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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Second Application by BellSouth )  
Corporation, BellSouth Telecommunications, )  
Inc., and BellSouth Long Distance, Inc., for )  
Provision of In-Region, InterLATA Services )  
in Louisiana )  
\_\_\_\_\_ )

CC Docket No. 98-121

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

APPENDIX TO COMMENTS OF AT&T CORP.  
IN OPPOSITION TO BELLSOUTH'S SECOND  
SECTION 271 APPLICATION FOR LOUISIANA

VOLUME VIII

Filed August 4, 1998

**APPENDIX TO COMMENTS OF AT&T CORP.  
IN OPPOSITION TO BELL SOUTH'S SECOND  
SECTION 271 APPLICATION FOR LOUISIANA**

**CC Docket No. 98-121**

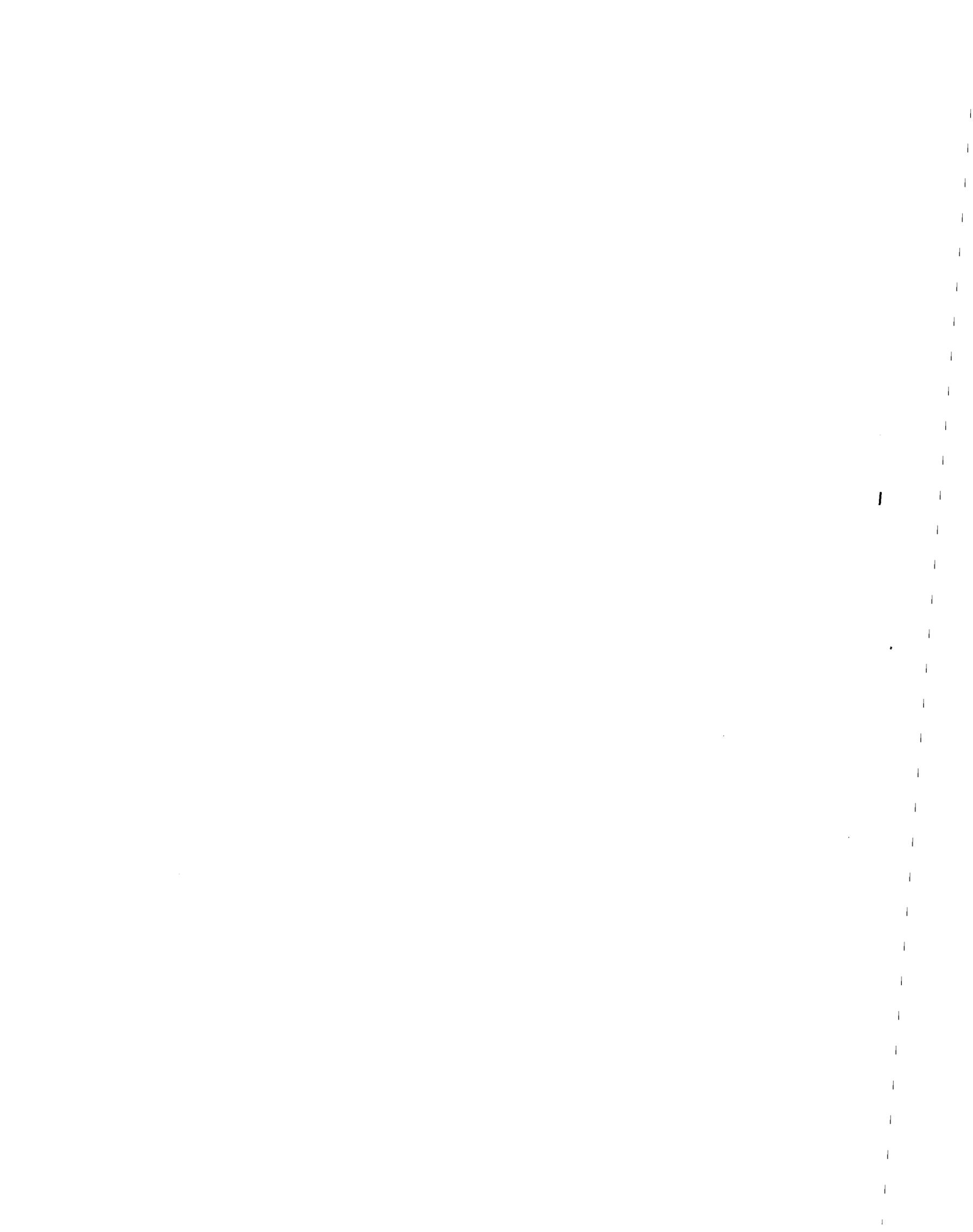
<b>TAB</b>	<b>AFFIANT</b>	<b>SUBJECT(S) COVERED</b>	<b>RELEVANT STATUTORY PROVISIONS</b>
A	Michelle Augier	AT&T Market Entry	§ 271(c)(1)(A), (c)(2)(B), (d)(3)
B	*William J. Baumol	Public Interest	§ 271(d)(3)(C)
C	*Robert H. Bork	Public Interest	§ 271(d)(3)(C)
D	Jay M. Bradbury	Operations Support Systems, Directory Listing, Number Portability, Resale	§ 271(c)(2)(B)(ii), (vi), (viii), (xi), and (xiv)
E	Robert V. Falcone	Unbundled Network Elements: Combinations	§ 271(c)(2)(B)(i), (ii), (v) and (vi)
F	Gregory R. Follensbee	Unbundled Network Elements: Pricing	§ 271(c)(2)(B)(i), (ii)
G	John M. Hamman	Unbundled Switching, Intellectual Property, Reciprocal Compensation	§ 271(c)(2)(B)(ii), (vi) and (xiii)
H	Donna Hassebrock	ADL, Interconnection, Operations Support Systems, Directory Listings, Number Portability	§ 271(c)(2)(B)(i), (ii), (viii) and (xi)
I	R. Glenn Hubbard and William H. Lehr	Public Interest	§ 271(d)(3)(C)
J	Patricia A. McFarland	Section 272 Compliance	§ 271(d)(3)(B)
K	Philip I. Miller and Dean A. Gropper	Public Interest - ILEC Ability to Harm Competition	§ 271(d)(3)(C)
L	Sharon Norris	Louisiana Public Service Commission Proceedings on Operations Support Systems	§ 271(c)(2)(B)(ii)

TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
M	C. Michael Pfau and Katherine M. Dailey	Performance Measurements	§ 271(c)(2)(B)(i), (ii) and (xiv)
N	Jordan Roderick	PCS	§ 271(c)(1)(A), (d)(3)

\* Affidavits marked with this are as originally filed in CC Docket No. 97-231

#### MISCELLANEOUS APPENDIX

TAB	DESCRIPTION
O	Order, <u>AT&amp;T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.</u> , No. 5:97-CV-405-BR (Eastern District of North Carolina, Western Division May 22, 1998)
P	Recommended Decision, Pennsylvania Public Utility Commission, <u>Petition of Bell Atlantic - Pennsylvania, Inc. For a Determination of Whether the Provision of Business Telecommunications Services is Competitive Under Chapter 30 of the Public Utility Code</u> , Docket No. P-00971307 (July 24, 1998)



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in Louisiana )  
)

CC Docket No. 98-121

AFFIDAVIT

OF

R. GLENN HUBBARD  
and  
WILLIAM H. LEHR

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT I

Filed August 4, 1998

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**AFFIDAVIT OF R. GLENN HUBBARD AND WILLIAM H. LEHR**

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**AFFIDAVIT OF R. GLENN HUBBARD AND WILLIAM H. LEHR**

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Second Application by BellSouth ) CC Docket  
Corporation, BellSouth Telecommuni-, ) No. 98-121  
cations, Inc., and BellSouth Long )  
Distance, Inc. for Provision of In- )  
region, InterLATA Services in Louisiana)

AFFIDAVIT  
OF

R. GLENN HUBBARD AND WILLIAM H. LEHR  
ON BEHALF OF AT&T CORP.

R. Glenn Hubbard and William H. Lehr do hereby depose and state as follows:

0. STATEMENTS OF QUALIFICATION

R. GLENN HUBBARD

1. My name is R. Glenn Hubbard. My business address is 3022 Broadway, 609  
Uris Hall, New York, New York 10027.

2. I hold the Russell L. Carson Professorship in Economics and Finance at  
Columbia University. During the 1997-1998 academic year, I was a visiting professor at the  
Harvard Business School. At the National Bureau of Economic Research, I am a research  
associate in programs on corporate finance, public economics, industrial organization,  
monetary economics, and economic fluctuations. I am also a visiting scholar at the American

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**AFFIDAVIT OF R. GLENN HUBBARD AND WILLIAM H. LEHR**

Enterprise Institute, where I direct the Program on Tax Policy Research, and an advisor to the president of the Federal Reserve Bank of New York. Prior to joining the Columbia faculty as professor of economics and finance in 1988, I taught in the economics department of Northwestern University. I have also served as John M. Olin Visiting Professor at the University of Chicago, Visiting Professor and Research Fellow of the Energy and Environmental Policy Center at the John F. Kennedy School of Government, and John M. Olin Fellow at the National Bureau of Economic Research. My A.M. and Ph.D. degrees in economics are from Harvard University, and my B.A. and B.S. degrees are from the University of Central Florida, *summa cum laude*.

3. My professional work has centered on problems in public economics, industrial organization, natural resource economics, and monetary economics. I have authored more than eighty journal articles, edited a number of books, and authored a leading textbook in money and financial markets. I have served on the editorial boards of journals specializing in industrial economics. I have been an advisor or consultant to the Board of Governors of the Federal Reserve System, Congressional Budget Office, Federal Reserve Bank of New York, Internal Revenue Service, International Trade Commission, U.S. Department of Energy, and U.S. Department of the Treasury. In 1991-1993, I served as Deputy Assistant Secretary (Tax Analysis) of the U.S. Treasury Department where I was responsible for economic analysis of tax policy, the administration's revenue estimates, and health care policy issues.

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4. I have previously filed or given testimony in telecommunications regulatory proceedings in Arizona, California, Colorado, Idaho, Iowa, Maine, Massachusetts, New Hampshire, New York and Vermont. I have also submitted numerous affidavits and declarations to the Federal Communications Commission and in proceedings regarding revisions of the Modification of Final Judgment in *United States of America v. Western Electric Company and American Telephone and Telegraph Company* (U.S.D.C., Civil Action No. 82-192). My curriculum vitae is attached as Attachment 1 with more biographical details and a listing of my writings.

**WILLIAM H. LEHR**

5. My name is William H. Lehr. My business address is 94 Hubbard Street, Concord, MA 01742.

6. I am an associate research professor of finance and economics at the Graduate School of Business of Columbia University. Prior to joining the Columbia faculty in 1991, I received my Ph.D. in economics from Stanford University. My M.B.A. (Wharton), M.S.E. (chemical engineering), B.S. (chemical engineering, *cum laude*), and B.A. (European history, *magna cum laude*) degrees are from the University of Pennsylvania. I have significant professional experience in the telecommunications industry through positions at consulting firms and at MCI.

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**AFFIDAVIT OF R. GLENN HUBBARD AND WILLIAM H. LEHR**

7. I have previously filed or given testimony in telecommunications regulatory proceedings in California, Colorado, Georgia, New Mexico, South Carolina, South Dakota, Utah, and Idaho. I have also submitted affidavits and declarations to the Federal Communications Commission and in proceedings regarding revisions of the Modification of Final Judgment in *United States of America v. Western Electric Company and American Telephone and Telegraph Company* (U.S.D.C., Civil Action No. 82-192).

8. My research focuses on issues in telecommunications economics and policy. I have authored a number of professional articles on standard setting and networks. My *curriculum vitae* is attached as Attachment 2.

**I. INTRODUCTION**

9. The principal goal of the Telecommunications Act of 1996 (the Act)<sup>1</sup> is to promote effective competition in all telecommunications services as the surest path to delivering benefits to consumers. The Act describes provisions under which Bell Operating Companies (BOCs), including BellSouth Corporation (BellSouth), will be permitted to offer interLATA services. The Act specifies that the Federal Communications Commission (FCC) should not approve a request for entry into the long distance market unless it determines, among other things, that the request is "consistent with the public interest, convenience, and

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<sup>1</sup> TELECOMMUNICATIONS ACT OF 1996, PUB. L. NO. 104-104, 110 STAT. 56 (1996).

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necessity."<sup>2</sup> In this affidavit, we demonstrate that granting authority for BellSouth to offer in-region, interLATA services in Louisiana at the present time would be inconsistent with the public interest.

10. The public interest will be advanced if entry by BellSouth improves the welfare of consumers by making long distance, local exchange, and other telecommunications markets more competitive.<sup>3</sup> Competition benefits consumers -- and thereby advances the public interest -- through lower prices, improved service quality, and expanded customer choice. Entry by a BOC, such as BellSouth, into interLATA services must be viewed within the larger context of its likely effect on the competitive process and consumer well-being in all telecommunications markets.

11. Today, there is effective competition in long distance markets and virtually no competition in local exchange markets.<sup>4</sup> Partial realization of the competitive goal (*i.e.*, in

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<sup>2</sup> TELECOMMUNICATIONS ACT OF 1996, at § 271(d)(3)(c), note 1, *supra*.

<sup>3</sup> The Department of Justice has also concluded that an assessment of actual local competition is critical for determining whether granting interLATA relief is consistent with the public interest. In a related proceeding, the Department of Justice concluded:

"In evaluating whether the necessary market-opening steps have been accomplished, the Department will look, first and foremost, to the nature and extent of actual local competition." See *In the Matter of Application of SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma*, Evaluation of the United States Department Of Justice, page 43, CC Docket No. 97-121, May 16, 1997.

<sup>4</sup> A recent industry study by the Yankee Group concludes that "while most consumers would be happy to have a choice when it comes to local phone service . . . less than half of 1% of U.S.

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long distance) depended on the separation of these two markets mandated by regulation.

While the emergence of effective local service competition will eventually eliminate the need for continuing mandated separation, it is not appropriate at this time to permit the BOCs to participate in the market for interLATA services. At this early stage -- before the success of the provisions embodied in Section 251 of the Act is assured -- entry by the BOCs into interLATA services would threaten the competitive process in *both* long distance and local services. To ensure that entry of a BOC, such as BellSouth into interLATA services does not impede competition, it is important to consider the economics of local and long distance markets -- their current conditions, differences, and relationship. In this affidavit, we present this analysis, explain the economic principles which should guide application of Section 271 of the Act, and respond to claims raised in this proceeding by BellSouth's economic witnesses, including Jerry A. Hausman,<sup>5</sup> Richard L. Schmalensee,<sup>6</sup> Richard J. Gilbert,<sup>7</sup> D. John Roberts,<sup>8</sup>

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households have yet to experience the benefits of telecom reform." See "Yankee Group Study Finds Residential Local Phone Competition - Still on Hold," press release (May 22, 1997).

<sup>5</sup> *Declaration of Jerry A. Hausman on Behalf of BellSouth*, in the Matter of Second Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in Louisiana, Before the Federal Communications Commission (July 1998).

<sup>6</sup> *Declaration of Richard L. Schmalensee on Behalf of BellSouth*, in the Matter of Second Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in Louisiana, Before the Federal Communications Commission (July 1998).

<sup>7</sup> *Affidavit of Richard J. Gilbert on Behalf of BellSouth*, in the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.,

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Aniruddha Banerjee,<sup>9</sup> and William C. Denk,<sup>10</sup> and a report by the WEFA Group<sup>11</sup>.

12. We organize the remaining discussion into eight major sections. In Section II, we interpret Section 271 within the larger context of the Act, its goals, and relationship to the public interest. Section III reviews the current status of competition in long distance and local exchange services. Section IV assesses the costs and benefits of potential BOC entry into long distance services. Section V provides a general response to the claims made by BellSouth

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for Provision of In-region, InterLATA Services in Louisiana, Before the Federal Communications Commission (November 1997), refiled in the Matter of Second Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in Louisiana, Before the Federal Communications Commission (July 1998).

<sup>8</sup> *Affidavit of D. John Roberts on Behalf of BellSouth*, in the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in South Carolina, Before the Federal Communications Commission (October 1997), refiled in the Matter of Second Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in Louisiana, Before the Federal Communications Commission (July 1998).

<sup>9</sup> *Affidavit of Aniruddha Banerjee, Ph.D. on Behalf of BellSouth*, in the Matter of Second Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in Louisiana, Before the Federal Communications Commission (July 1998).

<sup>10</sup> *Affidavit of William C. Denk on Behalf of BellSouth*, in the Matter of Second Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in Louisiana, Before the Federal Communications Commission (July 1998).

<sup>11</sup> The WEFA Group, *The Economic Impact of BellSouth's Entry into the interLATA Long Distance Markets in Louisiana*, March 1997.

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affiants in this proceeding. In Sections VI and VII, we respond in more detail to the arguments raised by Jerry A. Hausman and Richard L. Schmalensee, respectively. In Section VIII, we respond to a study prepared by the WEFA Group that attempts to estimate the economic benefits of BellSouth's in-region, interLATA entry. Section IX concludes.

13. To anticipate, we reach the following eight conclusions:

i. Long distance markets are effectively competitive today. An analysis of market shares, pricing trends, patterns of entry, marketing and product introduction strategies, and customer behavior demonstrate the existence of vigorous competition which has delivered significant benefits to consumers in the form of lower prices and improved quality and choice of services.

ii. Local exchange markets remain dominated by monopoly BOCs, such as BellSouth, in marked contrast to conditions readily observed in long distance services.

Competitive entry by Competitive Local Exchange Carriers (CLECs) and Competitive Access Providers (CAPs) is limited; and, contrary to BOC arguments, predictions of significant facilities-based entry from wireless or cable TV carriers remain currently unfulfilled, and rest largely on unproved technologies. In particular, PCS wireless services are not a viable substitute for wireline services in today's marketplace. The only significant near-term hope for local competition is from entrants relying heavily

on the opportunity to sell BOC wholesale services and lease unbundled network

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elements (UNEs) that are provided under Section 251 of the Act. BellSouth has foreclosed entry by resale or access to UNEs by its clear failures to comply with the requirements of Section 251.

iii. BellSouth's entry into interLATA services will not enhance the performance of long distance markets because these markets are already effectively competitive. Rather, it will threaten competition in both long distance and local exchange markets. The BOCs' incentives and opportunities to engage in anticompetitive behavior and to extend their market power over local exchange services, long distance services and other telecommunications services will be enhanced if they are allowed to compete in interLATA services at this time.<sup>12</sup>

iv. BellSouth's entry into long distance services is not warranted on efficiency grounds. Relaxation of the entry restriction in the near term will not further deregulatory goals,

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<sup>12</sup> Professor Marius Schwartz concurs with this assessment in his discussion in a related proceeding of why it is not appropriate to grant interLATA relief to Southwestern Bell Telephone at this time:

"Authorizing premature BOC entry would prematurely reduce a BOC's cooperation incentives for two main reasons: (a) the BOC stands to gain if it can leverage its local market power into the newly opened markets for long-distance and integrated services; and (b) the BOC is emboldened to stiffen its resistance to local competition having secured its coveted long-distance authority."

*See Affidavit of Marius Schwartz, Competitive Implications of Bell Operating Company Entry into Long-Distance Telecommunications Services, submitted on behalf of the Department of Justice, In the Matter of Application of SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, ¶ 9, CC Docket No. 97-121, May 16, 1997.*

but will force regulators to adopt less effective and more cumbersome mechanisms to attempt to safeguard the competitive process from anticompetitive behavior by BellSouth.

v. Professor Hausman argues that Bell Operating Company (BOC) entry into long distance services will result in significant reductions in long-run long distance prices, while there is little room for similar benefits to be realized from local competition. His analysis rests on the unsupported and erroneous contention that local prices approximate long-run average costs because regulation has been almost perfectly effective, while long distance prices are significantly above economic costs. He does not support these arguments with structural or empirical analysis of competition in either market. While Professors Hausman and Gilbert both correctly note the appeal to consumers and carriers of being able to offer "one-stop" shopping services, they fail to note that this option is only attractive if consumers are allowed to choose among multiple sources of supply for their one-stop offers and that currently there is no effective alternative for obtaining local services in Louisiana other than from BellSouth.

vi. Professor Schmalensee argues incorrectly that long distance prices are inadequately competitive, alleging that prices have failed to adequately reflect reduction in access charges and that margins in long distance remain excessive. On closer inspection, it is clear that both of these conclusions are wrong and inconsistent with appropriate data. Furthermore, while we agree with Professor Schmalensee that BellSouth would be a

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strong competitor in interexchange services, we recognize that BellSouth's ability to compete relies on its unique position as the monopoly provider of local services.

BellSouth's ability to succeed in long distance competition is not the relevant question.

It is more important to consider the negative impact that premature entry into interLATA services would have on prospects for promoting local competition.

vii. The WEFA analysis merely demonstrates the importance of telecommunications services to the economy of Louisiana -- both local and long distance. The results are based on faulty and inadequately substantiated assumptions contrasting the base case to the scenario in which BellSouth enters long distance service. The analysis ignores the negative impact on local competition (and hence local and long distance prices) of permitting premature entry by BellSouth and fails to adequately explain why all of the benefits assumed in their alternate scenario should be uniquely assigned to the entry of BellSouth. The potential welfare loss from continuing the present monopoly over local telephone services may exceed \$19 billion each year nationally.<sup>13</sup> Allowing BellSouth to enter long distance at this time would strengthen its monopoly power, thereby threatening realization of these gains. No compensating gains are available from additional entry into long distance services because these services are effectively competitive.

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<sup>13</sup> See R. Glenn Hubbard and William Lehr, *Improving Local Exchange Competition: Regulatory Crossroads*, Mimeograph, Columbia University, February 1998.

viii. The best policy is to deny interLATA relief for BellSouth until effective competition emerges in local exchange markets.

**II. PUBLIC INTEREST GOALS OF SECTION 271**

14. The goal of the Telecommunications Act of 1996 to promote competition in all telecommunications services requires a substantial shift in the regulatory paradigm. Instead of directly regulating for an indefinite period the behavior of the monopolist incumbent local exchange carriers (ILECs), regulators will manage the transition to competition. The Act sought to eliminate both regulatory and economic entry barriers in order to open local markets to competition. With the emergence of effective competition, market forces will increasingly and ultimately replace direct regulatory oversight as the guarantors of consumers' well-being and the health of the telecommunications sector of the economy.

15. Competition will benefit consumers through lower prices, improved quality, and greater choice. Such benefits include allowing consumers to engage in "one-stop" shopping, wherein they can purchase both long distance and local services (and perhaps other services such as Internet access) from a single provider. However, for consumers to benefit from this opportunity, they must be able to choose among multiple competing suppliers for the service bundle. This choice is not currently possible because of the lack of competition in local markets.

16. The Act seeks to promote local competition by enabling competitive CLECs to make use of the existing telephone infrastructure by requiring the ILECs to offer unbundled

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network elements (UNEs) and interconnection services at non-discriminatory, cost-based rates, and by requiring the ILECs to offer wholesale versions of the ILEC's retail services at a resale discount that reflects the costs which should be avoided by the ILEC when the CLEC resells the service. These unbundling and resale provisions, embodied in Sections 251 and 252 of the Act, are needed to overcome the economic barriers associated with constructing a local telephone network. It is neither feasible nor efficient for an entrant to replicate all of the facilities of the ILEC in order to provide service -- especially in the short term. Requiring the ILEC to offer UNEs and interconnection services at the forward-looking incremental cost "levels the playing field" because both the ILEC and CLEC can use the existing network infrastructure at its economic costs, which approximates the prices that would prevail if the market were already competitive.<sup>14</sup>

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<sup>14</sup> The economic cost includes a fair return on invested capital, so that the ILEC is adequately compensated for the CLEC's use of its facilities.

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17. The Act recognizes that the ILECs have little incentive to cooperate in a process that is intended to reduce their monopoly control over local exchange services, and so implementing these provisions is going to be extraordinarily difficult.<sup>15</sup> Therefore the Act anticipated that continuing regulatory oversight of the ILECs will be necessary as long as they retain significant market power to protect the competitive process during the transition. In addition, the Act includes a number of special provisions which apply to the incumbents -- principally the BOCs -- and are intended to limit their ability to exploit their market power. Section 271 identifies the preconditions and requirements which must be satisfied before the

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<sup>15</sup> The FCC's Order notes that "[a]n incumbent LEC . . . has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions" (see paragraph 10 of the *First Report and Order*, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Released August 8, 1996, hereafter referred to as *First Report and Order*). Moreover, the FCC recognized that the BOCs possess superior bargaining power and that a new entrant "comes to the table with little or nothing the incumbent LEC needs or wants" (see *First Report and Order*, paragraph 15).

Furthermore, in noting the incentive and ability of BOCs to delay competition by refusing to cooperate, Professor Marius Schwartz noted that:

"BOCs repeatedly and successfully delayed the introduction of dialing parity, long after it was determined to be in the public interest. In Minnesota, the delay caused by repeated legal and administrative challenges was close to a decade."

See *Supplemental Affidavit of Marius Schwartz on Behalf of the U.S. Department of Justice*, in the Matter of Application of BellSouth Corporation to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Before the Federal Communications Commission, November 1997, page 15.

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FCC may approve a BOC's application to compete in interLATA services. These are intended to assure a successful implementation of the policies required by Section 251 before the restriction against competing in interLATA services is removed.<sup>16</sup>

18. The emergence of effective competition will reduce the need for direct regulatory oversight. In the absence of effective competition, however, complex regulatory controls are often needed to assure that consumers' interests are protected. In such cases, it is common to restrict the regulated firm's participation in unregulated, competitive markets in order to prevent the firm from either harming the competitive process in other markets or circumventing regulations in its home market.

19. The restriction on BOC participation in interLATA markets addressed by Section 271 of the Act originated in the Modification of Final Judgment ("MFJ"), which governed the divestiture of the former Bell System into a long distance company (AT&T), which would face competition, and into the seven Regional Bell Operating Companies (RBOCs), which would be regulated as local monopolists.

20. While the MFJ achieved its goal of establishing vigorous and sustainable competition in long distance markets by the end of the 1980s, local exchange markets have remained monopolized by the BOCs. Despite this fact, the BOCs have lobbied in judicial,

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<sup>16</sup> These include a public interest test, a requirement that there exist a facilities-based local exchange competitor, and a competitive checklist (*see* Section 271 of the Telecommunications Act of 1996, note 1, *supra*).

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legislative, and regulatory arenas for freedom to enter interLATA markets since almost immediately after divestiture.<sup>17</sup>

21. Before the Act was passed, the BOCs lobbied to have control over their entry into interLATA markets taken away from the judiciary and placed before Congress and, in the lawmaking process, accepted the provisions of Section 271 as being less onerous than the MFJ. One and one half years later, the BOCs appealed to the judiciary to invalidate Section 271 as unconstitutional. Recently a federal judge in Texas ruled in their favor, and that decision is now in the beginning of the appeal process.<sup>18</sup> The factual circumstances regarding local competition have still not changed since 1984. The BOCs are still monopolists that are capable of engaging in the same kind of behavior that the MFJ sought to prevent.

22. The provisions of Section 271 identify the circumstances under which the BOC entry restriction will become unnecessary. To eliminate this restriction prematurely would at a minimum necessitate an increase in alternative regulatory mechanisms to attempt to safeguard against anticompetitive behavior by the BOC. Moreover, any such alternatives would be less

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<sup>17</sup> In 1994, four RBOCs -- Bell Atlantic, BellSouth, SBC, and NYNEX -- filed a motion to vacate the MFJ. Before the hearing on the RBOCs' motion was held, the issues addressed by the motion were resolved by the Telecommunications Act of 1996.

<sup>18</sup> Civ. Action No. 7:97-CV-163-X, slip op. (N.D. Tex. Dec. 31, 1997) (*SBC v. FCC*), appeal pending, Case No. 98-10140 (5th Cir.).

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effective at protecting competition and more cumbersome to implement. In fact, removal of this form of regulation would necessitate an overall increase in the regulatory burden, while at the same time diminishing its effectiveness in preventing anticompetitive conduct.

23. The Act has still not been successfully implemented. Although SBC, Ameritech, and BellSouth have argued that they have met the requirements of Section 271 in Oklahoma, Michigan, South Carolina, and Louisiana, the Department of Justice and the FCC have soundly rejected BOC requests to enter in-region, interLATA services.<sup>19</sup> Review of the state of competition in each of these cases indicates that the markets remain monopolies and that important pro-competitive provisions of the Act are still not implemented (see Exhibit 1). Many states still have not approved prices for UNEs nor finalized the terms under which UNEs will be made available to CLECs. In no state have the ILECs completed implementation of non-discriminatory electronic interfaces to facilitate the transferring of

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<sup>19</sup> *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, Federal Communications Commission 97-298 (released August 19, 1997); *In the Matter of Application by SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, Federal Communications Commission 97-228 (released June 26, 1997); *In the Matter of Application of BellSouth Corporation, et. al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, Federal Communications Commission 97-418 (released December 24, 1997); *In the Matter of Application of BellSouth Corporation, et. al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, Federal Communications Commission 98-17 (released February 4, 1998).