

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

In the Matter of

Comment Sought on Benefits and Burdens of  
Requiring Commenters to File Cited Materials  
in Rulemaking Proceedings as Further Reform  
to Enhance Record-Based Decisionmaking

GC Docket No. 10-44

**COMMENTS OF AT&T INC.**

AT&T Inc. (AT&T) files these Comments in response to the Commission’s Public Notice (Notice), seeking comments on the “whether . . . commenters [should] file materials they cite in pleadings submitted in rulemaking proceedings, so that those materials are more easily accessible to all interested parties.”<sup>1</sup> The purported aim of the proposal is “to improve efficiency and transparency” in the Commission’s operations.

**I. DISCUSSION**

In general, AT&T supports the Commission’s efforts to improve efficiency and transparency in its rulemaking process. But, quite frankly, AT&T is baffled by the Commission’s proposal in this case. The Commission fails to make the case in the Notice that there is a systemic problem that needs addressing or that the proposal, which most assuredly would impose costs and other burdens on commenters, is reasonably tailored to promote transparency and “robust public participation” in the Commission’s rulemaking process. Moreover, the proposal also runs afoul of the Paperwork Reduction Act (PRA) and the recent Executive Order of President Obama. In short, the proposal appears to be a solution, which imposes unnecessary burdens, looking for a problem. In light of this, AT&T urges the Commission to abandon this proposal in its entirety.

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<sup>1</sup> *Comment Sought on Benefits of Requiring Commenters to File Cited Materials in Rulemaking Proceedings as Further Reform to Enhance Record-Based Decisionmaking*, Public Notice, DA 11-1950 (rel. Nov. 29, 2011) (Notice).

**A. The Commission should not adopt the proposal to require submission of “full copies” of any materials cited in commenters pleading or *ex-parte* notices because there is no evidence that the present practice adversely affects transparency.**

The Commission does not make the case that there is any problem that needs addressing. The Notice doesn't mention any occasion on which a commenter cited material in his or her pleading that was unavailable to the public.<sup>2</sup> Even if it had, however, the Commission would still have to show, at a very minimum, that this problem was widespread—and hence worthy of regulatory redress—and that the best way to remedy the problem would be to adopt the Commission's proposal to require submission of “full copies.”<sup>3</sup>

That said, the Commission's proposal appears to be based on the conclusion that efficiency and transparency in its proceedings requires spoon feeding the public information cited by and relied on by commenters. Yet, the opposite is true. As for efficiency, requiring commenters to download into the Commission's Electronic Comment Filing System (ECFS) “full copies” of voluminous material would seem to be the antithesis of efficiency. While it is impossible to reasonably quantify the impact on the ECFS database, it is clear that the burden on that database will grow and most likely make access to filings considerably more unwieldy.<sup>4</sup>

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<sup>2</sup> The references to complaints raised concerning “two major proceedings” set out in the text of the Notice and “supported” in footnote 8 appear directed solely to the efforts of the Commission staff to add “collections of materials” that parties did not submit in the record. The staff's aims appear to have been to facilitate access, but there is no evidence that the materials “added” by staff were inadequately referenced by the commenters in their pleadings, *etc.* or generally unavailable to the public. Indeed, many of the documents referenced were either clearly publicly available (*e.g.*, state statutes, blog posts, public financial filings, information from websites) or were not materials generated for or by commenters (*e.g.*, FCC working papers, transcripts from FCC workshops). And the commenters voicing concern seem to have directed them to the Bureau's actions and not the failure of commenters to properly alert the public to identity of materials brought to the Commission's attention in their filings. In short, from the perspective of commenters, there doesn't appear to have any failure to provide regulatory transparency.

<sup>3</sup> As the Commission provides no direction as to the meaning of the term “full copies,” we are left to wonder what kind of submission would be needed to satisfy any rule ultimately adopted. For example, if a commenter referred to the Commission's own publicly available National Broadband Plan in his or her pleading, would the commenter have to “attach” the entire plan or merely the relevant chapter or paragraph?

<sup>4</sup> The Commission has a 10Mb limit on documents filed in the ECFS. It is not yet clear whether filing “full copies” of the types of documents referred to in the Notice—*e.g.*, state statutes, academic articles, financial reports/filings, transcripts, *etc.*—would result in commenters

As for transparency, the availability of information through the Internet and other public resources has already addressed that issue.<sup>5</sup> If commenters are properly citing referenced material and/or providing access through the use of embedded URLs and hyperlinks, the information is for the most part a few key strokes away from the reader.<sup>6</sup> Transparency doesn't require the Commission to fill in all the valleys and level all the hills for the public. If the material is generally available—albeit even if it takes a little effort to retrieve—then transparency is satisfied. The use of the proper citations or the use of hyperlinks is sufficient to provide transparency and promote public participation—without clogging up the ECFS or the hard drives of interested persons seeking to download comments—because a citation or a hyperlink adequately informs interested persons what the commenter is proposing to the Commission and what the Commission is being asked to consider in rendering a decision.

**B. The Commission should not adopt the proposal to require submission of “full copies” of any materials cited in commenters pleading or *ex-parte* notices because it is contrary to the PRA and President Obama’s Executive Order.**

The proposal will indubitably impose additional burdens on commenters without any discernable benefit. In addition to any time and effort involved in just deciding what “full copies” need to be filed with the pleading, producing a copy of the material(s), organizing the attachments, reproducing the filing in the appropriate electronic format, and filing the voluminous document in the ECFS, commenters might also incur costs making sure that they are in fact free to reproduce and file such material(s).<sup>7</sup> All in all, the proposal will add time and

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more frequently exceeding this limit. But it is clear that the filings would be considerably larger and more difficult to manipulate and manage.

<sup>5</sup> Transparency is defined as “being the quality of being transparent.” Transparent means, in this context, “easily seen through, recognized, or detected.” Dictionary.Com: <http://dictionary.reference.com/browse/transparent>.

<sup>6</sup> The Commission could consider providing acceptable formats for citing to different materials or adopting a recognized standard of citation, like The Bluebook: A Uniform System of Citation.

<sup>7</sup> Under the Commission’s rules, electronic “filings containing text should be submitted in a format conducive to electronic search and/or copying, . . . , [and] filings containing non-text information should be submitted in native format.” *Amendment of Certain of the Commission's*

staffing costs in addition to any costs associated with reproduction. In light of the Commission's failure to make the case that there is in fact a pressing problem in need of regulatory redress, a cost-benefit analysis favors rejecting this proposal.

The proposal should also be rejected under any PRA analysis. The aim of the PRA is to reduce the regulatory filing burden on the public.<sup>8</sup> This proposal flies in the face of that statutory obligation, because it increases the paperwork obligation on the public without a showing that the obligation "is necessary for the proper performance of the functions of the agency."<sup>9</sup> And just as bad, the proposal is in direct contravention to President Obama's Executive Order on improving regulation and regulatory review, which directs the Commission and other federal agencies to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs,"<sup>10</sup>—a determination which is missing in this case.<sup>11</sup> The aim of the President's order was actually to bolster confidence in federal regulations by adopting the principal that government regulates best when it regulates least. In the instant case, the Commission is violating that principal by rushing to impose a regulation in the absence of real need.

## **II. CONCLUSION**

AT&T Inc. respectfully asks the Commission to consider these comments in its deliberations on this matter.

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*Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, Report and Order, 26 FCC Rcd 1594, 1602 para. 20 (2011).*

<sup>8</sup> See 44 U.S.C. § 101 *et seq.* The PRA, among other things, requires the agency to "certify . . . that each collection of information submitted to the Director [of the OMB] for review under section 3507. . . is necessary for the proper performance of the functions of the agency, including that the information *has practical utility*; . . ." 44 U.S.C. § 3506 (c) (emphasis added). The PRA defines practical utility as "mean[ing] the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion." 44 U.S.C. § 3502 (11). As noted above, the Commission's case for imposing this paperwork obligation on the public is not to facilitate the Commission's deliberations, but rather to address some yet undemonstrated lack of transparency.

<sup>9</sup> *Id.*

<sup>10</sup> EXEC. ORDER NO. 13,563 (rel. Jan. 18, 2011) .

<sup>11</sup> The Order also directs the Commission to "specify performance objectives, rather than specifying behavior . . ." This would be consistent with directing commenters to provide sufficient information in citations to enable interested parties to obtain access to cited material(s).

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By: \_\_\_\_\_ /S/

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