

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

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In the Matter of	)	
	)	
2000 Biennial Regulatory Review –	)	
Comprehensive Review of the Accounting	)	
Requirements and ARMIS Reporting	)	CC Docket No. 00-199
Requirements for Incumbent Local	)	
Exchange Carriers: Phase 2	)	
	)	
Amendments to the Uniform System of	)	CC Docket No. 97-212
Accounts for Interconnection	)	
	)	
Jurisdictional Separations Reform and	)	CC Docket No. 80-286
Referral to the Federal-State Joint Board	)	
_____	)	

**OPPOSITION OF AT&T CORP.  
TO PETITIONS FOR RECONSIDERATION**

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Pursuant to section 1.429 of the Commission’s rules, 47 C.F.R. § 1.429, AT&T Corp. (“AT&T”) respectfully submits this opposition in response to the Petitions for Reconsideration seeking modification of the Commission’s rulings set forth in its *Phase 2 Order*.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

As demonstrated below, the petition for reconsideration filed individually by SBC Communications (“SBC”) and the joint petition for reconsideration (“Joint Petition”) filed by

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<sup>1</sup> *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, et al.*, Report & Order in CC Docket Nos. 00-199, 97-212, and 80-286 and Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd. 19911 (2001) (“Phase 2 Order”).

BellSouth Corporation (“BellSouth”), SBC, and the Verizon telephone companies (“Verizon”) should be denied because the petitions raise no new arguments or provide any facts that would justify reconsideration of the Commission’s *Phase 2 Order*.

First, the Commission should reject SBC’s request for reconsideration of the Commission’s amendment to 47 U.S.C. § 32.11. The amendment to section 32.11 now expressly defines which class of carriers is subject to the Commission’s accounting rules. SBC is flatly mistaken when it argues that a carrier’s status under Section 251(h) as an “incumbent local exchange carrier” “says nothing about whether that carrier is ‘dominant’ in the markets in which it operates.” SBC Petition at 2. To the contrary, the *Phase 2 Order* properly reflects that the “incumbent LECs . . . are the dominant carriers in their markets.” *Phase 2 Order*, ¶ 126. Further, SBC’s contention that it lacks market power and should be deemed nondominant in the provision of “broadband services,” SBC Petition at 3, has been overwhelmingly refuted in the Commission proceeding established to seek comment on SBC’s separate petition for a declaratory ruling that it is nondominant in the provision of those services.<sup>2</sup>

Second, the Joint Petition should be rejected to the extent that it seeks to eliminate the distinct wholesale and retail subaccounts for customer services in Account 6620. The Commission properly required the creation of subaccounts “to separately record expenses associated with retail and wholesale services.” *Phase 2 Order*, ¶ 64. Such accounts are of

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<sup>2</sup> See, e.g., *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Comments of AT&T Corp. at 19-51 (filed Mar. 1, 2002); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Reply Comments of AT&T Corp. at 4-27 (filed Apr. 22, 2002).

increasing importance “as competition develops in the local exchange market,” *id.*, and, contrary to the Bells’ arguments, differentiation between retail and wholesale expenses is highly relevant for developing network element rates “that properly reflect the costs of providing a wholesale service,” *id.*, and for computing wholesale discounts for resale under 47 U.S.C. § 251(c)(4). Further, the incumbent LECs’ claim that this requirement would impose substantial burdens is untimely and, in all events, is based upon bald assertions that have no support in the record.

Finally, the incumbent LECs’ study area-aggregated fiber and DSL deployment information should be reported through ARMIS reports rather than on Form 477. The predicate for the Bells’ contrary argument – *i.e.*, that this information is “confidential” notwithstanding aggregation that deprives it of any competitive significance – is baseless. But even if the Bells could establish that some or all of this information is confidential, the Commission rules would not preclude them from seeking confidential treatment merely because the information is provided in an ARMIS report. Moreover, requiring this information to be produced through Form 477 would impose unnecessary costs upon competitive LECs. And, although requiring the Bells and other incumbent LECs to report fiber and DSL deployment would have significant benefits – particularly in an environment in which the Bells are seeking sweeping regulatory reforms on the basis of wholly unsubstantiated claims about their fiber and DSL deployment incentives and activities – there would be no corresponding regulatory benefit in requiring competitive LECs to report that information.

**I. SBC'S REQUEST TO RECONSIDER THE COMMISSION'S AMENDMENT TO SECTION 32.11 OF ITS RULES SHOULD BE REJECTED.**

In the *Phase 2 Order*, the Commission amended 47 C.F.R. § 32.11 to clarify that the “companies” to which the Commission’s accounting rules apply are “incumbent LECs only” because incumbent LECs “are the dominant carriers in their markets.” *Phase 2 Order*, ¶ 126. The Commission implemented this change by modifying section 32.11 “so that its requirements explicitly pertain only to incumbent LECs, *as defined in section 251(h)* of the Communications Act, and any other companies that the Commission designates by order.” *Id.* (emphasis added). The Commission noted that this proposal was *unopposed. Id.*

SBC now objects to the Commission’s amendment of section 32.11. SBC does not dispute, as a general matter, that the definition in Section 251(h) provides a valid proxy for concluding that a carrier is dominant; rather, SBC proposes that the Commission ignore subsection (1)(B)(ii) of Section 251(h) and decide “on a case-by-case basis whether any other entity that is a successor or assign of an ILEC . . . should be subject to the Commission’s accounting rules.” SBC Petition at 3. In support of that proposal, SBC argues that use of the statutory definition in Section 251(h) “in the context of determining which entities are subject to the Commission’s accounting regulation” is “not appropriate.” *Id.* at 2. That argument should be rejected.

First, SBC’s argument (at 2) that the fact that a carrier meets the statutory definition of an incumbent local exchange carrier under section 251(h) “says nothing about whether that carrier is ‘dominant’ in the markets in which it operates” is flatly contrary to the Commission’s conclusion that “incumbent LECs . . . are the dominant carriers in their markets.”

*Phase 2 Order* ¶ 126. SBC provides no contrary authority. Instead, SBC argues that it is has demonstrated in its Broadband Non-Dominance Petition and in the Commission’s *Incumbent LEC Broadband Notice* proceeding that its “advanced services affiliates are nondominant in the market for broadband services.” SBC Petition at 3. To the contrary, as AT&T and others have demonstrated in those proceedings, incumbent LECs in general, and SBC in particular, retain pervasive market power in the provision of broadband services.<sup>3</sup>

Moreover, the legal authorities cited by SBC merely confirm the propriety of the definition adopted by the Commission. SBC argues, based upon the *Non-Accounting Safeguards Order* and the *Ascent* decision, that an incumbent LEC cannot “avoid its network unbundling obligations by transferring a network element to a section 272 affiliate.” SBC Petition at 2-3. But that argument reinforces the Commission’s decision to use the *entire* definition reflected in Section 251(h) – including Section 251(h)(1)(B)(ii), which applies the definition of incumbent LEC to “a successor or assign” of an incumbent LEC. 47 U.S.C. § 251(h)(1)(B)(ii). Indeed, these decisions confirm that SBC’s proposal – which would allow incumbent LECs presumptively to avoid their statutory and regulatory obligations as ILECs by transferring discrete services to a successor or assign – should be rejected.

## **II. THE COMMISSION SHOULD RETAIN DISTINCT WHOLESALE AND RETAIL SUBACCOUNTS IN ACCOUNT 6620.**

In the *Phase 2 Order*, the Commission adopted “changes to [its] accounting rules that reflect a sharpened focus on ongoing regulatory needs in the area of competition and universal service.” *Phase 2 Order*, ¶ 4. The Commission reduced the number of Class A

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<sup>3</sup> See n.2, *supra*.

accounts by “forty-five percent” and maintained “only those currently used in ongoing regulatory activities under the Communications Act and the 1996 Act.” *Id.* ¶ 5. In a few limited respects, the Commission added accounts or subaccounts. As relevant here, the Commission, “[i]n response to state requests,” established new “wholesale and retail subaccounts under services.” *Id.* The Commission explained that the “wholesale versus retail distinction is important,” that this distinction likely would “increase in importance as competition develops in the local exchange market,” *id.* ¶ 64, and that “[a]dding these new subaccounts w[ould] assist the states in developing UNE rates that properly reflect the costs of providing a wholesale service.” *Id.*

The Joint Petition provides no basis for undermining these conclusions. The Joint Petition does not even address the Commission’s reliance on the comments filed in support of these subaccounts or its conclusion that this “wholesale/retail distinction will increase in importance as competition develops in the local exchange market.” *Id.*<sup>4</sup>

The Bells ignore this record when they argue that the only “regulatory function” served by wholesale and retail subaccounts is that they “purportedly” will “assist the states in developing UNE rates that properly reflect the costs of providing a wholesale service.” Joint Petition at 3 (quoting *Phase 2 Order*, ¶ 64). That argument disregards that distinct wholesale

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<sup>4</sup> For example, the Commission properly credited the comments by the New York Department of Public Service, which reasoned that “a breakdown of revenues and expenses by retail . . . [and] wholesale” was necessary “to accomplish the goal of monitoring competition.” Comments of New York at 1 (filed Dec. 18, 2000). Similarly, the General Services Administration explained that the “addition of wholesale and retail subaccounts to the customer operations expense account would aid greatly in the determination of appropriate resale discounts.” GSA Comments at 5 (filed Dec. 18, 2000); *see also* 47 U.S.C. § 251(c)(4). Finally, NARUC explained that the Commission could “use retail and wholesale measures as a means of assessing ILEC market dominance.” Letter from James Bradford Ramsey to Magalie Roman Salas, App. A, at 5-6 (Sept. 6, 2001).

and resale accounts are important to assessing the incumbent LECs' compliance with its duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers." 47 U.S.C. § 251(c)(4)(A). As the Commission explained, for example, "the per-line expenditure for customer service is higher at the retail level" because "CLECs (wholesale customers) do most of the customer service functions themselves." *Phase 2 Order*, ¶ 64 & n.122. Thus, distinct wholesale and retail accounts plainly serve an important and current regulatory function.

In any event, the Bells are wrong in contending that distinct wholesale and resale accounts are irrelevant to the pricing of UNEs. Joint Petition at 4 (arguing that methodology for pricing UNEs is wholly "divorced from accounting costs"). To be sure, TELRIC pricing of UNEs looks to "forward-looking economic cost-based pricing," but UNE pricing also reflects common costs, loading factors and other overhead costs attributable to the costs of operating a "wholesale" network. In assessing those costs, state commissions routinely look to the Bells' ARMIS accounts on the theory that historical ratios of such costs to investment may serve as a proxy (or at least a starting point) for estimating forward-looking levels of those costs. As a result, the Commission's decision to require ILECs to provide distinct subaccounts for retail and wholesale costs plainly "will assist the states in developing UNE rates that properly reflect the costs of providing a wholesale service." *Phase 2 Order*, ¶ 64. *See also Implementation of the Local Competition Provisions In The Telecommunications Act Of 1996*, First Report And Order, 11 FCC Rcd. 15499, ¶ 691 (1996) ("*Local Competition Order*") (explaining that "directly attributable costs" are relevant to pricing of UNEs, but that "costs associated with retail services" shall "not be included").

Furthermore, the Commission rejected the argument that “the burden of adding these subaccounts outweighs any potential benefits.” *Phase 2 Order*, ¶ 64. The Commission explained that the commentors had “failed to quantify this burden” and that the benefit of requiring a “wholesale/retail distinction will increase in importance as competition develops in the local exchange market.” *Id.* In the Joint Petition, BellSouth and SBC make no additional effort to describe what burden, if any, this accounting requirement would impose. Joint Petition at 4-5. Verizon recognizes that its current “showing” is belated, *id.* at 6 n.5, but even if it were timely, the purported “showing” consists of nothing more than bald, unsupported assertions regarding the costs of this regulatory requirement providing without explanation or analysis.<sup>5</sup>

Finally, the Commission should reject efforts to delay implementation of the wholesale and retail subaccounts. There has been no showing of any “enormous expense of creating wholesale and retail subaccounts,” and although the Commission “still is considering various proposals” in Phase 3 of this proceeding, Joint Petition at 6-7, that unremarkable fact does not take away from the Commission’s conclusion that the “record” supports adoption of subaccounts for “wholesale and retail services.” *Phase 2 Order* ¶ 57 & n.111. Indeed, the Bells’ argument logically would permit them to avoid all accounting obligations pending the Commission’s resolution of other accounting issues in Phase 3 of this proceeding.

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<sup>5</sup> BellSouth’s bald assertions regarding costs are equally untimely and are even less relevant because they are predicated on the unsupported claim that it would be required to make “operational system changes.” Joint Petition at 6.

### **III. THE BELLS SHOULD BE REQUIRED TO REPORT THEIR AGGREGATED FIBER AND DSL DEPLOYMENT IN ARMIS 43-07 REPORTS.**

The Commission has emphasized that there is “an immediate and pressing need to assess the penetration of fiber in the local loop and gauge the development of broadband infrastructure[s].” *Phase 2 Order* ¶ 175. Accordingly, to assess fiber deployment in the local loop, the Commission now requires the largest incumbent LECs to provide information showing the number of locations where interfaces between fiber and copper (or coaxial cable) exist, and the number of switched access lines that are physically routed through those locations, aggregated by study area, in ARMIS 43-07 Reports. *See id.* ¶ 175, nn. 332 & 333. Similarly, to measure broadband deployment over local telephone networks, the Commission now requires the largest incumbent LECs to provide the number of working digital subscriber lines (“DSL”) terminated at customer premises locations, and the number of those lines that are provided through fiber/copper (or fiber/coaxial) interfaces, again aggregated by study area, in ARMIS 43-07 Reports.

The Bells object to providing this information in ARMIS 43-07 Reports because, they claim, fiber and xDSL deployment information is confidential and, therefore, should not be made publicly available through those reports. *See Joint Petition* at 10-11. Instead, they urge the Commission to collect fiber and xDSL deployment information in Form 477, where the Commission has instituted procedures that streamline requests for confidentiality. *See id.* This request should be rejected.

The predicate for the Bells’ argument – that the fiber and xDSL deployment information to be provided in ARMIS 43-07 Reports warrants confidential treatment under the

Commission's rules – is wrong. Confidential treatment is appropriate to protect data that would “assist[] competitors in preparing marketing strategies to use in direct competition with [the reporting carrier].” *Southwestern Bell Telephone Company*, Tariff FCC No. 73, DA 96-1927 (released November 19, 1996).<sup>6</sup> But the ARMIS 43-07 data relating to fiber and xDSL deployment will be collected and reported only at the “study area” level, *see Phase 2 Order* ¶ 158, and thus would not provide potential competitors with competitively sensitive information that could be used to compete against incumbent LECs. The incumbent LECs provide service throughout every study area, and data showing the number of fiber/copper interfaces or xDSL lines terminated by an incumbent LEC at customer premises in that study area could not remotely reveal broadband capabilities in any specific geographic area within the study area.

But even if these data were found to be confidential, the Bells' claim that these data would be subject to confidential treatment if reported on Form 477, but not if reported in an ARMIS 43-07 Report is specious. The Commission's rules do not preclude carriers from seeking confidential treatment of information provided in ARMIS reports. Moreover, the mere fact that information is reported on Form 477 does not guarantee confidential treatment of that information.

A large portion of the data reported on Form 477 is highly disaggregated information that identifies the specific capabilities of new telephone and Internet carriers within narrow geographic areas – and thus is highly competitively significant. Recognizing that this type of information – in contrast to highly aggregated data – would allow competitors, and incumbent LECs in particular, to develop marketing strategies to target new entrants, the

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<sup>6</sup> *See also Public Citizen Health Research Group v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999).

Commission allows for “streamlined” confidentiality requests for that data (by checking a box on Form 477). *See Data Gathering Order* ¶ 90.<sup>7</sup> But simply checking that box does not automatically protect the data from disclosure. If a third party requests access to the data, the providing carrier must make a showing that the data fall within the Commission’s confidentiality rules. *See id.* ¶¶ 87-88. The incumbent LECs, therefore, would have to demonstrate that their fiber and xDSL deployment data fall within the Commission’s confidentiality rules whether reported on Form 477 or provided in ARMIS 43-07 Reports.

Finally, shifting the reporting of fiber and DSL deployment to Form 477 would impose substantial new burdens on all other LECs that meet the Form 477 reporting threshold. Only the largest incumbent LECs are required to submit ARMIS 43-07 Reports, *e.g.*, Qwest, SBC, Verizon, and BellSouth. *See Phase 2 Order* ¶ 9. But *all* LECs that serve 10,000 or more voice-grade equivalent lines or 250 broadband lines would be subject to the new fiber and xDSL fiber requirements if those reporting requirements are shifted from ARMIS 43-07 Reports to Form 477. *See Data Gathering Order* ¶¶ 39, 41. Although the Commission has found that there are clear benefits to requiring the largest monopoly incumbent LECs – which serve the vast majority of lines – to report data relating to fiber and xDSL investment, there has been no such showing that imposing such requirements on small and medium sized LECs would produce any measurable benefit. And complying with such new reporting requirements can be very onerous for smaller carriers. Thus, shifting fiber and xDSL reporting requirements from Form 477 to

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<sup>7</sup> *Local Competition Broadband Reporting*, Report and Order, 15 FCC Rcd. 21796 (2000) (“*Data Gathering Order*”).

ARMIS 43-07 Reports would contravene the public interest, and the incumbent LECs have made no showing to the contrary.

## CONCLUSION

For these reasons, the petition for reconsideration filed by SBC and the joint petition for reconsideration filed by BellSouth, SBC and Verizon should be denied.

Respectfully submitted,

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May 15, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of May, 2002, I caused true and correct copies of the forgoing Opposition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: May 15, 2002  
Washington, D.C.

/s/ Peter M. Andros

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