May 12, 2008

Ms. Dana Shaffer
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket Nos. 07-21, 05-342

Dear Ms. Shaffer:

In the Cost Assignment Forbearance Order recently adopted in the above-referenced dockets, the Commission conditioned the effectiveness of its grant of AT&T’s petition for forbearance from accounting regulations on the Wireline Competition Bureau’s review and approval of an AT&T compliance plan. In that plan, AT&T must describe “in detail” how it will update and comply with the principles underlying the rules that were the subject of its forbearance petition. This letter suggests procedures for the review and implementation of such a plan.

At the outset, it is important to emphasize that the new accounting regime adopted by the Wireline Competition Bureau (“Bureau”) for AT&T will, to a significant degree, determine the extent to which the Commission is able to enforce the provisions of the Communications Act as they apply to AT&T. In the Cost Assignment Forbearance Order, the Commission was remarkably candid in describing the critical importance of cost assignment information. The Commission reiterated its previous finding that AT&T has “[e]xclusionary market power” due to its control over bottleneck last mile facilities. See id. ¶ 27. It also reiterated its prior holding that nonstructural safeguards such as cost-assignment rules are critical “safeguards for protecting against anticompetitive discrimination and improper cost shifting.” Id. Moreover, the Commission described specific circumstances in which cost assignment information would be necessary, such as when it must “adjust” the “existing price cap regime” (id. ¶ 19) (as it did in the CALLS Order) and in Commission-initiated investigations and Section 208 complaints that address AT&T’s compliance with Sections 201 and 202 (see id. ¶ 22). The Commission also acknowledged the need for cost assignment information to ensure that AT&T complies with the

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imputation requirement of Section 272(e)(3) and the prohibition against cross-subsidization in
Section 254(k) (see id. ¶¶ 29-30). Thus, far from concluding that cost assignment information is
no longer important, the Commission reaffirmed the central importance of such information to its
future enforcement of the Communication Act as it applies to AT&T.

In light of the critical importance of reliable accounting information, the Commission
“expressly condition[ed]” its grant of forbearance on AT&T implementing a “method of
preserving the integrity -- for both costs and revenues -- of its accounting system in the absence
of Cost Assignment Rules to ensure that accounting data requested by the Commission in the
future will be available and reliable.” Id. ¶ 21. In delegating responsibility for reviewing the
AT&T compliance plan to the Bureau, the Commission stated that the Bureau shall (a)
“prescribe the administrative requirements of the filing,” and (b) approve the plan only when it is
satisfied that the plan complies with the requirements set forth in the Order. Id. ¶ 31. The
Commission stated further that this delegation is “consistent with existing procedures for CAM
modifications that allow the Chief of the Bureau to suspend any changes for a period not to
exceed 180 days and to allow the change to become effective or prescribe a different procedure.”
Id. It is clear, therefore, that the Commission viewed the procedures governing the review of
cost allocation manual filings as providing the departure point for the procedures applicable to
the Bureau’s review of the AT&T compliance plan. Based on this fact, and in light of the
magnitude and importance of the undertaking at issue, the undersigned parties respectfully
suggest that the Bureau adopt and follow the following procedures.

First, upon receiving the AT&T compliance plan, the Bureau should make the plan
available to the public, establish a permit-but-disclose proceeding for the review of the plan, and
establish a pleading cycle for interested parties to file comments and reply comments. This is
exactly how the Bureau has treated Cost Allocations Manual (“CAM”) filings since their
inception in 1987. See, e.g., AT&T Files Cost Allocation Manual Revision, Public Notice,
WCB/Pricing File No. 08-16, DA 09-835 (rel. Apr. 9, 2008) (“CAM Public Notice”); Separation
of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, et al., Report and
Order, 2 FCC Rcd 1298, ¶¶ 232, 235 (1987). In fact, just last year, the Commission reconfirmed
that changes to BOC cost allocations manuals should be subject to review and comment by
interested parties. The Commission found that, “[t]his public disclosure requirement will
provide an opportunity for interested parties to review and comment on whether the identified
methodology could result in improper cost-shifting.” Section 272 Sunset Order ¶ 94. If
anything, the need for public comment is greater in the present context because AT&T will be
proposing a comprehensive reform of its accounting regime, thus creating more numerous and
significant opportunities for cost misallocation than was the case with past, relatively limited
modifications to CAMs. Moreover, the opportunity for public comment is also critical here
because interested parties are likely to need to rely on the information and reports yielded by the
new AT&T accounting methodology when seeking enforcement of the requirements of the
Communications Act in rulemaking and adjudication proceedings. Interested parties should

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therefore be allowed to review and comment on the sufficiency of the accounting methodologies proposed by AT&T.

In addition, the Bureau should ensure that it provides sufficient time for interested parties to provide comprehensive input on AT&T’s compliance plan. In CAM review proceedings, the Bureau has set the pleading cycle at 30 days from release of the public notice for comments and at 15 days thereafter for reply comments. See, e.g., CAM Public Notice. In this case, however, AT&T will be proposing wholesale reform of regulatory accounting procedures that are critically important “safeguards for protecting against anticompetitive discrimination and improper cost shifting.” See Cost Assignment Forbearance Order ¶ 27. It would therefore be more appropriate to allow interested parties 45 days to file comments and 30 days thereafter to file reply comments.

Second, it is essential that the Bureau withhold approval until AT&T has actually made all modifications necessary to ensure that the plan provides a robust, detailed and transparent framework for preserving “the integrity -- for both costs and revenues -- of its accounting system in the absence of Cost Assignment Rules.” See id. ¶ 21. In accordance with the Commission’s Order, the Bureau can not allow AT&T must not be permitted to take advantage of any part of the forbearance granted in the Cost Assignment Forbearance Order until it has met this standard in full.

Third, the Bureau should establish procedures for review of future proposed modifications to AT&T’s compliance plan. As it has with CAMs, the Bureau should require that AT&T update its accounting methodology annually. See 47 C.F.R. § 64.903(b). AT&T should be required to submit such changes for Bureau review. Upon receipt of each annual update, the Bureau should establish a docket and seek public comment on the AT&T proposal. If, in light of its investigation or the comments received from interested parties, the Bureau determines that further review of the proposed modifications is necessary or if it determines that AT&T must alter its proposed modifications, the Bureau should exercise its right to suspend implementation of AT&T’s proposed modifications for up to 180 days pending further investigation or pending AT&T’s submission of revisions to its proposal as directed by the Bureau. See id.

Finally, it is critical that AT&T make the information yielded by its new regulatory accounting regime publicly available in a searchable format so that interested parties have full and complete access to such information. The most appropriate means of achieving this end would be for the Bureau to require that AT&T post annual reports displaying all of the information yielded by the new accounting methodology on AT&T’s website in a format that can be accessed and searched using readily available, and not AT&T proprietary, software (e.g., Microsoft Excel™ or Microsoft Access™). Failure to make the information available in this manner would substantially diminish the extent to which interested parties could review and analyze the data, and would conflict with the Commission’s determination that reasonable cost assignments are a necessary “safeguard[] for protecting against anticompetitive discrimination and improper cost shifting.” Indeed, absent a meaningful disclosure requirement, parties would not know whether there is a basis for bringing an enforcement action. Nor would a requirement that AT&T post its accounting information on its website result in a substantial cost increase to AT&T since AT&T would already be required to maintain the information in question in any
event. In all events, the Bureau should at least require that AT&T make the accounting
information yielded by its compliance plan available to interested parties in searchable format
without the need for AT&T proprietary software in any situation where AT&T is required to
submit such information to the Commission (e.g., in a rulemaking, investigation or complaint
proceeding).

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