

**JOINT STATEMENT OF COMMISSIONERS  
MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN, DISSENTING**

Re: *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; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 05-342; Memorandum Opinion and Order (April 24, 2008)

The Enron and WorldCom-type accounting scandals earlier this decade are not so far behind us that we cannot remember the distress they wrought on the telecommunications industry and on the economy as a whole. But if those scandals seem too distant to recall, just open the morning newspaper to find lax financial standards and oversight implicated in the housing crisis and economic upheaval that too many hard-working Americans face today. It is in this context that we face the above-referenced Petitioners' requests for forbearance from the Commission's application of its cost assignment and allocation rules. At this moment, more information—not less—is what is needed to promote competition, consumer confidence, investor security and the public interest. Indeed, the Commission has a duty to ensure that the required system of accounts provides both state and federal regulators with the information they need to discharge their oversight responsibilities. Given the necessity of the rules at issue, now and in the future, we dissent from today's Order based on the Petitioners' failure to meet the statutory requirements set forth in section 10 of the Communications Act.

We disagree for a number of reasons with Petitioners' contention that the cost assignment rules are no longer necessary. First, the Commission remains under ongoing statutory obligation to ensure that telecommunications services are offered on rates, terms and conditions that are just, reasonable and not unjustly or unreasonably discriminatory. The Commission and market participants have repeatedly relied on the very cost assignment and allocation data at issue in these petitions to set rules to carry out that statutory duty and to monitor the Petitioners' compliance. For example, in the 2000 *CALLS Order*, the Commission used this data to set the current price cap rules that are designed to ensure that Petitioners provide rates that are just, reasonable and nondiscriminatory.<sup>1</sup> More recently, the Commission sought comment on a plan to succeed the *CALLS Order* and specifically asked parties to address how the Petitioner's cost accounting data should guide the Commission's analysis.<sup>2</sup>

Second, a unanimous Commission just last year established "a new regulatory framework for the BOCs' in-region, long distance service" and expressly concluded that "an important component of the regulatory framework . . . [is] the Commission's accounting and cost allocation rules and related reporting requirements."<sup>3</sup> The Commission in fact relied on the cost

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<sup>1</sup> See generally *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, 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 at ¶ 171 (2000) ("*CALLS Order*").

<sup>2</sup> *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*; WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking at ¶ 35 (2005).

<sup>3</sup> *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for*

assignment and allocation rules to prevent anticompetitive discrimination and improper cost-shifting. Despite Petitioners' promises to continue to comply with the statutory obligations of sections 272(e)(3) and 254(k), we fear that today's Order will render largely meaningless the important safeguards adopted less than a year ago. Such a conclusion is particularly surprising when we consider the fact that section 11 of the Act requires the Commission every two years (most recently in 2006) to review all of the cost assignment and allocation rules to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition."<sup>4</sup> While the Commission makes adjustments to these rules where appropriate, it has not, before today, found a reason for their elimination.

Third, the Commission must still tackle the widely-recognized need for comprehensive inter-carrier compensation and Universal Service Fund reform. The elimination of the cost assignment and allocation rules is likely to hinder the Commission's ability to effectively implement such reform no matter what policies are adopted, and such a hindrance is likely to result in harm to consumers and the public interest.

Fourth, it is clear from the record that there are many states that rely on this data in the performance of their duties. The Commission's ambivalence (or worse) towards the critical role of state commissions and the Federal-State Joint Board on Separations ignores the statutory responsibility to establish a uniform system of accounts and promote a viable federal-state partnership.

A decision to grant forbearance relief is not one to be taken lightly. Yet, the record is replete with comments from consumer advocates, state regulators and Commissions, Members of Congress, rural wireline companies, wireless companies, CLECs and telecom end-users all opposed to the elimination of the cost assignment rules. These comments should not have been ignored. While we recognize the need to continually examine and improve the Commission's cost assignment and allocation rules, Petitioners have not offered any alternative—other than a "trust us" approach—for ensuring that the public interest is protected. In this instance, we prefer to "trust but verify" and we are unable to conclude that Petitioners have met the burden for doing otherwise.

Finally, while not the basis for our dissent, we again believe it important to note that such sweeping revisions to the Commission's rules are best accomplished through industry-wide rulemakings, conducted under the balanced governance of the Administrative Procedures Act, rather than via the improvised and piecemeal route of forbearance petitions, unguided by meaningful procedural rules to ensure fairness and transparency. There are currently five related forbearance petitions statutorily due for determination by the Commission this year. While the particular circumstances faced by the industry as a whole when it comes to our cost assignment and accounting rules are not before us, today's decision will no doubt impact future decisions. For a Commission with limited resources and urgent demands, this is no way to set sound policy.

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*Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 02-112, CC Docket No. 00-175, WC Docket No. 06-120, FCC 07-159; Report and Order and Memorandum Opinion and Order at ¶¶ 89-90 (Aug. 31, 2007).

<sup>4</sup> 47 U.S.C. § 161(a)(2).

The telecommunications industry has not been immune from accounting malfeasance in the past and in fact the Petitioners' in certain instances suffered greatly from it. So we end where we began—more transparency and increased accountability to facilitate more effective federal and state oversight must be critical parts of any plan to put the country's economy on a sounder footing. Now is not the time to permit the Petitioners and those that follow them—who all play an enormous role in our economy—to shut their books and assume that's all they need to do.