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February 18, 2000

RECEIVED  
FEB 18 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

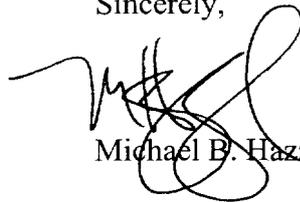
Re: Fourth Further Notice of Proposed Rulemaking Concerning Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98.

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original and twelve copies of the Reply Comments of Allegiance Telecom, Inc.

Would you kindly date-stamp the additional copy provided and return the same to the bearer. Thank you for your assistance.

Sincerely,



Michael B. Hazzard

Enclosures

No. of Copies rec'd 0/12  
List A B C D E

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
)  
Implementation of the Local Competition ) CC Docket No. 96-98  
Provisions in the Telecommunications Act )  
of 1996 )

**REPLY COMMENTS OF  
ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. (“Allegiance”), by its attorneys, hereby submits its reply comments in response to the Commission’s Further Notice of Proposed Rulemaking<sup>1</sup> and Supplemental Order<sup>2</sup> in the above-captioned proceeding.

**I. BACKGROUND**

Allegiance is a facilities-based integrated communications provider headquartered in Dallas, Texas. Allegiance offers its customers a full suite of local, long distance, and Internet access services, including Digital Subscriber Line services. Allegiance also offers a variety of web hosting and web design services. In short, Allegiance is a full-service company that seeks to provide as many services as possible to its customers. Allegiance presently offers service in 20 markets in the United States, and plans to offer service in a total of 36 markets by the end of 2001.

<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (“*UNE Remand Order*”).

<sup>2</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999).

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Allegiance Telecom, Inc.  
CC Docket 96-98  
February 18, 2000

As recognized in the comments filed in this proceeding, legitimate concerns exist regarding the ability of carriers that offer only interexchange services to substitute unbundled network elements (“UNE”) for special access, which potentially could result in sharp decreases in incumbent local exchange carrier (“LEC”) special access revenues. For similar concerns, Allegiance, along with two other competitive LECs and Bell Atlantic, previously offered a workable, middle-ground proposal designed to: (1) preserve the ability of competitors to utilize UNEs to provide integrated voice and data services; and (2) mitigate incumbent LEC special access revenue losses due to UNE conversions.<sup>3</sup> Since that time, however, the actions of incumbent LECs, most notably BellSouth, have demonstrated to Allegiance that the potential for and likelihood of abuse of any UNE use restriction by incumbents outweighs any perceived advantages of such a use restriction. Based on this experience, Allegiance has re-evaluated its position and submits that the Commission should not permit use restrictions of any kind on UNEs.

## **II. THE POTENTIAL FOR ABUSE OF ANY PERMITTED UNE USE RESTRICTION BY INCUMBENT LECs IS HIGH**

In Allegiance’s experience, obtaining even basic, seemingly non-controversial, UNEs from incumbents can sometimes be extremely difficult. Any UNE use restriction issued by the Commission presents another opportunity for incumbent LECs to thwart further the ability of competitors to obtain access to network elements. To illustrate this point, Allegiance provides

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<sup>3</sup> Letter from Susanne Guyer, Assistant Vice President Federal Regulatory, Bell Atlantic, to Magalie Roman Salas, Secretary, CC Docket 96-98 (filed Sept. 2, 1999).

one on-going example of how the incumbents utilize legal ambiguity and delay tactics to make obtaining basic UNEs a Kafkaesque venture.

BellSouth has placed unreasonable conditions on Allegiance's ability to access the dedicated transport UNE. Under the Commission's rules, incumbent LECs are required to provide requesting carriers, such as Allegiance, unbundled dedicated transport, which the Commission defines as:

[I]ncumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting carriers.<sup>4</sup>

In elaborating on the uses of dedicated transport UNEs, the Commission has stated that a dedicated transport facility "could be used by a competitor to connect to the incumbent LEC's switch or to the competitor's collocated equipment."<sup>5</sup> In spite of this straightforward description of the dedicated transport UNE, BellSouth's practices have impaired Allegiance's efforts to obtain reasonable access to dedicated transport to connect Allegiance's switches to its collocated equipment.

After the Commission released its *UNE Remand Order*, Allegiance renewed its attempts to obtain from BellSouth a continuous dedicated transport UNE from an Allegiance switch to an Allegiance collocation arrangement. In response to this request, a BellSouth representative stated that:

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<sup>4</sup> See 47 C.F.R. § 51.319; see also, *UNE Remand Order*, ¶¶ 322-23.

<sup>5</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 440 (1996) ("First Report and Order") (subsequent history omitted).

To us the facility that runs between your switch and our office is considered Local Interconnection and that's not available at a UNE Level. In fact, I've noticed from the [*UNE Remand Order*] that the FCC is going to put that out in a [Further] Notice of Proposal Rulemaking to see ... whether or not they should offer that segment as UNE.<sup>6</sup>

In other words, contrary to the Commission's rules, BellSouth denied that it had an obligation to provide end-to-end transport from an Allegiance switch to Allegiance equipment collocated in a BellSouth central office.

In order to obtain interoffice transport between its switch and a serving wire center where Allegiance is collocated, BellSouth requires Allegiance to submit two separate orders and purchase two separate UNEs: one UNE dedicated transport circuit from Allegiance's collocated equipment to a BellSouth serving wire center and a second "UNE DS3 Local Channel" (*i.e.*, UNE dedicated transport) from the BellSouth serving wire center to the Allegiance switch.<sup>7</sup> Moreover, BellSouth requires Allegiance to combine these two UNEs in its collocation space in the BellSouth serving wire center. Thus, rather than provide Allegiance with a continuous, end-to-end dedicated transport facility, BellSouth indicated that Allegiance must purchase two separate facilities and "combine" them in an Allegiance collocation node.<sup>8</sup>

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<sup>6</sup> Transcribed voicemail from Marc Cathey, BellSouth, to Robert W. McCausland, Allegiance, dated January 12, 2000, attached hereto at Exhibit A.

<sup>7</sup> A diagram of the proposed BellSouth arrangement is attached hereto at Tab B.

<sup>8</sup> To further complicate matters, BellSouth noted that, although it was willing to provide two transport facilities, Allegiance's interconnection agreement lacked "pricing associated with UNE DS3 Local Channel." Email from Wayne Carnes, BellSouth, to Dan Yost, Allegiance, dated January 18, 2000, attached hereto at Tab C. In spite of the fact that a "UNE DS3 Local Channel" is physically and functionally identical to dedicated transport, and that dedicated transport is provided for in Allegiance's interconnection agreement, BellSouth told Allegiance that it would have to amend its interconnection agreement to cover this item. This has added additional unwarranted delay to the process of obtaining dedicated transport from BellSouth.

In addition to injecting substantial delay in the “process” of obtaining UNE transport, BellSouth’s position artificially raises Allegiance’s costs. UNE pricing for dedicated transport is composed of two elements: (1) a flat monthly recurring fee for the transport circuit and (2) a mileage-based component. By forcing Allegiance to purchase two UNEs when only one is needed, Allegiance’s monthly costs are inflated artificially. Allegiance also is required to pay two sets of non-recurring charges for establishing the transport circuits, even though the same result could be obtained with a single, continuous facility. Moreover, BellSouth’s requirement that Allegiance “combine” the two transport elements in an Allegiance collocation node similarly increases Allegiance’s costs and forces Allegiance to waste precious and expensive collocation space unnecessarily to accomplish the cross connection of the two separate UNEs.

After making its position on the availability of UNE transport known to Allegiance, BellSouth sent Allegiance a letter explaining how it would be better off if it purchased retail, rather than UNE, dedicated transport facilities from BellSouth. In describing the shortcomings of BellSouth’s wholesale UNE transport product as compared to its retail product, BellSouth made numerous observations, including the following:

- “The UNE DS3 has no performance monitoring”;
- “The UNE DS3 has no guarantees [with] respect to service performance..., which ultimately may affect the end user’s service”; and

- “The UNE DS3 has a ‘targeted’ installation interval of 30 days with no guarantees,” whereas a retail facility “will be implemented in 2-3 days.”<sup>9</sup>

At bottom, “[e]ven though the two products are the same in their purpose, by virtue of buying a product at wholesale prices, Allegiance is forgoing the added value and benefits supported by a product purchased at retail prices.”<sup>10</sup> As for price, according to BellSouth’s estimates, the proposed “retail” transport facility would cost approximately \$6,000 more on a monthly recurring basis than the UNE facilities sought by Allegiance.<sup>11</sup>

Although, the Commission’s existing rules prohibit incumbents from placing use restrictions on UNEs, BellSouth thus far has effectively prevented Allegiance from obtaining a continuous dedicated transport facility from its switch to its collocated equipment. In so doing, BellSouth has manufactured a variety of explanations designed to artificially raise Allegiance’s costs. In Allegiance’s view, there is no doubt that BellSouth is attempting to make its UNE products as unattractive as possible with an aim towards foreclosing competition, or, at a minimum, forcing competitors to purchase retail products at significantly higher rates. Any use restriction permitted by the Commission would serve only to provide an additional tool to BellSouth and other incumbents to delay or entirely foreclose reasonable access to the network elements mandated by the Commission.

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<sup>9</sup> Letter from Wayne Carnes, BellSouth, to Dan Yost, Allegiance, dated January 25, 2000, attached hereto at Tab D.

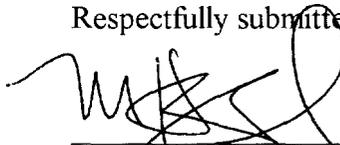
<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

**V. CONCLUSION**

For the foregoing reasons, the Commission should not place any use restrictions on UNEs.

Respectfully submitted,



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Michael B. Hazzard  
Lawler, Metzger & Milkman, LLC  
1909 K Street, NW, Suite 820  
Washington, D.C. 20006

Counsel to Allegiance Telecom, Inc.

February 18, 2000

A

**TAB A**

**From:** "McCausland, Robert" <Robert.McCausland@allegiancetelecom.com>  
**To:** "Mike Hazzard (E-mail)" <mhazzard@LMM-Law.com>  
**Date:** Thu, Jan 13, 2000 6:56 PM  
**Subject:** FW: MARC CATHEY VOICE MAIL,

-----Original Message-----

**From:** Larrea, Carol  
**Sent:** Wednesday, January 12, 2000 10:42 AM  
**To:** McCausland, Robert  
**Subject:** MARC CATHEY VOICE MAIL,  
**Importance:** High

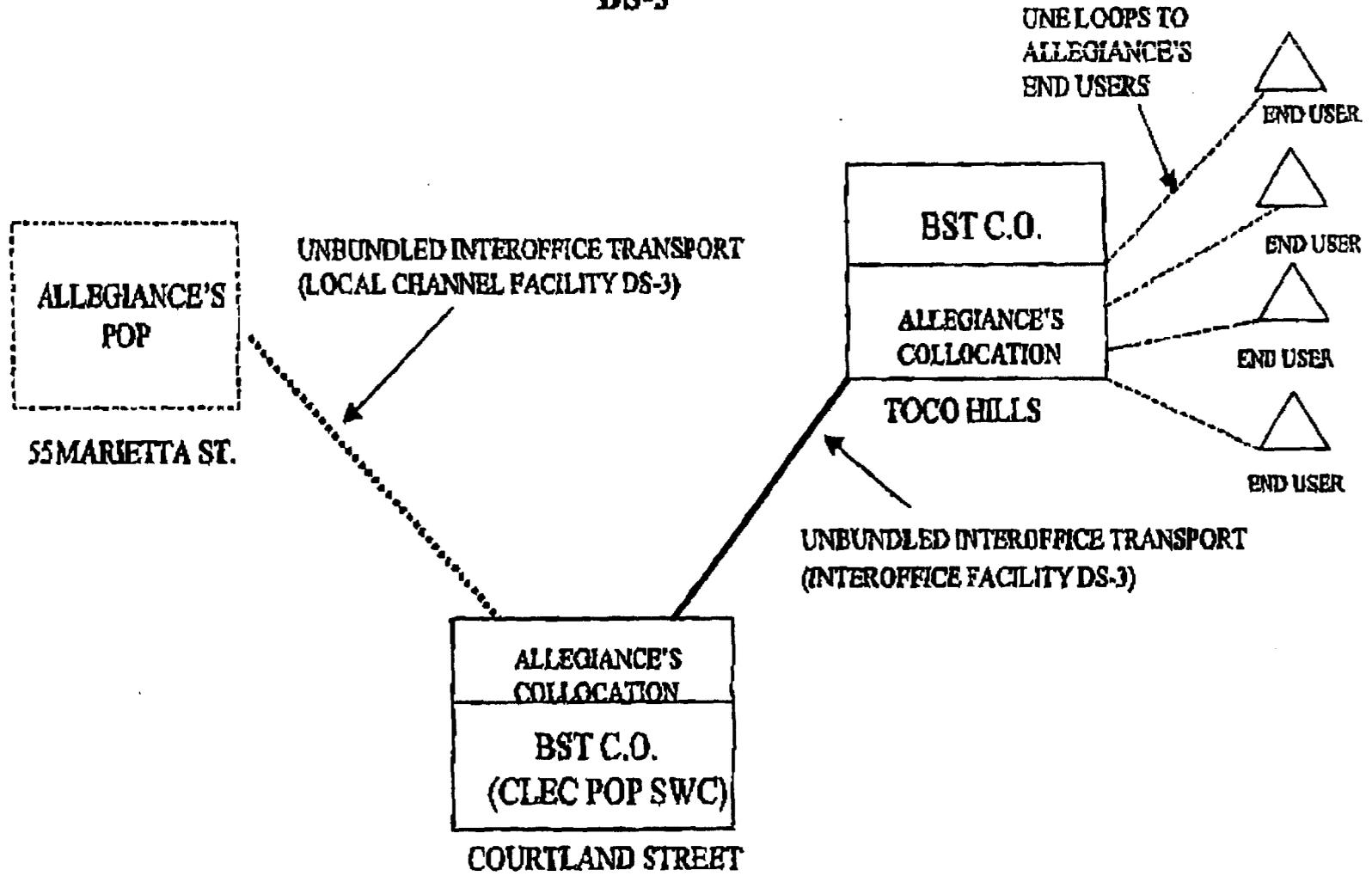
Hi Bob this is Marc Cathey,  
I got your message, I was, were, one of the issues because I heard a message that Dan Yost had played for Wayne Carns and I think he may have already called my boss Ken Rey, as I alerted him to the fact and I think he was called as well. Um, I think we do probably have an issue Bob, I want to make sure that we are both talking about the right segment of the network. Um, to us the facility that runs between your switch and our office is considered Local Interconnection and that's not available at a UNE Level. In fact, I've noticed from the 319 Order that the FCC is going to put that out in a Formal Notice of Proposal Rule Making to see if whether or not they should offer that segment as UNE. So, I think our contracts are consistent with that same logic it's not available today. Now if we are talking about some other segment then that Bob, then maybe there's a definition issue that we need to get to ground in. But I don't have any of my other customers that have UNE's that run between their switch and our access stand ups in any of our LATA's, but maybe we are talking about something else that we are not familiar with. Terms of converting services and requiring an N and D between our retail product or an access product in the UNE equivalent, absolutely, that's the same on all of our services. Um, specifically special on access circuit you know we got to put New Assignments, New CFA, New Class of Service. Now I am checking to see if actually we do any physical work, because I don't know if we do any physical work, unless there's some change you all may require in terms of the route that particular circuit would take. But I think it's more of a records only kind of thing, but I don't think it's accomplished via just a C order. I think it does take an N and a D. But we, I am having my team verify that, but if your talking about some other service change between other than special access to the UNE equivalent, such as a UNE, Uhm, interoffice facility, Um, then maybe you need to give me a buzz back and give me a little bit more specifics and we will run that ground for you. So, anyways I just wanted to let you know I've um, am working with the Regulatory folks. I think Ken's commitment to Dan Yost was to get him something in writing. The Terms and Position on entrance facility of the local interconnection segment and network and hopefully we can get some clarity around that. 205-321-4900.

Carol Larrea  
Administrative Assistant  
Regulatory & Interconnection  
214-261-8752

**B**

**TAB B**

# BELLSOUTH'S UNBUNDLED INTEROFFICE TRANSPORT- DEDICATED DS-3



UNBUNDLED INTEROFFICE TRANSPORT DEDICATED IS COMPRISED OF TWO FACILITIES TO PROVIDE END TO END DS-3 "INTEROFFICE" BANDWIDTH. THESE TWO FACILITIES ARE AN INTEROFFICE FACILITY AND LOCAL CHANNEL FACILITY THAT ARE HANDED OFF TO THE CLEC AT THEIR COLLOCATION FOR THEM TO COMBINE INTO A END TO END "FACILITY" TO TRANSPORT THEIR END USERS' TRAFFIC BACK TO THE CLEC'S SWITCH.

01/18/00 TUE 16:30 [TX/R] NO 5645]

01/18/00 15:37 PERFORMANCE IMPROVEMENT → 2142617118  
 ALLEGIANCE TELCOM  
 Allegiance Telec  
 NO. 629 P003-003  
 002  
 003



**TAB C**

MESSAGE

Dated: 01/18/2000 at 11:08

Subject: BellSouth & Allegiance  
Creator: Wayne Carnes /m3,mail3a

Contents: 3

Item 1

FROM: Wayne Carnes /m3,mail3a: PHONE=205-321-4946  
TO: Dan.Yost@allegiancetelecom.com  
CC: rmccauseland@allegiancetelecom.com  
Art.Santiago@allegiancetelecom.com

Item 2

Hello Allegiance,  
Attached you will find drawing that addresses the question of UNE DS3  
Interoffice Transport. BellSouth does not disagree with DS3 bandwidth delivered  
to 55 Marietta Street. We would deliver UNE DS3 IOC from Taco Hill Collo to  
Courtland Street Collo. In order to provide UNE DS3 to 55 Marietta St.  
Allegiance would need a UNE DS3 Local Channel from Collo at Courtland St to 55  
Marietta. At this time in your contract for Atlanta there is no pricing  
associated with UNE DS3 Local Channel. In order to have this in your contract  
please contact Pat Finlien at BellSouth. (404-927-8389) Please call me if you  
have any questions at 205-321-4946. Looking forward to getting this issue  
resolved.  
I am also preparing OC12 quote for Miami and will be comparing prices between  
UNE's and SOWET Service. I think you will be surprised by the pricing  
difference.  
Thanks for your time  
Wayne

Item 3

This item is of type MS POWERPOINT (obsolete filetype and cannot be displayed as  
a TEXT)



**D**

**TAB D**

January 25, 2000

Allegiance Telecom, Inc.  
Attention: Mr. Dan Yost  
1950 Sternmons Freeway  
Suite 3026  
Dallas, Texas 75207

Dear Dan,

I wanted to start by thanking you for the opportunity given BellSouth to compare and provide transport options for your network. Truly, Allegiance and BellSouth have the same common goal when it comes to your customers. This common goal is providing a reliable and outstanding network in order for you to deliver quality services to your end users. By providing the highest quality of service to your end users, you ensure that your competitors must compete against your core strength of **network reliability**. With this in mind, I wanted to address several issues that are extremely important when deciding between the UNE DS3 Transport product or the SPA OC12 Dedicated Ring product.

The old axiom "you get what you pay for" certainly applies regarding the UNE DS3 Transport product vs. the SPA Dedicated Ring topology. Granted, the initial up-front cost of a dedicated ring is greater than the UNE DS3 transport. However, the long-term benefits of a dedicated ring such as network performance, reliability, installation and service level guarantees, and cost per line should not be overlooked when comparing the two. On the surface, the price difference between an OC12 Dedicated Ring compared to the UNE DS3 transport appears to offer little value. But, a close review of the following points, reveals there are other factors and benefits that should not be overlooked when judging which product offers true value to Allegiance. The lower price, alone, does not dictate the best value.

First, consider survivability. Within the areas of BellSouth that you are deploying your network, survivability will be a huge issue. Tropical storms, hurricanes, and tornadoes are common occurrences. As a result, customer service can be adversely affected if those services are not carried by the type of diverse facilities a dedicated ring would provide. A great selling point to your customers would be the added sense of security that their service has a far greater chance of remaining operational in case one of the aforementioned natural disasters should occur. The UNE DS3 transport simply does not provide the inherent redundancy that the dedicated ring topology guarantees. When a storm hits, your customers' service is more likely to be interrupted due to the UNE DS3 transport not necessarily being provisioned over diverse facilities. Chances of your customers' service surviving a natural disaster could be greatly diminished when choosing UNE DS3 transport instead of a dedicated ring to transport those services. Also, the nine-state region that BellSouth serves is the fastest growing in the country. Associated with that growth will be large amounts of new construction, and as much as we try to prevent it, along with new construction comes the increased risk of damage to BellSouth's facilities. Here again, the benefit of diverse facilities employed in providing Allegiance a dedicated ring eliminates the danger of a wayward backhoe putting one of your customers out of service for hours, if not days. We guarantee it! That same guarantee can not be had when you choose UNE DS3 transport.

Secondly, BellSouth monitors your dedicated ring 24 hours a day, 7 days a week. The UNE DS3 has no performance monitoring. In virtually all cases with the dedicated ring, we can see the problem and correct it before it affects your network. Your customers can rest assured that the services you are providing them are utilizing an industry leading technology that is being constantly monitored by BellSouth. With the UNE DS3, we do not provide any monitoring capability. It will be entirely up to Allegiance to configure, monitor, and maintain any network you design using UNE DS3 transport.

Third, is the Service Level Guarantees provided by a dedicated ring. With UNE DS3 transport, there are no service level guarantees. **Our tariff provides that if the dedicated ring is down for more than one (1) second we will pay you 100% of your monthly recurring cost for the Dedicated Ring.** This speaks volumes of BellSouth's belief in the ring technology, and ultimately enables Allegiance the capability of providing the best customer service available. The UNE DS3 has no guarantees in respect to service performance. Also with the SPA Dedicated Ring, the DS3s, DS1s and DS0s provisioned on the ring come with their own service level guarantees. Again, the UNE DS3 has no guarantees, which ultimately may affect the end user's service.

Fourth, is proactive project management and support. With our SPA Dedicated Ring service, Allegiance is assigned a Project Manager (PM) to oversee the entire process from start to finish. BellSouth project manages the dedicated ring, helps with ordering the dedicated ring, monitors the dedicated ring for troubles 24 x 7 and oversees the deployment of the entire network. This ensures that your transport is provisioned and maintained correctly and timely. If you choose to deploy the dedicated ring product, Allegiance would not have to dedicate an employee(s) and pay them a salary(s) to project manage the ring deployment. The UNE DS3 will be managed totally by Allegiance. There will be no PM assigned for the deployment of UNE DS3s by BellSouth. This will be a process that Allegiance will oversee from start to finish. The ordering of UNE DS3 transport is done via LSRs to the Local Customer Service Center (LCSC), not ASRs to the ICSC, and is not overseen by a BellSouth PM as well. The bottom line is that SPA Dedicated Rings are a retail product and the UNE DS3 is a wholesale product. The increased price Allegiance would pay for the dedicated ring versus the UNE DS3 is reflective of the higher level of support and service you should expect when purchasing BellSouth's retail products. In contrast, the price you pay for a wholesale UNE DS3 product supports only a minimal amount of support from BellSouth's internal provisioning and maintenance organizations. The level of involvement from your account team will understandably be diminished also, as our energies will be directed to supporting the complex issues surrounding our retail products. Even though the two products are the same in their purpose, by virtue of buying a product at wholesale prices, Allegiance is forgoing the added value and benefits supported by a product purchased at retail prices. Allegiance can expect to shoulder a much greater burden of responsibility for ordering, provisioning, configuring, and maintaining a network utilizing UNE DS3 transport.

Fifth, is the ability to react to market demand in the most efficient and timely manner possible. With the dedicated ring topology, as your bandwidth demands increase, provisioning additional DS3 interfaces is all that is required. This translates to a much quicker turn-up interval than provisioning a UNE DS3 facility. The UNE DS3 has a "targeted" installation interval of 30 days with no guarantees, provided there is no special construction involved. Each time you add a UNE DS3, you are doubling your price. With the OC12 dedicated ring your capacity is already there, you simply have a DS3 interface charge of  $\$75.00 \times 2 = 150.00$  per installation, and it will be implemented in 2-3 days, thus providing a rapid and economical deployment of new facilities

as additional bandwidth is required. This ability to adjust to market demand offers Allegiance the capability of meeting your customers' service demands in a more timely manner than the UNE DS3 product provides. The ability to virtually have "bandwidth on demand" has become a pre-requisite more and more of your CLEC competitors are now demanding and receiving. As a result of this, more and more CLECs have recognized the intrinsic values of choosing the SPA Dedicated Ring topology over a UNE DS3 network. Their reasoning stems from all the aforementioned factors. They are, without a doubt, considering more than the price difference alone. Once they recognize the "total value" a dedicated ring will provide, the choice for them becomes an easy one to make.

I also want to mention our Area Commitment Plan (ACP) and Transport Savings Plan (TSP) we can place Allegiance under for the DS1s and other access services ordered off of the dedicated ring. By placing Allegiance under an ACP and TSP, Allegiance can save over **\$800,000.00** in a five-year period. As you reforecast monthly and grow the number of access services, your discount will increase as well. This pricing structure ensures that you receive the most aggressive pricing plans, enhancing your competitive position. The UNE DS3 has no pricing plan such as this.

To ensure that your economic rationale is worth the **short term** cost benefits. I would urge you to, not only compare the pricing of both plans, but consider the added value a ring offers. When reviewing the comparison, factor into your consideration the aggressive business plan of Allegiance and the growth needed to meet that plan. We have compared pricing of both products, and found that the \$6000.00 a month difference in price equates to only \$0.74 per end user, per month at 100% capacity. Even at 80% capacity, the difference in cost is only \$0.93 per end user, per month.

If you're interested, I would like to coordinate a meeting with you in Dallas, sometime in the next few weeks, to discuss the differences and advantages in greater detail.

In closing, I want you to know we are here to work with you in whatever direction you decide to go. I feel I would not be doing my job as your Account Manager if I did not point out the obvious benefits and added value of utilizing an OC12 Dedicated Ring over a UNE DS3 network. I feel very strongly about our SPA Dedicated Ring product. I think in the long run, it is the product most suited to support and continue Allegiance's valued reputation as a premier provider of telecommunication services.

Best Regards,

Wayne Carnes  
Regional Account Manager

cc:

Marcus Cathey, Sales AVP - BellSouth Telecommunications  
Mike Wilburn, Sales Director - BellSouth Telecommunications