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December 9, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Written Ex Parte in CC Docket 98-147

Dear Ms. Salas:

This notice is to inform you that a written ex parte was delivered yesterday to Larry Strickling, Chief, Common Carrier Bureau, regarding an advanced data services proposal. The letter is attached to this notice.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record of CC Docket 98-147.

Respectfully submitted,



David G. Frolio

Attachment

cc: Larry Strickling

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List ABCDE

Robert T. Blau, Ph.D, CFA
Vice President - Executive and
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December 8, 1998

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DEC - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Larry Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Re: **New Proposal for Reducing Regulation of Advanced Services**
(CC Docket No. 98-147)

Dear Mr. Strickling:

As we explained in our meeting on November 3, BellSouth is committed to the widespread deployment of advanced services, including mass-market deployment of ADSL service. Advanced technologies have the potential to transform the existing circuit-switched network into the "network of the future," over which consumers and small businesses will obtain broadband data services as readily as they obtain voice services today. The Commission's actions in this proceeding will directly affect whether and when this transformation actually occurs. In this letter, BellSouth proposes a new approach for reducing regulation of advanced services and the technologies that enable such services.

The Commission can best promote competition and investment in advanced services by adhering to the deregulatory policies of the Telecommunications Act of 1996. Three fundamental conditions are crucial to widespread deployment of advanced services:

1. The Commission must grant BOCs in-region interLATA relief without further delay. Such relief will do more to accelerate the deployment of advanced services than all of the other actions the Commission could take.
2. The Commission must not discourage or penalize the integration of advanced technologies into ILECs' networks. ILECs do not dominate advanced services markets. Indeed, they compete directly with cable companies and large interexchange carriers, which face no regulatory impediments to the integration of advanced technologies into their networks. The Commission must not rob ILECs of their economic incentives to invest in advanced technologies. As Michael Armstrong of AT&T recently explained, "[G]etting a free ride on someone else's investment and risk is really not the way to do it. It's not fair, and it's not right."
3. The Commission must encourage advanced services competition from all sectors and eliminate economic regulation of competitive advanced services. Uneven regulatory

burdens, which penalize only ILECs for pursuing network integration, bias public policy toward the provision of advanced services by everyone but ILECs.

The Commission's proposals in this proceeding, while made in good faith, do not satisfy these three conditions. They do not adequately address the serious impact of the interLATA restriction on the deployment of advanced services. Indeed, some proposals could have the effect of raising the bar for interLATA relief. Moreover, the Commission has proposed to make regulatory relief for ILECs' advanced services contingent on the formation of "truly" separate affiliates. This approach would add another layer of regulation, further distorting investment incentives and penalizing ILECs for upgrading their networks with new technologies. Accordingly, BellSouth has urged the Commission to interpret the Communications Act in a manner that facilitates ILECs' provision of advanced services on an integrated basis and to reject calls by ILECs' competitors for greater regulation of ILECs.

As BellSouth's comments demonstrate, the Commission has sufficient authority to forbear dominant carrier regulation of ILECs' advanced services and to mitigate the effects of Section 251(c)(3) on the integrated deployment of advanced technologies -- without an affiliate requirement. For instance, the Commission has the authority under Section 251(d)(2)(B) to determine that equipment and facilities used by ILECs to provide advanced services should not be unbundled under Section 251(c)(3). Nevertheless, BellSouth recognizes that the Commission still may impose an affiliate condition for regulatory relief. In anticipation of that possibility, BellSouth now proposes a variation on the Commission's proposal that would mitigate the negative effects of an affiliate requirement.

Specifically, the Commission should include in any affiliate rule an alternative that permits ILECs to continue to integrate advanced technologies into their networks, while leaving the provision of advanced telecommunications services to an affiliate and other CLECs. This approach, while not eliminating all regulatory impediments to ILECs' deployment of advanced technologies, would significantly reduce those impediments.

Under this alternative, an ILEC could choose (on a case-by-case basis) to deploy advanced technologies and not to offer the associated advanced telecommunications services. The ILEC would negotiate contracts to provide CLECs access to advanced technologies. CLECs, including an affiliated CLEC, would offer the advanced services to customers using the advanced technologies provided by the ILEC or their own facilities and equipment, as they choose. Under this approach, the affiliate and other CLECs would have the same opportunity to negotiate contracts with the ILEC, as well as the same access to the technologies.

This alternative has several advantages. First, it addresses any reasonable concern with respect to ILECs' incumbency advantage. All providers of advanced services, whether or not affiliated with the ILEC, would receive the same access to the ILEC's advanced technologies and would, of course, also have non-discriminatory access to unbundled network elements and collocation.

Second, this approach would promote competition for advanced services by moving ILECs' affiliates toward the freedom from regulation already enjoyed by their competitors, including the providers of cable modem service and large interexchange carriers. Because the providers of advanced services under this approach will be CLECs, all should be treated as non-dominant, or even fully deregulated. Consistent with Commission precedent, this non-dominant treatment would extend to any ILEC affiliate that maintains a *Competitive Carrier* level of separation from the ILEC. Likewise, maintenance of this level of separation would assure that the affiliate would not be treated as a successor or assign of the ILEC under Section 153(4) or Section 251(h). (See Enclosure B for a comparison of the *Competitive Carrier* safeguards as applied in two recent cases with the Section 272 safeguards.)

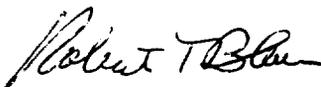
Third, this approach would promote investment in advanced services based on market incentives. It would reduce the regulatory burdens now borne by ILECs that deploy advanced technologies on an integrated basis. ILECs and CLECs would negotiate the particular advanced technologies to be provided to the CLECs, thus ensuring that ILEC deployment of advanced services is based on market demand rather than regulatory fiat. This approach would also free ILECs from any application of Section 251(c)(3) and related provisions to advanced technologies that ILECs do not use to provide any telecommunications service. This limited freedom from Section 251(c)(3) would not otherwise affect the ILEC's obligations under Section 251(c)(3) for facilities and equipment it uses to provide telecommunications services. Neither would it affect the obligation arising from the *Competitive Carrier* safeguards herein proposed to provide completely non-discriminatory access to advanced technologies provided to its affiliate. It would, however, mitigate the investment disincentives resulting from application of Section 251(c)(3) to these advanced technologies.

As you know, BellSouth earlier this week joined with members of the computer and telecommunications industries in a statement of ten principles to promote widespread deployment of advanced services. The proposal made herein is fully consistent with those principles and represents, in fact, one possible application of those principles.

Further details of this alternative are set forth in Enclosure A. While this approach is not the ideal method of eliminating regulatory impediments to investment (particularly the interLATA prohibition), BellSouth proposes it as an interim step toward full deregulation of ILECs' advanced services and parity with their essentially unregulated competitors.

We will be happy to answer any questions you may have regarding this proposal.

Sincerely,



Robert T. Blau

Enclosures

cc: Thomas Power
Kevin Martin
Kyle Dixon
Jim Casserly
Paul Gallant
Bob Pepper
Carol Matthey

**ADVANCED TELECOMMUNICATIONS SERVICES
BELLSOUTH'S PROPOSED ALTERNATIVE FRAMEWORK**

- 1) An ILEC would have three options for deploying advanced telecommunications services ("advanced services") and technologies in a market, from which it could select on a case-by-case basis:
 - a) Deploy advanced technologies in existing networks and offer advanced services in the ILEC ("Status Quo");
 - b) Deploy advanced technologies and offer advanced services in a "truly" separate affiliate ("NPRM Approach"); or
 - c) Deploy advanced technologies in existing networks and offer those technologies only to CLECs, including an affiliate that would provide advanced services ("BellSouth Proposal").
- 2) When an ILEC chooses to offer an advanced technology exclusively to CLECs, the following framework would apply:
 - a) The ILEC would transfer to its affiliate its rights and obligations under existing advanced services arrangements with customers and withdraw its tariffs. The affiliate would provide advanced services to customers, including end users and ISPs. For the purpose of these transfers, the ILEC would have the right to determine which services to classify as advanced services.
 - b) The ILEC would make access to advanced technologies, including associated OSS interfaces and collocation, available to its affiliate and other CLECs on the same terms and conditions.
 - c) The affiliate would have the same rights as non-affiliated CLECs to negotiate non-discriminatory interconnection and collocation agreements with the ILEC under Section 251(c) and related provisions and to deploy its own facilities and equipment. No restrictions would be placed on an affiliated CLEC's right to negotiate interconnection and collocation contracts with the ILEC unless such restrictions apply equally to non-affiliated CLECs.
 - d) The ILEC would have the right to negotiate arms-length contracts (other than interconnection and collocation contracts) with the affiliate free from non-discrimination requirements, as follows:
 - i) The ILEC would be able to obtain advanced services for its integrated enhanced services operations from the affiliate. For instance, BellSouth's ILEC ("BST") provides Internet Access Service in compliance with the *Computer Inquiry III* rules. BST has recently begun to offer a high-speed Internet Access Service that uses its tariffed ADSL service. If BST elected to discontinue the provision of ADSL service and trans-

ferred that service to an affiliated CLEC, it would still need to be able to use that service to provide its high-speed Internet Access Service. Since it would no longer offer that service to other ISPs under tariff, it would be required to obtain the service from a CLEC. It should be able to procure that service from its affiliated CLEC with no nondiscriminatory procurement obligation.

- ii) The ILEC would be able to engage in joint marketing with affiliate.
- iii) The ILEC would be able to provide billing and collection services for the affiliate.
- iv) The ILEC would be able to provide professional network operations services to the affiliate.

(The foregoing would apply even if the affiliate engaged in activities that invoke the Section 272 safeguards.)

- e) The ILEC would have a 12 month transition period in which to form an advanced services affiliate and make it operational.
 - i) During this period, the ILEC would be able to transfer its advanced services assets and operations to the affiliate without the affiliate's becoming a successor or assign under Section 153(4) or Section 251(h).
 - ii) Examples of assets or operations that could be transferred include the existing customer base, equipment that the ILEC will not use to provide advanced technologies to CLECs (if any), employees, and advanced services retail operations and contracts.
- 3) The Commission would regulate the affiliate no differently from the way it regulates other CLECs.
 - a) Non-dominant carrier regulation would apply to avoid dominant carrier price and tariff regulation, application of *Computer Inquiry III* requirements, and all other aspects of dominant carrier regulation. When CLECs are fully deregulated, the affiliate would be too.
 - b) The affiliate would not be subject to any ILEC obligations under Section 251(c) and related provisions.
 - c) This level of regulation would apply to the affiliate as long as the ILEC maintains a level of separation from the affiliate that satisfies *Competitive Carrier* safeguards, including the nondiscriminatory provision of advanced technologies to its affiliate and other CLECs. Section 272 requirements (with the modifications set forth in paragraph 2(d), above) would apply only if the affiliate also engaged in activities to which Section 272 applies.
 - d) The requirement of *Competitive Carrier* safeguards would sunset concurrently with the sunset of Section 272 safeguards.

- 4) States would be required to treat the affiliate the same as non-affiliated CLECs, including no delays or discriminatory conditions on certification or acceptance of state tariffs, if any. States would also be required to permit the ILEC to withdraw its tariffs for advanced services transferred to the affiliate or to transfer such tariffs to the affiliate, depending on which alternative would be consistent with nondiscriminatory regulation of the affiliate. Violations of these requirements would be regarded as barriers to entry under Section 253.
- 5) In support of this alternative, the Commission should clarify the following:
 - a) Prior to Section 271 relief, the affiliate may enter into cooperative marketing, interconnection, and other business arrangements with non-affiliated interLATA providers to provide complementary services to meet customers' needs in region, provided only that such arrangements clearly identify the non-affiliated party that is providing the interLATA service, that the non-affiliate levies separate charges for its services, and that the affiliate does not base its charges to the non-affiliate on the revenues that the non-affiliate receives from its interLATA services. Under such arrangements, the affiliate may provide marketing and sales, customer care, and other professional services for the interLATA provider. (This clarification is needed because the Commission's order regarding the teaming arrangements between Qwest, U.S. West, and Ameritech, while continuing to permit teaming arrangements, has created substantial uncertainty regarding how BOCs or their affiliates should structure teaming arrangements with non-affiliated interLATA service providers to avoid a finding that they are "providing" interLATA services.)
 - b) An ILEC's provision of advanced technologies (*i.e.*, facilities or equipment) or combinations of advanced technologies solely to CLECs does not constitute the provision of "telecommunications service," "telecommunications," or "wire communication" as those terms are defined in the Telecommunications Act.
 - c) Where an ILEC provides advanced technologies solely to CLECs, the facilities and equipment comprising such technologies do not constitute "network elements" as that term is defined in the Telecommunications Act and are therefore not subject to Section 251(c)(3) or related provisions.
 - i) Alternatively, the Commission should find under Section 251(d)(2)(B) that, when an ILEC does not use advanced technologies to provide advanced services but provides affiliated and nonaffiliated CLECs the same access to its advanced technologies, it is not required to provide unbundled access to such technologies under Section 251(c)(3).
 - ii) Either approach would preserve ILECs' economic incentives to invest in advanced technologies without the threat of being forced to charge prices that do not adequately compensate the ILEC for its investment risk.

- iii) In either case, the fundamental safeguard proposed herein would be preserved: In order for the ILEC and its affiliate to enjoy the regulatory freedoms of this proposal, the ILEC would be required provide its affiliate and other CLECs the same access to the ILEC's advanced technologies.
- d) The ILEC has no obligation to file a CEI Plan or to comply with ONA or network disclosure requirements with respect to advanced services that the ILEC purchases from the affiliate or other providers for use in the provision of the ILEC's enhanced or information services.
- e) The ILEC has no CEI Plan, ONA, or other obligation under *Computer Inquiry II or III* rules when affiliate engages in the provision of enhanced or information services using services, UNEs, or advanced technologies purchased from ILEC under tariffs or under nondiscriminatory contracts available to all CLECs.
- f) Neither the Commission nor the states may compel an ILEC that has elected to provide an advanced service solely through an affiliate to provide such service directly to the public.

**COMPARISON OF REGULATORY SAFEGUARDS
GOVERNING THE RELATIONSHIP BETWEEN
INCUMBENT LECS AND AFFILIATED COMPETITIVE CARRIERS**

	LONG DISTANCE SAFEGUARDS		CMRS SAFEGUARDS
	Section 772 (LD)	Competitive Carrier 5 th RAO	WFL Docket 98-100
Shared Officers	No	Yes	Yes
Shared Operating, Marketing, and I&M Personnel	No	Yes	Yes
Joint Ownership of Facilities	No (for transmission and switching or buildings in which located)	No (for transmission or switching facilities)	No (for transmission and switching facilities used to for provision of local exchange service)
Joint Physical Space	Yes	Yes	Yes
Joint Billing	Yes	Yes	Yes
Affiliate May Own Landline Facilities	Yes	Yes	Yes
ILEC Sale/Promotion of Affiliate's Services	Yes	Yes	Yes
Shared Administrative Services	Yes (except neither can perform operations or I&M on other's facilities)	Yes	Yes
Joint R&D	Yes	Yes	Yes
Separate Corporate Entity Required	Yes	Yes	Yes
Separate Books of Account Required	Yes	Yes	Yes
Arm's length dealings	Yes	Yes	Yes
Must Obtain ILEC Communications Services or Network Elements Under Tariffs or Nondiscriminatory Agreements*	Yes	Yes	Yes

* The CMRS/LD affiliate should also be permitted to purchase unbundled network elements.