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OFFICE OF THE SECRETARY

June 30, 1997

Ms. Carol Mattey
Deputy Chief
Policy Division
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Re: BellSouth Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized Services; CC Docket No. 96-149

Dear Ms. Mattey:

This letter is in follow-up to the June 10, 1997, meeting between you and Mr. Kehoe of your staff and representatives from BellSouth and other RBOCs. The meeting centered on the RBOCs' respective and various petitions for forbearance of the separate affiliate requirements of Section 272[1] of the Act[2] for certain existing services that previously were authorized by the MFJ Court, to the extent such services may be deemed to be interLATA information services under the Act. This letter responds to your request for additional information on BellSouth's Petition, particularly in the context of the Act's Section 10[3] forbearance standard.

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[1] 47 U.S.C. § 272.

[2] The Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*

[3] 47 U.S.C. § 160.

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Background and Overview

The Commission concluded in the *Non-Accounting Safeguards Order*[4] that interLATA *information* services previously authorized by the MFJ Court, while permitted to continue, nonetheless are required by the Act to be provided by a BOC affiliate that meets the Section 272 separate affiliate criteria. The Commission observed, however, that under Section 10 of the Act, the Commission is *required* to forbear from applying any provision of the Act that is not *necessary* to ensure just and reasonable charges and practices in the telecommunications marketplace, or to protect consumers, if the Commission finds that such forbearance would promote competition and is consistent with the public interest.[5]

BellSouth filed its Petition on February 7, 1997, asking the Commission to forbear from imposing the separate affiliate requirements of Section 272 on two services that may be considered to be interLATA information services and that BellSouth was previously authorized to provide on an integrated basis pursuant to orders of the MFJ Court. The first service, a reverse directory service, is presently provided in two forms. The first form is provided in conjunction

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[4] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149, FCC 96-489 (rel. Dec. 24, 1996) (*"Non-Accounting Safeguards Order"*).

[5] Section 10 provides, in relevant part:

(a) REGULATORY FLEXIBILITY.--Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

(b) COMPETITIVE EFFECT TO BE WEIGHED.--In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

with voice-based directory assistance service. In the second form, the service is offered in conjunction with BellSouth's on-line electronic white pages (EWP) directory service. Both forms of the service permit the customer to obtain name and/or address information upon presentation of a telephone number.[6] The second service included in BellSouth's Petition was E911 service.

Pursuant to your request, BellSouth addresses in this letter both of these services (including both forms of the reverse directory service) in more detail and in the specific context of the three prongs of the Section 10 forbearance test.

I. Reverse Directory Service

As discussed in BellSouth's Petition, reverse directory service is provided in two forms: a manual, operator assisted form and an electronic, on-line form. Each is addressed in turn below.

A. Operator Assisted Reverse Directory Service

1. Service Description

Operator-assisted reverse directory service, also referred to as manual reverse search or as CNA, permits callers to obtain the name and/or address of other telephone service subscribers upon providing a working telephone number. This form of reverse search service is offered as part of, or in conjunction with, voice-based standard search directory assistance operations. It uses the same trunking facilities, the same switching facilities, the same centralized databases, the same centralized operator service centers, and the same personnel as standard search directory assistance. As BellSouth indicated in its Petition, BellSouth has been providing this form of reverse search service since it received authorization to do so from the MFJ Court in 1989.[7]

Callers seeking name and address information associated with another telephone number within the caller's toll-free calling area dial the same directory assistance telephone number (411) as callers seeking telephone number information. The call is routed by the caller's end office to a Traffic Operator Position System ("TOPS") remote switch within the caller's LATA where the call terminates into an automated answering system. The automated answering system prompts the caller to provide his or her information request,[8] which is then recorded by the system. The

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[6] For purposes of clarity, the distinction is made between the two forms of reverse search service by referring to the voice-based offering as "customer name/address service" or "CNA", while the electronic white pages reverse search offering is abbreviated EWP-RS.

[7] *See* BellSouth Petition at 3-4 and Attachment 1.

[8] Because this reverse search service in provided over the same systems as the much more heavily used standard search directory assistance service, the caller hears a voice prompt asking, "What city?", followed by, "What listing?". Of course, this is precisely the information a caller (Continued...)

TOPS remote switch then signals a TOPS host, which searches for and finds an available operator at an operator service center that serves the caller's state. That DA operator then hears a playback of the caller's information request. The operator keys the request and transmits it to a centrally located directory assistance database.[9]

On standard search calls, when the appropriate listing is found in the database, the operator hits a key known as "release to audio," which drops the TOPS host switch and the operator from the call. Simultaneously, the database signals an audio response unit, which established a voice path connection back to the caller's TOPS remote, bridges on to the caller's line, and plays back the desired telephone number listing.

In contrast, where the caller has provided the telephone number and seeks CNA information, there is no "release to audio." Rather, a voice path is set up through the TOPS system between the operator position and the caller's TOPS remote, and is bridged onto the caller's line. The operator then orally conveys the requested CNA information.[10]

The call flow process is essentially the same when a caller seeks directory information about another subscriber outside of the caller's toll-free calling area. However, rather than dialing 411, the caller dials 1+distant NPA+555-1212. If the distant NPA is in a different LATA, the call is carried by an IXC to the distant LATA and terminates in a TOPS switch serving the distant NPA. The remainder of the call flow activity is as described for 411 calls: the caller receives a voice prompt from the TOPS remote and records his or her request; the TOPS remote signals a TOPS host which locates an available operator position; the operator hears a playback of the

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using the reverse search service is hoping to obtain. Nonetheless, whatever the customer's response, it will be recorded for subsequent presentation to a DA operator.

[9] BellSouth has two centrally located DA databases for load-sharing and redundancy purposes. Each of these databases is a duplicate of the other and contains both "listed" information (*i.e.*, listings available in the printed white pages) and "non-listed" information (*i.e.*, listings available through directory assistance but not in the printed directory). The database does not contain listing information about subscribers who request not to appear in either the printed directory or directory assistance service (referred to as "non-published listings"). An operator attempting to retrieve information about such a subscriber will receive only a "non-published" indicator. These databases also contain information as provided by other carriers with whom BellSouth has appropriate agreements, including both independent incumbent LECs as well as new entrant competing LECs.

[10] Thus, while CNA may be considered an "information service" under the Act, it is not an "enhanced service" under the Commission's rules because the customer interacts with a live operator, not a "computer processing application." *See*, 47 C.F.R. § 64.702. *See also*, *Non-Accounting Safeguards Order*, at ¶ 103 ("[W]e agree with BellSouth and AT&T that live operator telemessaging services that do not involve 'computer processing applications' are information services, even though they do not fall within the definition of 'enhanced services'.").

request and queries a database; on locating the appropriate listing, if a telephone number has been requested, the operator keys "release to audio" and the audio response unit is bridged onto the caller's line at the TOPS remote; for CNA searches, the operator orally conveys the information via voice path back through the TOPS network to the serving TOPS remote. In all cases, the transmission link between the caller and the TOPS remote in the distant NPA is provided by the IXC.

Thus, as described above, CNA service is provided over the very same network using the very same resources as standard search directory assistance. And, as explained in BellSouth's Petition, regardless of whether the caller is seeking telephone number or CNA information, various links in the call flow process may cross LATA boundaries depending upon the relative location of the TOPS remote and host switches, operator service positions, and directory database. Of course, standard search directory assistance service has always been considered to be exchange or exchange access service, rather than an information or interLATA service.[11] Further, CNA has been provided pursuant to a waiver of the MFJ granted eight years ago. The only issue at this point is whether it is now necessary, after all these years, for the Commission to apply the separate affiliate requirement of Section 272 -- effectively destroying the inherent efficiencies of this integrated provisioning -- to ensure that CNA is offered on just, reasonable, and nondiscriminatory terms; to protect consumers; or to be consistent with the public interest. As discussed in more detail below, it is clear that Section 272 separation requirements are *not* necessary to achieve those objectives. And, -- as the Commission has observed -- under such circumstances, the Commission is *required* to forbear from applying those requirements.

2. Forbearance from Enforcement of Section 272 Separate Affiliate Requirements for Manual Reverse Search Service is Appropriate and Required under Section 10.

   a. Enforcement of Section 272 is not necessary to ensure that the terms of BellSouth's Manual Reverse Search Service are just, reasonable, and non-discriminatory.

The first prong of the Section 10 forbearance standard requires the Commission to determine that

> enforcement of [Section 272] is not necessary to ensure that the charges, practices, classifications, or regulations, by, for or in connection with [manual reverse search service] are just and reasonable and are not unjustly or unreasonably discriminatory.[12]

This first prong is easily met.

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[11] *See, Non-Accounting Safeguards Order* at n.280, *citing, United States v. Western Electric*, 569 F. Supp. 1057, 1097-1101 (D.D.C. 1983).

[12] 47 U.S.C. § 160(a)(1).

As BellSouth noted in its Petition, the MFJ Court's grant of authority to provide CNA service was conditioned by a requirement that revenues from the service be used to support regulated operations.[13] BellSouth has satisfied that condition by including the operator assisted reverse search capability in its tariffs for directory assistance services. In the states, the service is found in the General Subscriber Services Tariff for end-users and in the intrastate access tariff for carriers, both of which are filed with appropriate state regulatory commissions. At the federal level, the service is included in BellSouth's interstate access tariff[14] filed with this Commission.

In both jurisdictions, the "charges, practices, classifications, [and] regulations" are subject to standards of justness, reasonableness, and just or reasonable discrimination.[15] The tariffs for the service are submitted to the appropriate regulatory authority, made public, and subjected to an opportunity for intervention, suspension, or rejection if they fail to meet those standards. Additionally, complaint proceedings provide additional enforcement pressures and assurances. Clearly, where the service is, and has for years been, offered in a manner originally required by the MFJ Court and pursuant to long-established and widely applicable processes to ensure just, reasonable, and non-discriminatory service offerings, it simply cannot be asserted that Section 272 separate affiliate requirements are now necessary to achieve those objectives.

MCI's assertion in its Comments on BellSouth's Petition that Section 272 non-discrimination obligations should attach to BellSouth's manual reverse search service is both a red herring and a misdirection ploy. The gist of MCI's argument is that BellSouth is obligated pursuant to Section 251(b)(3) of the Act to provide MCI directory listing information of third

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[13] BellSouth Petition at 6 and Attachment 1. The Court was particularly concerned that a BOC *not* be able to offer this service through a separate affiliate free from regulatory oversight. *See* BellSouth Petition, Attachment 2, at 7.

[14] That the MFJ Court deemed this service to be an "information service" under the literal definition of that term in the Consent Decree, but nonetheless required it to be offered under regulation, effectively rendered this service an "adjunct to exchange or exchange access" service for Decree purposes -- much like the "adjunct to basic" category the Commission has recognized for functionalities that meet the literal definition of "enhanced service," but which otherwise are "'basic' in purpose and use." *North American Telecommunications Association*, 101 F.C.C.2d 349, 359 (1985), *recon.* 3 FCC Rcd 4385 (1988). Insofar as CNA effectively was required under the MFJ to be treated as an exchange or exchange access service and has in fact been so treated, it is not at all clear that the service is even an interLATA *information* service to which Section 272 would apply in the first instance, but is instead a previously authorized interLATA *telecommunications* service. Accordingly, the Commission could conclude that forbearance is not required with respect to manual reverse search service because it is exempt from Section 272 separate affiliate requirements pursuant to Section 272(a)(2)(B)(iii).

[15] *See, e.g.*, 47 U.S.C. §§ 201, 202.

party carriers that BellSouth has in its directory assistance database.[16] Of course, as BellSouth has previously responded, BellSouth has no obligation to provide, and is prohibited from providing, information it has from one carrier to another carrier, absent permission from the first carrier.[17] To the extent MCI disagrees with BellSouth, MCI has avenues it can pursue to seek that to which it claims a right.[18] The point here, however, is that the question of whether MCI is wrong or right with respect to BellSouth's obligation to provide directory listing information it does not own is irrelevant to whether Section 272 safeguards are necessary to ensure just, reasonable, and nondiscriminatory availability of BellSouth's reverse directory service.

In other words, BellSouth's offering of reverse directory service is irrelevant to MCI's claim of right to third party directory listing information. MCI's claim stands as it is regardless of whether BellSouth offers the reverse directory service at all. No purpose (other than MCI's) would be served by subjecting manual reverse search service to Section 272 requirements merely to create the conditions necessary to a claim by MCI of a right to access third party listings under Section 272(c) or (e).

Section 272 requirements are not necessary to ensure just, reasonable, and non-discriminatory terms for manual reverse search service. Thus, the first prong of the forbearance test is satisfied.

b. Enforcement of Section 272 is Not Required to Protect Consumers.

The second prong of the forbearance test requires the Commission to determine that "enforcement of [Section 272] is not necessary for the protection of consumers."[19] This prong is also easily satisfied.

To the extent consumer protection is affected by on the circumstances under which BellSouth's manual reverse search service is offered, it is clear that Section 272 would provide no greater protection than is already afforded consumers with the existing service offering. As noted above, consumers are protected at the outset through tariffing processes that ensure that rates and other terms for the service are just and reasonable. Moreover, while BellSouth has no control over the rates charged consumers by IXCs for long distance directory services, those rates start out as just and reasonable in the rates charged the IXCs by BellSouth.

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[16] Notably, MCI has not asserted that BellSouth has been unwilling to provide directory listing information of its own customer base.

[17] BellSouth Reply Comments, at 7-8 (March 17, 1997).

[18] *Id.*

[19] 47 U.S.C. § 160(a)(2).

Consumers are also protected through the tariffing of optional listing formats, *e.g.*, listed, non-listed, or non-published.[20] These optional formats allow customers to exercise individual choices with respect to the degree of privacy protection to be accorded their respective directory listings.

Application of Section 272 separate affiliate requirements would do nothing to enhance these consumer protections. As a set of provisions that addresses primarily the relationship between a BOC and its long distance affiliate vis-à-vis nonaffiliates, Section 272 has little direct bearing on consumer protection. Clearly, application of the separate affiliate requirements to BellSouth's reverse directory service is not necessary for the protection of consumers, and the second prong of the forbearance test is thus easily satisfied.

c. Forbearance from Applying Section 272 to BellSouth's Manual Reverse Directory Service is Consistent With the Public Interest.

The third prong of the forbearance standard requires the Commission to determine that the requested forbearance is "consistent with the public interest."[21] In making that determination, the Commission "shall consider whether [such] forbearance . . . will promote competition among providers of telecommunications services."[22] Again, this test is easily met.

Continued provision of manual reverse search service through BellSouth's existing directory assistance operations will promote competition among telecommunications carriers in a variety of ways. It should be recognized at the outset, however, that the market for directory assistance services, including reverse search capabilities, is already highly competitive. Many types of service providers offer many types of directory assistance or listing products to end users, sometimes coupled with other information offerings. For example:

IXCs: will provide directory assistance information on request, even within the caller's home NPA; no apparent restrictions on whether these carriers offer a reverse search service.

Internet Services: may be local, regional, and nationwide in scope; accessible from anywhere with no per usage charge.

N11 and 7-Digit Information Service Providers: offer directory information and much more.

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[20] See note 9, *supra*.

[21] 47 U.S.C. § 160(a)(3).

[22] 47 U.S.C. § 160(b).

CD-ROM Directives: accessed via personal computer; unlimited usage; variable search criteria or formats.

CPE-Based Sources: CPE can capture incoming call information, store it, and associate it with other data for later retrieval; operates as company's internal directory assistance source.

Electronic White Pages: BellSouth's own EWP service competes with its operator assisted directory services.

Alternate DA Providers: Payphone service providers, cellular service providers, and others may contract with third parties for directory assistance service.

Paper Directories: traditional white and yellow pages; specialty directories; "criss-cross" directories.

Thus, there is a formidable set of existing providers of directory assistance services with a variety of different products to meet different customer needs. BellSouth already facilitates this competition by making its directory listing information available under tariff. For example, BellSouth provides tariffed services by which BellSouth performs the directory assistance service for its customers ("Directory Assistance Access Service"); by which the customer accesses BellSouth's DA database ("Direct Access to Directory Assistance Service"); by which BellSouth provides initial and update information to reside on the customer's own database ("Directory Assistance Database Service"); and by which BellSouth provides listing information to directory publishers ("Directory Publishers Database Service"); as well as its EWP offering.

In addition, consistent with its obligations under the 1996 Act, BellSouth has negotiated over 90 agreements that allow competing local exchange carriers to resell BellSouth's directory assistance services, including the manual reverse search service. Moreover, by definition, these resale offerings include every directory assistance function (*i.e.*, both name and number search) and every directory listing in BellSouth's database, including those of non-BellSouth subscribers. Thus, as contemplated by Congress, the market for directory assistance service including reverse search is made more competitive through BellSouth's resale agreements with other carriers.

Further, as touched upon above, CLECs that desire to provide their own directory assistance operation in lieu of reselling BellSouth's service can obtain from BellSouth the information about BellSouth's customers necessary to populate their databases with the same information BellSouth has about its customers in its database. Indeed, it is competitors' ability to obtain this information from BellSouth and to use it in their own directory assistance operations, including offering reverse search functionality, that would make it potentially non-competitive if BellSouth were the only carrier required to offer that functionality out of a fully separated affiliate. BellSouth would be the only competitor deprived of the obvious, natural efficiencies to be derived from integrating name and number search offerings. Meanwhile, such a separate affiliate requirement would provide CLECs with no greater right to access BellSouth customer

listing information than they already have and are exercising. Thus, forbearance from applying Section 272 separation requirements to BellSouth's manual reverse search service will promote competition because it will enable BellSouth to maintain its reverse search service in the already competitive market for directory assistance services.

Congress has already declared that such a determination that forbearance will promote competition "may be the basis for a Commission finding that forbearance is in the public interest."[23] But, there are other factors, too, that demonstrate that forbearance is consistent with the public interest in this case.

As noted above, other providers are not subject to the same constraints as BellSouth on services they can offer as part of a directory information service package. For example, other service providers may offer with their basic telephone number or reverse search services a variety of options, such as restaurant reviews, movie listings, driving directions, or other information. While BellSouth theoretically could achieve the same combination of information services by offering a full range of directory assistance/information services in a separate affiliate, BellSouth would be duplicating in large part the basic standard search directory assistance service that it currently provides and is obligated to continue to provide as part of exchange and exchange access service. Such duplication, of course, would be extremely wasteful.

Nor would it make sense for BellSouth to attempt a "reverse-search only" service in a separate affiliate. Such a narrow product offering would not be likely to draw the degree of customer loyalty or usage levels that would be required to sustain such a service. The service, instead, would likely be discontinued.

Thus, forbearance is required to avoid depriving customers of a choice of an existing, convenient, and useful service. As indicated in BellSouth's Petition, BellSouth handles roughly 3.2 million calls to directory assistance every day, *thousands* of which are CNA calls. Thus, while the percentage of CNA calls may be comparatively small, the raw number of such requests confirms that BellSouth is providing a demonstrably beneficial and desirable service to the public. Forbearance of the Section 272 separate affiliate requirements is not only consistent with, but is necessary to preserve, this public interest.

B. On-Line Electronic Reverse Search Service.

1. Service Description

BellSouth's on-line reverse search service is like its operator-assisted manual reverse search service in that it provides a user the ability to submit a telephone number and obtain the name and/or address associated with that telephone number. Thus, the service falls within the

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[23] 47 U.S.C. § 160(b).

parameters of the MFJ Order previously authorizing BellSouth to provide reverse directory service.[24] It is also like the operator assisted version in that it is offered in conjunction with a tariffed standard search functionality and depends on the same network, facilities, and database as its tariffed standard search counterpart.[25] Beyond these fundamental similarities, however, the two reverse search offerings differ quite a bit.

The biggest, most apparent difference, of course, is that the EWP and EWP-RS functionalities are available only through users' personal computers -- there is no voice connection. In addition, EWP and EWP-RS are provided from a single centrally located database.[26] While voice based directory assistance service is available on a casual, as needed, per call basis, EWP and EWP-RS require customers to subscribe to the service so that PIN codes can be established in order for the subscriber to obtain access to the database. Once subscribers accounts are established, users are billed on a "per-screen" basis. That is, the user is charged a set rate for each screen of data the user views on his or her PC in response to the user's submitted query.

Subscribers have a choice of two versions of EWP or EWP-RS to which they may subscribe: a "regional" offering and a "home NPA" offering. As these names imply, these choices differ in the geographic scope of the data available. They also differ in the way a customer gains access to the respective service.

The regional offering allows subscribers to obtain access to names, addresses, and/or telephone numbers of customers throughout BellSouth's region.[27] As explained in BellSouth's Petition, however, subscribers to this offering, if located in a LATA other than that in which the

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[24] See BellSouth Petition at 2-3 and Attachments 1, 2.

[25] The tariffed, on-line name search service is often referred to as "electronic white pages" or "EWP." The reverse search functionality may be referred to "EWP-RS".

[26] This database is actually one of the two databases described above for voice-based directory assistance that has special software to allow EWP searches. Although the database is the same, information available through it may vary somewhat. For example, some independent or other telephone carriers whose directory listing information is included in BellSouth's database have authorized BellSouth to make information available through the EWP offering, but not through directory assistance. (Of course, nothing prevents an MCI or other provider from entering similar arrangements with these other carriers.) Thus, the EWP offering provides access to more listings than does directory assistance.

[27] As with the database for voice-based directory assistance, the EWP database provides information for "listed" customers and "non-listed" customers (*i.e.*, those who have asked for their numbers not to appear in printed directories). The database does not provide information on "non-published" customers, *i.e.*, those who have opted not to have their listing information available either through printed directories or directory assistance services.

database resides, must obtain their own interLATA service to reach the database. That is, the subscriber's PC/modem must place a 1+ten digit (or 10XXX + ten digit) call to reach the database. Because all of the interLATA transport associated with the regional data offering is provided by a carrier other than BellSouth, the EWP-RS component of this offering is not an *interLATA* information service,[28] and forbearance of Section 272 is not required for BellSouth to continue providing this service. Thus, as previously indicated by BellSouth, this aspect of BellSouth's EWP-RS offering is not the subject of BellSouth's Petition.[29]

In contrast with the regional offering, the home NPA offering is limited to the names and telephone numbers of customers in the same NPA as the subscriber to the EWP-RS service. Subscribers to this offering reach the same centralized database as subscribers to the regional service, but do so by dialing a local telephone number. For this offering, BellSouth provides the interLATA transmission component of the subscriber's call to the centralized database pursuant to its previous MFJ waiver to provide reverse search services.[30] It is for this aspect of EWP-RS that BellSouth seeks forbearance from application of the Section 272 separate affiliate requirements.

2. Forbearance From Enforcement of Section 272 Separate Affiliate Requirements For BellSouth's "Home NPA" On-Line Reverse Search Service is Appropriate and Required Under Section 10.

a. Enforcement of Section 272 is Not Necessary to Ensure That The Terms of BellSouth's Home NPA EWP-RS Service are Just, Reasonable, and Nondiscriminatory.

As above, the first prong of the Section 10 forbearance standard requires the Commission to determine that

> enforcement of [Section 272] is not necessary en ensure that the charges, practices, classifications, or regulations, by, for, or in connection with [BellSouth's home NPA EWP-RS offering] are just and reasonable and are not unjustly or unreasonably discriminatory.

This test is again easily met, albeit for different reasons.

In contrast with operator assisted reverse search service, the Commission has concluded that EWP-RS must be treated as a nonregulated, enhanced service under its rules. Accordingly,

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[28] *See*, *Non-Accounting Safeguards Order* at ¶ 115, 120.

[29] BellSouth Petition at 4.

[30] *See*, BellSouth Petition at 5 (*quoting* 271(f) of the Act, 47 U.S.C. § 271(f), ("[a BOC may] engag[e], *at any time after the date of enactment of the Telecommunications Act of 1996*, in any activity to the extent authorized" by the MFJ Court.")).

the EWP-RS offering is not subject to tariffing processes and standards for ensuring that rates, terms, and conditions, are just and reasonable.[31] Nonetheless, other conditions exist to ensure that these expectations are met.

As discussed above with respect to BellSouth's manual CNA offering, the marketplace for subscribers listing information is fully competitive, with a variety of products and providers. Thus, BellSouth is constrained to provide its offering within the same marketplace parameters as any other service provides. These pervasive marketplace influences thus ensure that the terms and conditions of BellSouth's offering are just, reasonable, and nondiscriminatory.

MCI's assertions regarding listing information BellSouth maintains about other carriers' customers are as irrelevant here as they are with respect to the voice-based CNA offering. MCI is not dependent on BellSouth to obtain listing information about other carriers' customers. Rather, MCI is dependent on the other carriers themselves to make that information available and, indeed, other carriers have a duty to provide that information to MCI upon appropriate request.[32] It is not BellSouth's obligation, however, to fulfill other carriers' responsibilities. MCI is not precluded from obtaining directly the information it claims it needs.[33] Accordingly, MCI's claims of unfair advantage must be rejected.[34]

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[31] It is paradoxical and, indeed, ironic that the issue is now presented whether Section 272 separation requirements are necessary to achieve for a nonregulated enhanced service the very standards to which the Commission has determined that enhanced services should not be subject. *See*, 47 C.F.R. § 64.702 ("Enhanced services are not regulated under title II of the Act."). Rather than subjecting EWP-RS to a separate affiliate requirement -- which, as discussed below, does nothing to ensure that EWP-RS rates, terms, and conditions meet the standards of Section 201 and 202 -- the Commission should consider revising its clarification of EWP-RS and allow it to be provided as "adjunct to basic," *i.e.* not as an interLATA information service for which forbearance is an issue.

[32] *See*, 47 U.S.C. § 251(b)(3).

[33] Of course, if MCI is precluded from obtaining any information directly, there is even less reason to compel BellSouth to provide it indirectly.

[34] As discussed above, the issue underlying MCI's argument is not actually related to whether BellSouth is providing a reverse directory service. Even if BellSouth were not offering a reverse search functionality, MCI would be making the same claims. Accordingly, the Commission clearly should not use this forbearance proceeding to resolve an issue for which MCI has more appropriate forums through which to pursue its cause. *See* BellSouth Reply at 7-8. Should the Commission nonetheless grant BellSouth's forbearance request subject to an obligation to provide other carriers' listing information to MCI, the Commission should constrain MCI's use of that information only to the purposes for which BellSouth can use it. Thus, directory listing information would not be available to MCI for undefined and unlimited "other purposes," as MCI indicates it would use the information. *See* MCI Comments at 4. Such potential uses for
(Continued...)

Finally, there is no reason to believe that Section 272 separate affiliate requirements would have greater bearing on whether EWP-RS is provided on nondiscriminatory, just, and reasonable terms than do the current nonstructural conditions under which the service is offered. Of course, as BellSouth demonstrated in its petition for waiver of the CEI requirements for EWP-RS,[35] the cost of providing the service through a separate affiliate would be orders of magnitude higher than if provided on an integrated basis. Naturally, if BellSouth were able to continue providing this service at all, its rates would similarly have to be materially higher. And, while the rates charged and associated terms and conditions still could be expected to be just and reasonable, there would be no greater assurance that that would be the case. Rather, the likely consequence would merely be *higher* just and reasonable rates. Thus, since Section 272 would add nothing to the assurance of just, reasonable, and nondiscriminatory rates, terms or conditions for EWP-RS service, its enforcement is not necessary to achieve those objectives, and the first prong of the forbearance test is met.

b. Enforcement of Section 272 is Not Required to Protect Consumers

The second prong of the forbearance test requires the Commission to determine that "enforcement of [Section 272] is not necessary for the protection of consumers."[36] This test is as easily met here as it was for voice-based CNA service.

Consumer protection beyond the protections afforded by the current nonstructural requirements could hardly be advanced by a separate affiliate requirement. As a condition of its integrated operation, BellSouth must comply with the Commission's cost allocation rules and BellSouth's own cost allocation manual. These rules and processes were adopted to ensure that subscribers to regulated services do not improperly subsidize nonregulated operations. Compliance with these requirements is reinforced through recurring and periodic audits. The Commission adopted these rules precisely to accommodate circumstances in which the public interest is served by allowing combined regulated and non-regulated activities, subject to the appropriate safeguards to protect consumers and competition. EWP-RS is provided in compliance with those existing requirements, and application of the Section 272 requirements would add no greater degree of consumer protection.

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purposes other than for which the information was originally maintained and by parties to whom it may not have been knowingly given would raise substantial consumer protection concerns for subscribers and unfair marketing opportunities for MCI. Indeed, these concerns alone are sufficient not to require BellSouth to provide third party carriers' data to MCI.

[35] *See, BellSouth Petition for Waiver of Computer III Rules for Reverse Search Capability*, CC Docket No. 90-623, Memorandum Opinion and Order on Reconsideration, DA 96-1069 (July 3, 1996) (*"CEI Waiver Order"*) (Petition filed March 1, 1996).

[36] 47 U.S.C. § 160(a)(2).

Consumers also benefit under the existing requirements from the convenience of "one-stop shopping" for electronic white pages information. In a single session, a user can search for both names and numbers interchangeably. If BellSouth were required to provide the EWP-RS service out of a separate affiliate, the user would have to log out of one service and log on to the other. Moreover, as noted in the previous section, the cost of EWP-RS would be forced substantially higher. The result: EWP-RS alone would be a less attractive service at a higher price. Further, in order to obtain the range of functionality presently available through an integrated offering, the consumer would have to subscribe to *two* less efficient services at a higher total price. This is hardly the stuff of which "consumer protection" is made.

Moreover, as discussed in note 34, *supra*, application of Section 272 requirements would subject subscriber listings to risks of inappropriate use by other carriers. It is not clear what "other purposes" MCI would devise for the use of directory listing data. Clearly, however, to the extent Section 272 would require disclosure of that information to MCI if provided to a BellSouth separate affiliate, Section 272 presents a jeopardy to consumer protection, rather than an assurance of it.

Thus, it is forbearance of Section 272, not the enforcement of it, that provides desirable protection for consumers. Hence, enforcement of Section 272 is not necessary for the protection of consumers, and the second prong of the forbearance test is satisfied.

c. Forbearance from Applying Section 272 to BellSouth's EWP-RS Service is Consistent With the Public Interest.

The third prong of the forbearance test requires the Commission to determine that the requested forbearance is "consistent with the public interest."[37] In making this determination, the Commission "shall consider whether [such] forbearance will promote competition among providers of telecommunications services."[38]

Continued provision of EWP-RS on an integrated basis will promote competition among telecommunications carriers in a number of ways. As discussed above, of course, the market for directory assistance services is already competitive. IXCs, Internet services, voice-based ISPs, CPE, CD-ROMs, and others provide a host of alternative sources for a variety of information listings. BellSouth already facilitates this competition through its tariffed list offerings and its interconnection agreements with other carriers.

Further, while only BellSouth's tariffed standard search EWP service is subject to resale obligations under Section 251(c), BellSouth nonetheless permits other carriers also to sell the

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[37] 47 U.S.C. § 160(a)(3).

[38] 47 U.S.C. § 160(b)

EWP-RS component.[39] Thus, other carriers that compete with BellSouth are able to offer the very same complete EWP product that BellSouth offers. The result, as contemplated by Congress, is that the market for directory listing services is made all the more competitive through BellSouth's resale agreements with other carriers.

Additionally, CLECs that prefer to provide their own electronic white pages offering in lieu of reselling BellSouth's service can obtain from BellSouth the information BellSouth has about BellSouth's customers and can populate their databases with the same information BellSouth has about its customers in its database. Indeed, it is these competitors' ability to obtain this information from BellSouth and to use it in their electronic white pages or other directory services, including the offering of a reverse search capability, that would make it patently non-competitive to require BellSouth to provide the identical functionality out of a separated affiliate. Moreover, not only would these CLECs have the ability to offer a package of EWP with standard search and reverse search capabilities, but they would also have the ability to supplement their databases with other information desired by customers and offer that as part of a package, too. And, they could do so without worrying about whether the service is inter- or intra-LATA, or an information or telecommunications service, because they are not subject to a separate affiliate requirement. While BellSouth theoretically could build such a comprehensive service in its separate affiliate, it would still entail material duplication of the presently tariffed EWP service. Accordingly, BellSouth would be deprived of its ability to offer even a minimalist EWP package of standard search and reverse search capabilities, a result that would not be pro-competitive.

Thus, it is forbearance, not enforcement of Section 272, that will promote competition in the already competitive market for directory listing services. As noted above, Congress has instructed that a determination that forbearance will promote competition among telecommunications carriers may form the basis for a conclusion that forbearance is in the public interest.[40] Thus, the third prong of the forbearance test is also satisfied. Accordingly, the Commission is required to forbear from applying Section 272 to BellSouth's EWP-RS service.

II. E911 Service

A. Service Description

Hardly anyone can dispute that E911 service is one of the most vital and publicly beneficial services currently provided by BellSouth and other LECs. In times of emergency, E911 service fulfills a critical role in ensuring that calls are routed to the proper response jurisdiction, in

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[39] Because EWP-RS is an enhanced service under the Commission's rules and therefore an information service under the *Non-Accounting Safeguards Order*, it is not subject to the requirements of Section 251(c)(4), which address only telecommunications services.

[40] 47 U.S.C. § 160(b).

minimizing response times, and in providing crucial location information to the appropriate response unit. In a nutshell, E911 saves lives and saves property.

Recognizing the importance of E911 service in today's society, BellSouth has deployed one of the most fault tolerant automatic location identification ("ALI") systems in existence today, with continuous service and disaster avoidance as primary design factors. As 911 calls are made, the local central office serving the caller routes the call and the caller's Automatic Number Identification ("ANI") to an E911 tandem, which is usually located in the caller's LATA.[41] The E911 tandem has specialized E911 software that equates the caller's ANI with a designated Public Safety Answering Point ("PSAP"). The E911 tandem selectively routes the call and the caller's ANI to the appropriate PSAP over specially designed trunk groups. These trunk groups also may cross LATA boundaries if a single PSAP serves multiple municipalities in different LATAs.

Once the 911 call is received at the PSAP, the PSAP issues a query to the ALI databases, based on the caller's ANI. BellSouth's fault tolerant design requires the PSAP to query two physically diverse ALI systems simultaneously. The two ALI systems themselves are deployed on fault tolerant computers each having mirrored databases, for a total of 4 copies of the database available for queries. BellSouth's disaster avoidance design requires that the two ALI systems be located in geographically diverse locations to eliminate potential ALI failure in the event of a catastrophic disaster, such as a hurricane or massive power failure. The two ALI systems take turns responding to queries from a specific PSAP. In the unlikely event of a failure of one of the ALI systems, the remaining ALI system is designed to support queries from all PSAPs that it serves.

To minimize the costs associated with BellSouth's fault tolerant design, ALI systems are deployed in four locations within the BellSouth nine state region. Florida, Georgia, North Carolina, and South Carolina are served by ALI systems located in Miami and Charlotte. Kentucky, Tennessee, Alabama, Mississippi and Louisiana are served by ALI systems located in Birmingham and Nashville. ALI queries from these states are transmitted over dedicated private lines to the appropriate ALI systems. This design meets the BellSouth requirement of fault tolerance and disaster avoidance, but does require ALI queries to cross LATA boundaries.

As BellSouth showed in its Petition, the Department of Justice has previously concluded that such interLATA provisioning of E911 service is in the public interest and within the scope of waivers previously granted by the decree Court.[42] Forbearance from the Section 272 requirements is critical to BellSouth's ability to keep providing E911 service in this manner. Indeed, other provisions of the Act indicate that Congress expected BellSouth and other BOCs to continue providing E911. To require otherwise would seriously infringe upon the public interest.

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[41] Some local jurisdictions in rural areas may cross LATA boundaries, yet be served by one E911 tandem to minimize hardware costs to the customer (*e.g.*, the municipal government).

[42] BellSouth Petition, at 8 and Attachment 3.

B. Forbearance From Enforcement of Section 272 Separate Affiliate Requirements for E911 Service is Appropriate and Required Under Section 10.

1. Enforcement of Section 272 is Not Necessary to Ensure that the Terms of E911 Service Are Just, Reasonable, and Nondiscriminatory

Under the first prong of the forbearance test, the Commission must determine that enforcement of Section 272 is not necessary to ensure that E911 service is provided on just and reasonable rates, terms, and conditions and not in an unjustly or unreasonably discriminatory manner. E911 service easily clears this hurdle.

E911 Service is provided to governmental entities (or their designates) for the benefit of their constituents. In many, if not all, states, E911 service is funded through surcharges that are imposed on end users' lines and set by the local government. E911 callers are never charged for their calls, and even carriers other than the LEC (*e.g.*, cellular carriers) who might receive an E911 call are prohibited from charging for the call or the airtime. Generally, public policies promoting E911 service have all been developed with the objective of ensuring that E911 service is available, free, and unencumbered by any conditions on use that might deter a potential caller in need. Section 272 is clearly not required to achieve these objectives.

Moreover, application of Section 272 requirements would be counterproductive, if not clearly at odds with Congress's expectations and intent. There can be no doubt but that Congress expected BOCs to continue providing E911 service, for Congress included 911 and E911 service among the specific services to which BOCs must provide competitors nondiscriminatory access under the Section 271 checklist.[43] Were the Commission not to forbear from enforcement of Section 272, BellSouth would have but two choices: provide E911 service through a separate affiliate, or reconfigure the service so that it has no interLATA components.

The first option, however, appears to be inconsistent with Congress's intent. If BellSouth were to move its E911 operations to a separate affiliate, that affiliate, which is not a BOC, would not be subject to the obligation to provide nondiscriminatory access to its E911 service. Meanwhile, the BOC would be left with no E911 service to make available to competitors to meet its checklist requirements.[44] Under this scenario neither the BOC nor its affiliate would be

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[43] 47 C.F.R. § 271(B), 271(B)(vii)(I).

[44] Some might argue, too, that the transfer of E911 service and the facilities necessary to provide that service to an affiliate would make the affiliate a "successor and assign" of the BOC. That affiliate, of course, would then be subject to all of the obligations of the BOC, including the obligation to provide E911 service through a different separate affiliate, itself subject the Section 272 separation requirements. The spiraling effect of this thought process confirms that that is not an outcome designed by Congress.

obligated to make E911 service available. This certainly would not appear to be an outcome Congress envisioned would flow as a result of the intricate reading the Commission has given to the interrelationships of Sections 271(f) and 272(a)(2)(B)(iii), in light of Congress's overt expectation that the BOCs continue to provide E911 service.

The second option, reconfiguring E911 service to be "LATA-pure", is also not realistically viable. Providing the same level of fault tolerance and disaster avoidance within LATA boundaries would be cost prohibitive. Fault tolerant systems required for E911 service are expensive and must be centralized to be cost effective. Moreover, maintaining ALI systems within a LATA would not provide disaster avoidance, since a natural disaster, such as a hurricane or earthquake, can easily cover the size of a single LATA.

Additionally, support costs to distribute the ALI databases over 38 intraLATA systems and provide updates on a daily basis would increase materially. The administrative costs of monitoring additional systems, providing the environment for additional systems, and maintaining additional computer systems would multiply. Further, distributed ALI systems would become exposed to all the problems and risks associated with today's distributed client/server applications, including risks to data security and integrity.

Under these circumstances, it clearly cannot be said that enforcement of Section 272 is required to ensure that E911 service is available on just, reasonable, and nondiscriminatory terms. To the contrary, only forbearance will achieve that result. The first prong of the forbearance test is thus satisfied.

2. Application of Section 272 to E911 Service is Not Necessary to Protect Consumers.

The second prong of the forbearance test requires the Commission to determine that enforcement of Section 272 is not required for the protection of consumers. For E911 service, there can be no doubt. This test is easily met.

Not enough can be said about the consumer protection value of E911 service. Indeed, the whole "reason for being" of the service is the protection of consumers. BellSouth has long been at the forefront of increasing the value of the service, promoting migration from the standard 911 call routing service to the E911 location identification service, developing a special stand-alone ALI database ("SALI") for maintaining descriptive location information for sparsely populated areas where "addresses" are loosely defined, deploying the highly fault tolerant network described above, and continuing to pursue improvements in operational efficiency, reliability, and costs. Throughout these efforts, consumer protection has been the single driving force.

Subjecting E911 service to Section 272 requirements could jeopardize some of the consumer protection that has been achieved so far. For example, as discussed above, reconfiguration of the service to make it LATA-pure would expose the system to greater risks of both natural disasters and security breaches. Additionally, E911 databases get populated with all

customers' telephone numbers and addresses, even those who subscribe to the "non-published" listing referenced above. Any obligation to make this information available to "any other entity" upon disclosure of it to an affiliate providing the E911 service[45] would be directly contrary to these consumers' overt attempts to maintain the confidentiality of that information.

In short, forbearance, not enforcement, is necessary for the continued protection of consumers.

3. Forbearance From Applying Section 272 to E911 Service is in the Public Interest.

The third prong of the forbearance test requires the Commission to determine that forbearance is in the public interest. In doing so, the Commission must consider whether such forbearance will promote competitive market conditions. This test, too, is easily met.

In fact, Congress has already made that determination. Congress enacted the 1996 Act specifically to foster competition in multiple telecommunications markets. To ensure that competition develops in the local exchange market as intended, Congress established the checklist of items it deemed would promote competitive conditions in that market. Inclusion of nondiscriminatory access to E911 service on that checklist confirms that Congress intended BOCs, not any separated affiliate, to provide that service.

Further, BellSouth is prepared to meet its responsibilities. BellSouth has procedures in place for facility based CLECs to interconnect to BellSouth in order to provide 911 service to their customers. Any CLEC that has been certified by the state PSC and has an interconnection agreement with BellSouth can obtain a 911 Local Exchange Carrier Guide for Facility Based Providers (subject to a nondisclosure agreement). This guide provides information needed for the CLEC to get customer information loaded into the 911 database. This guide also gives formats, protocols, and specific procedures for the electronic transmission of CLEC data to BellSouth. Upon request, the CLEC is provided with a list of 911 coordinators for the states in which they will be operating. BellSouth and the CLEC also share information to enable them to route their calls to the appropriate 911 tandem.

BellSouth similarly ensures that customers of resale CLECs are retained in the E911 service database. Thus, customers of competitors are assured of the same high quality, fault tolerant E911 service and architecture as BellSouth's customers. Thus, conditions in the marketplace for local service are made, and remain, competitive.

Where Congress has already determined that BOC provision of access to E911 service to others is pro-competitive and where BellSouth has met its obligations to carry out that

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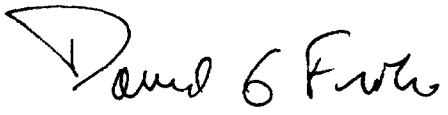
[45] 48 U.S.C. § 272(c)(1).

determination, the Commission has no choice but to conclude that forbearance from applying Section 272 to E911 service is procompetitive and in the public interest. The third prong of the forbearance test is clearly met.

III. Conclusion

As shown above, each of the three prongs of the Section 10 forbearance test has been met by both of BellSouth's reverse directory services and by its E911 service. Under these circumstances, the Commission "*shall* forbear" from enforcing Section 272 with respect to those services. Accordingly, the Commission must grant BellSouth's Petition.

Thank you for the opportunity to present these views.

Sincerely,