T and other interested parties *filed a pleading* in the docket does not mean that they are not interested in the outcome of the proceeding, or that they have waived their right to appeal an adverse decision. Accordingly, the Commission should ensure that any action it takes here fully respects the interests of AT&T and other parties in obtaining a

⁹ SBC Communications Inc.'s "Application for Review of Action Taken Pursuant to Delegated Authority," CC Docket No. 96-45, CC Docket 98-171, CC Docket 97-21 (Jan. 10, 2005).

¹⁰ While AT&T could seek mandamus to force Commission action, doing so is costly, time-consuming, and typically results in further delay. While this avenue is problematic, AT&T reserves the right to use it if the alternative—*i.e.*, further unnecessary delay—makes it more cost effective.

decision on the merits of pending proceedings in so-called dormant dockets. Thus, if the Commission decides to establish a “minimum period of dormancy,”¹¹ it should make clear that docket terminations based on dormancy constitute effective denials and final determinations of any outstanding petitions or other pleadings in that docket in order to preserve parties’ rights to appeal.

Respectfully submitted,



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¹¹ Notice at ¶ 19.