

Flynn/Lawson/Noland Reply Affidavit – Attachment A



Verigate

Southwestern Bell/Pacific Bell/Nevada Bell Verification Gateway

CLEC User Guide

Effective Date: October 20, 2001

Proprietary Information

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RESERVE TELEPHONE NUMBER

Southwestern Bell

- Click on “RESERVE TN” button from the Address Verification window.

The following window will appear:

Reserve Telephone Number

Address: 605 LELAND Apt/Unit/Room/Suite/Lot/Slip: 208
City: UNIVERSITY CITY Floor:
State: MO Zip/SAG: 63130 Building/Wing/Pier:
Calling Scope:
 Local
 Extended Area Service
 Coin Coinless
Number of TNs needed for this request (MAX 10):
Optional:
NPA: NXX: LINE:
Retrieve TN(s)
Close

- **Calling Scope Section:** The Calling Scope Section defaults to “Local”; but alternatively “Extended Area Service” may be selected along with COIN and COINLESS for users that are Coin providers.
- **Optional Section:** An optional “NPA” and “NXX” may be entered if served by the same local serving office. If a verified address is located in an area that has multiple NPAs, the NPA field has a drop down list to select alternative NPAs.
- **Number of TNs needed for this request (MAX 10):** Enter the number of TNs needed on request up to a Maximum of 10 TNs.
- **Click on the Retrieve TN (s) Button**

Note: A verified address must be obtained prior to requesting TN reservations.

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RESERVE TELEPHONE NUMBER

Southwestern Bell

This window is displayed after clicking the 'Retrieve TN(s)' button. It displays a list of available TNs that may be reserved for the verified address.

Reserve Telephone Number

Address: FOS LELAND Apt/Unit/Room/Suite/Lot/Box: 200
City: UNIVERSITY CITY State: MO Zip: 63130

Doing Business: Local Extended Area Service Other
Number of TNs reserved for this location: 1 2 3 4 5 6 7 8 9 10

Optional: NPA LINE

Available TNs: (314) 771-2812

Reserved TNs:

Service Availability: Deposit, Pay Down, BANK, CREDIT

Total # Reserved:

To Reserve One or more TNs:

- Highlight one or more TNs in the Available TNs column, by single clicking on the Telephone Number.
- Click the RESERVE => button.
 - TNs are reserved for a 30-day period. If not used within the 30-day period, they are returned to the pool of available telephone numbers.

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RESERVE TELEPHONE NUMBER

Southwestern Bell

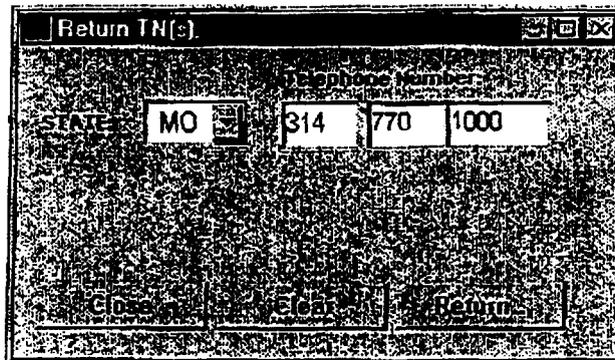
To Exchange the set of Available TNs:

- If the user wants to select a Telephone Number different from what is being shown. Click the EXCHANGE TN (S) Button at the bottom of the Available TNs column.

To Return (previously reserved) Telephone Numbers:

A previously reserved telephone number can be returned to the pool of available numbers if it will not be used to place an order. The number will be automatically returned to the pool of available numbers prior to the 30-day prompt by the system to return the number from lack of use.

To Return a TN to the pool, the user must return to the ADDRESS VERIFICATION screen. The address for the Reserved TN must be reentered and verified. After the Address has been verified, then the user must click on the Return TN button at the bottom of the screen. Upon clicking on this button, the following window will appear :



The screenshot shows a dialog box titled "Return TN(s)". It has a "STATE" dropdown menu currently set to "MO". To the right is a "Telephone Number" field divided into three boxes containing the digits "314", "770", and "1000". At the bottom of the dialog, there are three buttons: "Close", "Clear", and "Return".

The field for the STATE will be pre-populated. Input the telephone number to be returned and click the 'Return.' button on the window. If the telephone number has already been used on an order, or the 30-day reservation time limit has expired, a message will appear indicating that Verigate was unable to return the telephone number. Otherwise, Verigate will display a message indicating a successful return. Multiple Numbers must be returned one at a time.

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RESERVE TELEPHONE NUMBER

Southwestern Bell

Vanity Numbers i.e. (ONE-CALL) can not be requested. Vanity Numbers must be requested through the Local Service Center (LSC).

Accessing other Pre-Order functions from Reserve TN Window:

Once a number has been made available or has been reserved, it is possible to perform the following functions to continue the pre-order procedures.

- Obtain Service Availability
- Obtain Dispatch
- Obtain available Due Date
- Obtain PIC/LPIC List
- Obtain CLLI/Rate Group/Number Pooling.

To obtain other pre-order data:

- **Select the particular TN in either the 'Available TNs' list or the 'Reserved TNs' list**
 - If a TN is not selected from either list, the first TN in the Reserved TNs list will be used in other pre-order information look-up.
 - If there are NO TNs in the 'Reserved TNs list, then the first TN in the 'Available TNs list is used in other pre-order information look-up.
- **Click the button for the function desired. (Service Availability, Dispatch, Due Date, PIC/LPIC List or Retrieve CLLI/Rate Group/Number Pooling)**

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B



Flynn/Lawson/Noland Reply Affidavit – Attachment B

**REDACTED FOR
PUBLIC INSPECTION**

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED

OCT - 4 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Joint Application by SBC Communications)
Inc., Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell Long)
Distance for Provision of In-Region,)
InterLATA Services in Arkansas and Missouri)

CC Docket No. 01-194

REPLY AFFIDAVIT OF JOHN S. HABEEB

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I, John S. Habeeb, of lawful age, being duly sworn, depose and state:

I. INTRODUCTION

1. My name is John S. Habeeb. I am the same John S. Habeeb who previously filed testimony in this docket.
2. In this reply affidavit, I will address comments made by AT&T Corp. (“AT&T”), Association of Communications Enterprises (“ASCENT”), El Paso Networks, LLC and PacWest Telecom, Inc. (“El Paso”), and WorldCom (“Worldcom”) concerning ASI’s operations and advanced service offerings and SBC’s DSL Internet access service.
3. These commentators incorrectly claim that ASI is not meeting its resale obligations under Section 251 and SWBT thereby does not satisfy checklist item 14. Generally, these commentators claim that ASI is providing a retail DSL telecommunications service and is not complying with the obligation to make this retail service available for resale at a wholesale discount. These arguments rest on a mischaracterization of SBC companies’ operations and service offerings.

II. ASI’S DSL TRANSPORT SERVICE

4. As an initial matter, Worldcom repeatedly states that ASI does not permit resale of its DSL transport services, implying that ASI is imposing restrictions on the non-discounted resale of its services. Comments of MCI WorldCom, Inc., CC Docket No. 01-194, at 6-7 (FCC Filed Sept. 10, 2001)(“Worldcom Comments”). This is untrue. ASI stands ready and willing to resell all of the telecommunications services that it provides, including wholesale telecommunications services, in accordance with Section 251(b)(1).

5. Indeed, ASI's interconnection agreement with LOGIX Communications, Inc. ("LOGIX") (App. E – AR, Tab 25; App. G – MO, Tab 114 to SWBT's initial AR/MO Application), Section 11.A, states: "... the Services that SBC-ASI currently provides or hereafter provides at retail to subscribers who are not telecommunications carriers will be made available for resale to CLEC by SBC-ASI in accordance with the terms and conditions set forth in this Agreement. SBC-ASI shall make its Services available for resale to CLEC on terms and conditions that are reasonable and nondiscriminatory. SBC-ASI will not prohibit, nor impose unreasonable or discriminatory conditions or limitations on the resale of its Services."
6. In addition, after I filed my initial testimony, ASI filed an interstate tariff with the Commission, and that tariff permits resale of ASI's DSL transport services. A copy of the tariff (ASI FCC Tariff No. 1), which became effective September 10, 2001, is provided as Attachment A.¹ Section 6.1.1 of the tariff permits any carrier to resell ASI's DSL transport service:

Wholesale DSL Transport Service is intended primarily for Internet Service Providers (ISPs), but may be purchased by any information Service provider or carrier to connect to their End User for the purposes of providing a retail Service.

7. Unlike Verizon and its advanced services affiliate, Verizon Advanced Data, Inc., SWBT and ASI do not provide a package of DSL and voice telecommunications services over a single line to end user customers at retail. In fact, ASI sells service to a different customer—the ISP—than SWBT, the voice provider. As a result, CLECs

¹ ASI believes that it is a non-dominant carrier, and it filed the tariff out of an abundance of caution, to avoid any dispute concerning the proper regulatory treatment of its services after the decision of the United States Circuit Court of Appeals for the District of Columbia Circuit in *Association of Comm. Ent. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001). See Transmittal Letter to ASI FCC Tariff No. 1, a copy of which is provided in Attachment A.

do not need to be able to resell voice and DSL telecommunications services together to retail end users in order to compete with the offerings of the SBC companies.

Accordingly, SBC companies should not be subject to the same obligation as that imposed on Verizon to resell DSL services over ILEC-resold voice lines.

8. It would be difficult for ASI to offer resale of a new service – DSL transport over SBC ILEC resold voice lines – where it does not provide service today. Once SBC became legally obligated to provide advanced services through a fully separate affiliate under the SBC/Ameritech Merger Conditions, it created ASI. ASI essentially made two choices in developing its business plan. First, ASI determined that it would provide DSL Transport predominantly as a wholesale provider to ISPs and that it would provision DSL utilizing line sharing. Hence, ASI has built its provisioning and operational support systems and process flows for DSL Transport using the line sharing product provided by ILECs. However, SWBT does not provide the HFPL UNE over resold voice loops. As a result, ASI does not offer this product and simply does not have the systems and processes in place to resell DSL transport over loops that have ILEC-resold voice service.
9. In any event, it appears unlikely that there would be any significant demand for resale of ASI services without a discount under Section 251(b)(1), because CLECs would purchase the service at the same price that ASI would sell to other customers (wholesale or retail). No CLEC has claimed that it would purchase ASI's DSL service under Section 251(b)(1).

III. SBC's RETAIL DSL INTERNET ACCESS SERVICE

10. Worldcom and other commentators contend that ASI is not complying with the Section 251(c)(4) obligation to resell DSL Transport services at a wholesale discount.

As I explained in my initial affidavit and above, ASI's business plan is concentrated significantly on the provision of wholesale DSL Transport to ISPs, including both affiliated and non-affiliated ISPs, and these wholesale offerings are not subject to resale at a wholesale discount. However, ASI will resell at a wholesale discount those telecommunications services it does offer on a retail basis.

11. Worldcom, AT&T, and ASCENT contend that SBC is providing DSL Transport at retail to end users when ASI sells DSL Transport to an affiliated ISP, which in turn provides DSL Internet Access service to end users at retail. However, as I explained in my initial affidavit, DSL Internet Access service is not a telecommunications service and as such is not subject to resale under Section 251(c)(4). In fact, these carriers' comments underscore the fact that SBC's sole mass market retail DSL product offering – DSL Internet Access service – is an information service, and not a telecommunications service.

12. For example, both Worldcom (Worldcom Comments at 3) and AT&T, (Comments of AT&T, CC Docket No. 01-194, at 62 (FCC Filed Sept. 10, 2001)(“AT&T Comments”), claim that SBC's investor materials disclose the total number of wholesale and retail DSL transport lines, and state that an SBC affiliate provides Internet Access service on many of those lines. These statements clearly demonstrate two things: (a) that SBC provides wholesale DSL Transport service to ISPs, including affiliated and non-affiliated ISPs, and (b) that SBC provides retail DSL Internet Access service to end users.

13. Worldcom (Worldcom Comments at 3-4) complains that SWBT's web site does not advise customers that they can order ASI's DSL Transport with their choice of ISP.

That is because they cannot – SBC does not sell DSL transport service to retail end user customers. SBC is willing to provide DSL transport to any ISP on a wholesale basis, however, and the customer thus may purchase DSL Internet Access from its chosen ISP. That ISP may choose to purchase ASI's DSL transport service and package it with Internet access as a component of its retail information service offering. AT&T's witness Mr. all but concedes that the ambiguities that previously existed on SWBT's web site have been eliminated (AT&T Comments, Declaration of Scott L. Finney ¶¶ 12-16).

14. Worldcom (Worldcom Comments at 4-5) complains about SBC's inbound telemarketing and customer service line, stating that recorded menu options on the 1-800 number do not inform the customer that SBC provides DSL Internet service through Southwestern Bell Internet Services. However, the recorded menu options are introductory only. A caller interested in purchasing DSL will be routed through these menus to a customer service representative, who is instructed to sell only SBC's DSL Internet Access service, not DSL Transport. If the caller states that he or she wants to obtain Internet service from another ISP, the customer service representative is instructed to advise the caller to contact his or her chosen ISP.

15. AT&T, ASCENT, and Worldcom suggest that SBC somehow is improperly attempting to use its corporate affiliate structure to avoid reselling DSL Transport service, but that misses the point entirely. The DSL Transport service sold by SBC companies is not available for resale at a wholesale discount under Section 251(c)(4) because it is not a telecommunications service that is being sold at retail to subscribers, not because of any corporate affiliate relationships. SBC companies

combine the DSL Transport with Internet access and sell the resulting information at retail to subscribers.

16. To that end, SBC's product offerings are significantly different than Verizon's product offerings in Connecticut – which commentors fail to acknowledge (see ASCENT Comments at 9; El Paso Comments at 28; AT&T Comments at 62-64). Verizon offers a DSL Transport service at retail to subscribers on a mass market basis; SBC does not.
17. These commentors incorrectly claim that ASI is “converting” or “modifying” its service offerings in order to avoid its resale obligations. (See, e.g., ASCENT Comments at 6-7; El Paso Comments at 27; AT&T Comments at 61). But ASI has long focused its business on providing DSL Transport services at wholesale to ISPs rather than providing DSL Transport service at retail to end users.

IV. ASI'S WHOLESALE DSL TRANSPORT SERVICE

18. ASCENT and AT&T correctly note that SWBT is discontinuing its “split billing” option. As I explained in my opening affidavit, under split billing ASI would bill the ISP's end user customer for DSL Transport rather than the ISP customer. ASI offered split billing to accommodate its wholesale ISP customers, not end users. In fact, ASI charged the same (i.e., wholesale) price for DSL Transport whether it split billed or not. As explained in my initial affidavit, ASI is no longer accepting orders involving split billing from ISPs, and has informed the ISPs that the existing end users will be converted from split billing to consolidated billing by December 31, 2001.
19. AT&T claims that ASI should be deemed to be providing a retail service because it has not completely terminated billing of all split billed customers (AT&T Comments

at 61). However, even if the split billing arrangement were to be deemed a retail offering, it is not a current service offering.² Moreover, existing end users will be grandfathered in this billing option only up to December 31, 2001 (at the latest; some likely will be converted before that date). To eliminate any doubt about whether ASI complies with its obligations under section 254(c)(4), for as long as ASI bills these “grandfathered” end users under the split billing arrangement, ASI will make available to CLECs at its wholesale discount the DSL Transport service for resale to those specific end users.

20. AT&T incorrectly claims that ASI stopped offering split billing solely to reduce competition (AT&T Comments at 64). As I have previously explained, ASI never intended to enter the mass market for DSL Transport service, and it offered split billing only as an option for its wholesale customers. ASI discontinued split billing to avoid any claim that the option created a retail relationship between ASI and retail mass market customers.

21. AT&T also complains that split billing is being discontinued for unaffiliated ISPs but that direct billing will still be provided to SBIS (AT&T Comments at 65). That is a mischaracterization. SWBT performs the billing and collection on behalf of SBIS, and it does so under the terms and conditions of a standard billing and collection agreement. Those same terms and conditions are available on a non-discriminatory basis to any CLEC or ISP who wishes to have SWBT perform billing and collection for their services.

² Contrary to AT&T's assertion (AT&T Comments at 63, n. 82), ASI's discontinuance of the split billing option and modifications to its website was not a discontinuance of an ASI service. Although ASI eliminated the reference to “DSL Transport Only” on the website and has taken other steps to discontinue

22. AT&T complains that one unaffiliated ISP has not changed its website to explain that SBC no longer bills its end users for DSL transport service (AT&T Comments at 61; Finney Declaration ¶¶ 19-20). Of course, SBC does not have any control over the information other companies put on their web sites. However, SBC no longer takes split billing orders for DSL Transport service from that ISP or any other ISP in the SWBT region.

23. WorldCom provides a copy of a complaint made to the California Public Utilities Commission by the California Internet Service Provider Industry Association (“CISPA”) concerning ASI’s proposed contract with ISPs, claiming that it “shows that SBC remains the de facto provider of DSL services to end users.” This complaint is irrelevant to this proceeding. After ASI filed its federal tariff, ASI withdrew the proposed contract and CISPA withdrew its request for immediate injunctive relief, conceding “[b]ecause the FCC Tariff affords California ISPs a means of obtaining DSL Transport service without the need for signing the ‘General Services Agreement’ previously presented by SBC-ASI, California ISPs do not at this time face the prospect of losing access to DSL Transport services if they do not sign this Agreement.” A copy of CISPA’s motion to withdraw is provided as Attachment B.

24. In any event, Worldcom is wrong in contending that ASI is using the Broadband Capabilities Gateway (“BCG”) network architecture to provide retail services to end users, and that ASI will control access to end user customers using this technology. BCG is a technology that ASI has not yet installed for commercial services, so it is

split billing, ASI continues to offer the same wholesale DSL Transport service to ISPs that it previously offered.

not even part of ASI's current commercial offerings. ASI is investigating whether it may offer BCG-based multiple virtual sessions at some time in the future to multiple information content providers, which in turn would sell their services to end user customers. Under such an arrangement, ASI would continue to sell all broadband transport telecommunications services to information content providers at wholesale, and those providers would use this bandwidth to provide services to end users at retail.

25. AT&T and WorldCom also complain about the terms and conditions of ASI's agreements with the ISPs as embodied in the DSL Addendum and claim that ASI is not offering DSL Transport on a non-discriminatory basis to all ISPs (AT&T Comments at 66; Worldcom Comments at 5-6). As mentioned earlier, ASI has on file with the FCC an Advanced Services tariff which contains rates, terms and conditions for DSL Transport made available to all ISPs, both affiliated and unaffiliated, on a non-discriminatory basis. SBIS purchases DSL Transport under this tariff on the same terms and conditions as other ISPs.

V. OSS

26. AT&T also asserts that ASI is improperly attempting to limit its obligation to provide nondiscriminatory access to its OSS because CLECs will be required to use ASI's unique OSS to order services rather than being able to do so through SWBT's OSS, and that ASI's OSS will be available only for certain services (AT&T Comments at 68). As I explained in my previous affidavit, ASI's electronic Complex Products Service Order System ("CPSOS"), will be available for the processing of CLEC DSL Transport orders. ISPs use this system to order DSL transport, and this same system will be made available to CLECs for ordering DSL for resale.

27. The process of ordering other complex ASI services, notably Frame Relay and ATM Cell Relay, requires manual order entry; thus, no mechanized OSS is available.
28. To date, ASI has not received any orders from a CLEC for resale of its services. However, ASI received and successfully provisioned, in excess of 66,000 orders from ISPs using the CPSOS system during the period March 1 to August 31, 2001.
29. In the DSL workshops held before the Texas PUC staff in 2001, and in the 13-state Business Rules Plan of Record CLEC Collaboratives held in Dallas, neither AT&T nor any other CLEC raised an issue about the adequacy of ASI's CPSOS or the manual process used for ordering non-DSL advanced services from ASI.

VI. THE LOGIX AGREEMENT

30. ASI's recently-filed interstate tariff gives CLECs an additional choice for purchasing DSL Transport and other services from ASI. For its Section 251 offerings, ASI continues to honor its interconnection agreements with CLECs, such as the LOGIX Agreements in Arkansas and Missouri (referenced in my initial affidavit). A CLEC can enter into an interconnection agreement with ASI, either by opting into the LOGIX Agreement or another approved agreement or by negotiating its own agreement, and purchase DSL Transport under the agreement. Or, whether or not the CLEC has entered into an interconnection agreement with ASI, it can purchase DSL Transport from ASI under ASI FCC Tariff No.1.
31. AT&T makes numerous complaints about certain terms and conditions in the ASI/LOGIX Agreement (AT&T Comments at 67-68). It is not clear why AT&T is raising these points, since it has not sought to negotiate an interconnection agreement with ASI. ASI has successfully negotiated more than 30 interconnection agreements throughout its thirteen-state territory (three in Arkansas, three in Missouri). If AT&T

wants to request negotiation of an interconnection agreement with ASI, ASI would be willing to engage in good faith negotiations with AT&T, just as it has with other CLECs, and would negotiate all of the points raised in its comments. In any event, AT&T's complaints about the ASI/LOGIX Agreement are entirely unfounded, as described below.

32. CSAs. AT&T acknowledges that in the ASI/LOGIX Agreement ASI agrees to offer CSAs to any "similarly situated" customer, but complains that the ASI/LOGIX agreement does not include a definition for the term "similarly situated" (AT&T Comments at 67). AT&T does not explain why a definition is needed for such a common term, and AT&T provides no evidence that ASI is construing the term "similarly situated" unreasonably or in any manner inconsistent with Commission requirements. However, the "similarly situated" standard is directly out of the FCC's Second Louisiana 271 Order.³ Similarly, AT&T complains that the ASI/LOGIX agreement fails to specify that a reseller may aggregate the volumes of its individual customers to meet the volume requirements of a particular CSA (AT&T Comments at 67). This is also addressed by the "similarly situated" standard.

33. Termination Liability. AT&T argues (AT&T Comments at 68) that the LOGIX Agreement provides that an end-user under a CSA is subject to termination liability for early termination. That is wrong; the LOGIX agreement does not address early termination liability for CSA customers. ASI does have early termination liability provisions in its interstate tariff and CSA contracts, and these generally are one-half

³ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, Memorandum Opinion and Order ¶ 317, 13 FCC Rcd 20599 (1998) ("Second Louisiana 271 Order") ("We note that certain groups of end users

of the charges for the remaining term of the contract. See, e.g., ASI FCC Tariff No. 1, § 3.4.4.B. As such, the early termination charges are fair and reasonable.

34. Limitation of Liability. AT&T takes the position that the limitation of liability clause in Section 3 of the LOGIX Agreement is unreasonable in that, if ASI were to improperly install or maintain a service for the CLEC, the CLEC's recovery for the improper installation or maintenance would be "limited to a refund of its payment to ASI," with no recovery for consequential damages such as lost revenue or damage to reputation (AT&T Comments at 68). However, limitation of liability provisions that limit a party's damages and exclude all consequential damages are common in the industry and not unreasonable. For instance, Section 13.1 of SBC's 13 State Generic Interconnection Agreement, provides that a party's liability "shall not exceed in total the amount [which the other Party] has charged or would have charged ... for the affected ... service(s) that were not performed or were improperly performed." Likewise, Section 13.4 expressly excludes liability for consequential damages.

VII. CONCLUSION

35. This concludes my affidavit.

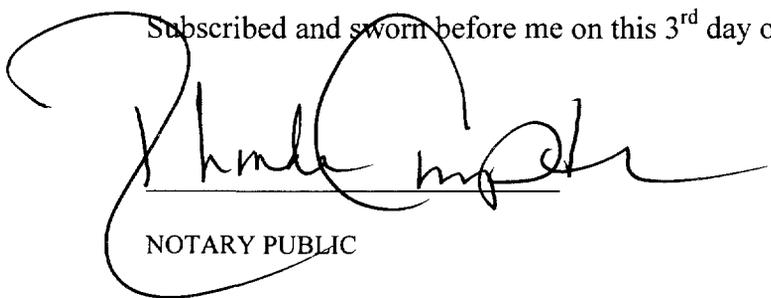
might constitute an aggregation that is similarly situated to the original CSA customer and, thus, BellSouth would be obligated to allow the reseller to aggregate the volume of such end users under the CSA.").

I declare under penalty of perjury that the foregoing is true and correct.



JOHN S. HABEEB
DIRECTOR-REGULATORY

Subscribed and sworn before me on this 3rd day of October, 2001.



NOTARY PUBLIC

