

MEMORANDUM

Date : April 5, 2007
(The Meeting of April 12, 2007)

To : Commissioners
Telecommunications Advisors

From : Natalie Wales, Legal Division
Charles Christiansen, Telecommunications Division

Subject: AT&T Petition for Forbearance From FCC Cost Assignment Rules –
FCC Request for Comment

On behalf of itself and its affiliates, AT&T asks the Federal Communications Commission (FCC) for forbearance from enforcing certain “cost assignment rules,” including those related to: jurisdictional separations (Part 36 of the FCC’s rules),¹ nonregulated activities (§ 32.23), affiliate transactions (§ 32.27), cost allocation (Part 64, Subpart 1), cost apportionment (Part 69, Subparts D and E), and other related rules.² In response to a *Public Notice* seeking comment on the petition,³ parties filed Comments on March 19, 2007. Reply Comments are due on April 9, 2007. By this memo, staff seeks permission to file Reply Comments with the FCC.

I. Background

The FCC rules from which AT&T seeks forbearance fall within the four-step process by which rates for the intrastate and interstate services of incumbent local exchange carriers

¹ Unless otherwise stated, references to rules will be to those codified in Title 47 of the Code of Federal Regulations (47 C.F.R.). 47 C.F.R. Part 36.

² *AT&T Inc. Petition for Forbearance*, WC Docket No. 07-21, *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*, (January 25, 2007), at 1, note 2. A petition by BellSouth seeking similar relief that was filed in WC Docket No. 05-342 was later withdrawn by AT&T (after the AT&T-BellSouth merger) and refiled in WC Docket No. 07-21. Letter from Theodore Marcus, Senior Attorney, AT&T Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-342 (Feb. 9, 2007).

³ Pleading Cycle Established for AT&T Inc. Petition for Forbearance From the Commission’s Cost Assignment Rules, WC Docket No. 07-21, *Public Notice*, DA 07-731 (rel. Feb. 16, 2007).

(ILECs) have historically been established.⁴ First, carriers record their costs in accordance with the Uniform System of Accounts (USOA) (Part 32); second, carriers assign costs between regulated and unregulated activities (Part 64); third, carriers perform jurisdictional separations by apportioning regulated costs between the interstate and intrastate jurisdictions (Part 36), and; fourth, carriers apportion interstate regulated costs among the services and rate elements that form the basis for their interstate access tariffs (Part 69).

II. Proposed Comments

In comments on AT&T's petition submitted by the State Members of the Federal-State Joint Board on Separations (State Members), the State Members observe that “[s]eparations and other cost allocation rules have traditionally supported a variety of regulatory use,”⁵ noting that there are “several functional areas where [the State Members] think it likely that separations data specifically, and cost allocation data generally, still determine the outcomes for customers or for other carriers.”⁶

The State Members also reference the ongoing activities of its Joint Board, which is currently considering reform of the jurisdictional separations process.⁷ The FCC recently extended an interim freeze on the allocation factors for separations and sought further comment on separations reform proposals in an *Order and Further Notice of Proposed Rulemaking (FNPRM)*.⁸ The CPUC filed reply comments on November 20, 2006 on the narrow issue of whether a draft data request proposed by State Members of the Joint Board should be sent to carriers.⁹ The CPUC supported issuing the draft data request because the carrier responses would provide valuable information for potential reform of separations, as well as for how the CPUC can best coordinate separations reform with meeting public policy goals such as those for the CPUC's universal service programs.¹⁰

⁴ See, e.g., *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No 80-286, *Order and Further Notice of Proposed Rulemaking*, FCC 06-70 (rel. May 16, 2006) (*FNPRM*) at para 3.

⁵ Comments of the State Members of the Federal-State Joint Board (Mar. 19, 2007) (State Members' Comments) at 3.

⁶ *Id.* at 4.

⁷ As the third step in the four-step process described above, the FCC's separations rules prevents ILECs from recovering the same costs in both the state and federal jurisdictions.

⁸ *FNPRM*.

⁹ The draft data request sought information on the issues of unbundled network elements, wholesale services, local interconnection, DSL, special access, and bundled packages. *FNPRM*, Appendix C (Draft Data Request).

¹⁰ Reply Comments of the California Public Utilities Commission and the People of the State of California On the Further Notice of Proposed Rulemaking Regarding Separations, CC Docket No. 80-286 (Nov. 20, 2006).

With regard to AT&T's petition for forbearance, the State Members recommend that "[t]he Joint Board should be allowed to continue its current efforts and not be effectively preempted by piecemeal forbearance decisions that would overthrow existing separations procedures in approximately half the country."¹¹ CPUC staff recommends supporting the State Members' Comments by urging the FCC to avoid piecemeal resolution of these issues and to deny AT&T's forbearance petition to the extent that the cost allocation issues raised by AT&T are being considered in the FCC's ongoing proceeding on separations reform.

Assigned staff: Legal Division - Natalie Wales; Telecommunications Division - Charles Christiansen.

NDW:jmc

¹¹ State Members' Comments at 6.