

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

070000-0T

STEPHEN A. ECENIA  
RICHARD M. ELLIS  
KENNETH A. HOFFMAN  
LORENA A. HOLLEY  
MICHAEL G. MAIDA  
MARTIN P. McDONNELL  
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

March 22, 2007

R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
MARSHA E. RULE  
GARY R. RUTLEDGE  
MAGGIE M. SCHULTZ

GOVERNMENTAL CONSULTANTS  
PARSONS B. HEATH  
MARGARET A. MENDUNI

Ms. Cindy Miller, Esq.  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**ORIGINAL**

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COMMISSION  
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Re: AT&T/BellSouth FCC Forbearance Petitions

Dear Ms. Miller:

On behalf of the Competitive Carriers of the South, Inc., ("CompSouth"), I am writing to provide additional comments regarding the BellSouth and AT&T Petitions for Forbearance from the FCC's Cost Assignment Rules, which the Commission discussed during its March 12, 2007, Internal Affairs Conference. CompSouth, a non-profit association of competitive local exchange carriers serving residential and business telecommunications customers throughout the Southeast, is troubled by AT&T's sweeping request for forbearance because it would eliminate long-standing FCC rules addressing a number of important issues, including:

How non-regulated revenues will be reported, including rules addressing transactions between AT&T's non-regulated affiliates and its incumbent local exchange carriers (Parts 32 and 64);

How costs should be separated between the interstate and intrastate jurisdictions (Part 36); and

Assignment of costs to specific access rates elements (such as loops, switching and transport) (Part 69).

AT&T's request raises a number of concerns for state commissions as well as competitive telecommunications providers. For example, AT&T effectively proposes to completely eliminate critical affiliate-transaction rules, as well as rules requiring ILECs to report costs on a jurisdictional, state-specific, basis. CompSouth believes that these issues should be addressed in an FCC rulemaking proceeding, on an industry-wide basis. In fact, the FCC currently is addressing separations reform in an existing rulemaking, and has an open rulemaking addressing whether Part 36 (Jurisdictional Separations) rules should be modified (CC Docket 80-286, with a FNPRM issued in May 2006). AT&T's request is an attempted end run around that proceeding.

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March 22, 2007

Page 2

Additionally, AT&T is proposing to eliminate federal rules addressing transactions between its ILECs and non-regulated affiliates (§32.27). Among other things, these rules require AT&T's ILEC affiliates to book the tariffed rates for a service when providing that service to a deregulated affiliate, and address how to value assets being transferred from a regulated carrier to an unregulated affiliate. Given AT&T's publicly-announced plan to rebuild its network as a video entertainment network which will be largely unregulated, the current affiliate transactions rules are more important than ever. Moreover, FCC rules are necessary to monitor whether AT&T's deregulated offerings are effectively treating tariffed inputs (such as access service) as a cost of business.

AT&T also proposes to eliminate rules which assign costs between the state and federal jurisdictions (Part 36). Without separated cost reporting, it would not be possible to determine AT&T's earnings for any individual state. Further, without the associated period reports on intrastate earnings to monitor, Florida will have no basis to empirically check any future claim by AT&T that policy changes (such as deregulation or state-specific universal service funds) are necessary to offset revenue losses from (for example) Missoula-type proposals.<sup>1</sup> Moreover, intrastate cost and earnings information would be necessary to address any future claim regarding the need for a state-specific universal service fund.

AT&T claims that price cap regulation renders these rules obsolete because cost allocations are no longer used to set rates. The reporting required under these rules, however, is useful to track how well price cap regulation is policing AT&T's rates, in particular whether AT&T is achieving unreasonable profit levels in a particular state. Without Part 36 data, this Commission will no longer be able to report to the Legislature on such basic information as state-cost trends or company earnings.

CompSouth is particularly concerned that AT&T wants to eliminate cost allocation rules that assign costs to specific access elements/services (such as between switched and special access). Correctly monitoring special access costs and profitability, in particular, is critical to a level competitive playing field. Special access is frequently used as a necessary input to downstream services, including competitive wireless, long distance and local exchange services.

AT&T's proposal to provide limited information on an informal basis is not an adequate substitute for the ready availability of reliable data under the current collection and reporting process. In the absence of a known data collection and reporting methodology, all informally-reported information inevitably will be viewed as controversial and must be subjected to careful scrutiny. For example, BellSouth's calculation of the intrastate portion of its 2006 tropical storm expenses in Docket No. 060598-TL was noncontroversial because the company used an

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<sup>1</sup> CompSouth notes that data such as that required under Part 36 is needed in order to model the claims of the Missoula plan's proponents.

March 22, 2007

Page 3

intrastate jurisdictional factor computed from its ARMIS reports. Had the company instead produced a jurisdictional separations study in support of its request, the Commission and intervenors would have been forced to conduct time-consuming and expensive discovery on this issue.

Further, because Florida is a net payer into the federal universal service fund, the Commission should be particularly concerned about the availability and reliability of data used to assess joint and common costs for federal universal service purposes. For example, the FCC's cost model for computing universal service support for non-rural carriers currently determines the amount of investment in such joint and common plant as buildings, motor vehicles, and computers by using factors derived from regulated (i.e., post Part 64 and Part 36) investment. While BellSouth claimed that the FCC could instead rely on total company (pre Part 64 and Part 36) factors, data submitted by the company revealed that this change would result in a 5 to 20 percent increase in investment in these joint and common plant categories, with a commensurate increase in the joint and common costs associated with that plant.<sup>2</sup> These and other similar changes would increase the amount that Florida's consumers must pay into the universal service fund.

Additionally, AT&T is exempt from the requirements of §§364.17 and 364.18, Florida Statutes, and thus it is not at all clear that the Commission would have authority to enforce any informal agreement to provide data. The Commission's reliance upon AT&T's agreement to provide information rather than upon data currently collected and reported could send the wrong message to Florida's consumers, who count on the Commission to provide "appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition."<sup>3</sup>

In conclusion, CompSouth notes that the FCC's Local Competition Report shows that BellSouth market share has increased 15% in the residential market to 91%, while its competitive losses in the business market have stabilized. The next report is expected to show a further increase in BellSouth market share because AT&T's lines will be reported as part of the incumbent's base. The reporting requirements from which AT&T seeks forbearance were developed in order to monitor monopoly power. Given AT&T's growing market power and in particular, its de-facto control of the residential market, this data is just as important today to prevent AT&T from being able to use its monopoly control to the harm of residential customers. This is not the time to prematurely relax reporting requirements, which, once eliminated, can never be practically reinstated.

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<sup>2</sup> See Ex Parte Letter from Mary L. Henze, BellSouth Corporation, to Marlene Dortch, Secretary, FCC, submitted September 27, 2006 in WC Docket No. 05-342, at 8.

<sup>3</sup> Section 364.01(3), Florida Statutes.

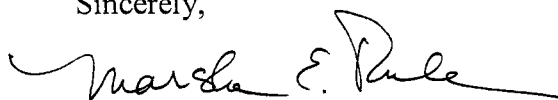
March 22, 2007

Page 4

CompSouth does not oppose thoughtful consideration of the continued applicability of the rules addressed in AT&T's forbearance petition. However, such policy determinations should be made on an industry-wide basis in a rulemaking proceeding, rather than a forbearance proceeding. Accordingly, CompSouth urges the Commission to file comments with the FCC that (1) inform the FCC of the data upon which the Commission currently relies and the purposes for which it uses such data; and (2) support the FCC's review of reporting requirements in an industry-wide rulemaking proceeding rather than via a company-specific forbearance proceeding.

Thank you for the opportunity to provide additional comments and information.

Sincerely,

A handwritten signature in black ink that reads "Marsha E. Rule". The signature is written in a cursive style with a long horizontal line extending to the right.

Marsha E. Rule

Cc: Chairman Lisa Polak Edgar  
Commissioner Katrina J. McMurrian  
Commissioner Matthew M. Carter II  
Ms. Blanca Bayo  
Ms. Pat Lee  
Mr. Dale Mailot