

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

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

**REPLY OF BELLSOUTH, SBC AND VERIZON TO AT&T'S
OPPOSITION TO JOINT PETITION FOR RECONSIDERATION OF
REPORT AND ORDER IN CC DOCKET NOS. 00-199, 97-212 AND 80-286**

BellSouth Corporation

Stephen L. Earnest
Richard M. Sbaratta
Suite 4300
675 West Peachtree Street, N.W.
Atlanta, Georgia
30375
(404) 335-0711

SBC Communications Inc.

Juanita Harris
Gary L. Phillips
Paul K. Mancini
1401 I Street, N.W.
Washington, D.C. 20005
(202) 326-8910

Verizon telephone companies

Ann H. Rakestraw
1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3174

Michael E. Glover
Edward Shakin
Of Counsel

May 28, 2002

TABLE OF CONTENTS

Introduction and Summary		1
I.	The Commission Should Not Create Separate Wholesale and Retail Subaccounts to Services Account 6620	3
II.	The Commission Should Allow Any Reporting of Information About Broadband Infrastructure to Occur Through Broadband and Local Competition Report Form 477, Rather Than ARMIS	7
Conclusion		13

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

In the Matter of)	
)	
2001 Biennial Regulatory Review --)	CC Docket No. 00-199
Comprehensive Review of the)	
Accounting Requirements and)	
ARMIS Reporting Requirements for)	
Incumbent Local Exchange Carriers:)	
Phase 2 and 3)	
)	
Amendments to the Uniform System)	CC Docket No. 97-212
of Accounts for Interconnection)	
)	
Jurisdictional Separations Reform and)	CC Docket No. 80-286
Referral to the Federal-State Joint Board)	

**REPLY OF BELLSOUTH, SBC, AND VERIZON TO
AT&T'S OPPOSITION TO JOINT PETITION FOR RECONSIDERATION
OF REPORT AND ORDER IN CC DOCKET NOS. 00-199, 97-212, AND 80-286¹**

In their joint petition for reconsideration (“PFR”), Petitioners requested that the Commission amend three portions of the *Report and Order*. One of those requested amendments – to change Table II ARMIS 43-07 reporting category “Sheath Kilometers” back to “Loop Sheath Kilometers,” *Report and Order*, ¶ 170 – has not been opposed by any commenter and, for reasons outlined in the PFR, the Commission should change that part of its Order.²

¹ See *Report and Order*, 16 FCC Rcd 19911 (2001). This reply is to the portions of AT&T’s opposition that address the joint petition for reconsideration filed on behalf of BellSouth Corporation and its wholly owned affiliates (“BellSouth”), SBC Communications (“SBC”), and the Verizon telephone companies (collectively, “Petitioners”). SBC is filing a separate reply to the portions of AT&T’s comments related to the issues raised in SBC’s petition for reconsideration.

² See PFR, at 7-9 (demonstrating that Petitioners would have to conduct expensive additional studies to separate the “loop” from non-loop portion of sheath kilometers, and such a change is not necessary for regulatory purposes).

One lone commenter, AT&T, filed an opposition to the PFR's other requests: (1) to eliminate the new wholesale and retail subaccounts to Account 6620 (Services), *Report and Order*, ¶ 64; and (2) to order that the reporting of data related to broadband infrastructure occur through the Local Competition and Broadband Reporting Form 477, rather than through ARMIS 43-07, *Report and Order*, ¶ 175. *See* PFR, at 9-11; AT&T Opposition, at 9-12 (filed May 15, 2002). However, the Commission should reject AT&T's protestations. AT&T has failed to articulate why the creation of separate wholesale and retail subaccounts to Account 6620 is necessary, and has not seriously challenged the fact that requiring these new subaccounts would create significant burdens on Petitioners. Because of the enormous burdens, and the amount of time that would be required for each carrier to get the necessary systems and processes in place, the Commission should enter an interim order *now* delaying the implementation of the wholesale and retail subaccounts until six months after the Commission's decision on the PFR, and preferably after it has reached a decision on Phase 3. *See* PFR, at 6-7.³

AT&T also has failed to offer any convincing objections to moving the reporting of infrastructure data to Form 477, which would allow the data to be collected from more carriers, would ensure all broadband data was gathered in one place, and would protect confidential information. If AT&T is correct that requiring other carriers to report this information would not provide any "measurable benefit" and would "impose substantial

³ Contrary to AT&T's assertion, Petitioner's request for a delay in implementation does not "logically . . . permit them to avoid all accounting obligations pending the Commission's resolution of other accounting issues in Phase 3 of this proceeding." AT&T Opposition, at 8. Petitioners have only requested that they not be required to make time-consuming and expensive systematic changes that may ultimately prove to be for naught.

new burdens,” AT&T Opposition at 11, then no carriers – including Petitioners – should be required to provide it.

I. The Commission Should Not Create Separate Wholesale and Retail Subaccounts to Services Account 6620

The Commission should not require the creation of new wholesale and retail subaccounts to Account 6620, as the subaccounts are not necessary, and would require ILECs to journalize information monthly that would only be used, if at all, on an occasional basis.

The purpose of biennial review is to eliminate unnecessary regulations and reduce the regulatory burden on the carriers, and should not be used to increase these burdens through the creation of new accounts. The Commission is statutorily required to “repeal or modify any regulation it determines to be no longer necessary in the public interest.” 47 U.S.C. § 161. In other words, the Act “is clear that a regulation should be retained only insofar as it is necessary in, not merely consonant with, the public interest.” *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1050 (D.C. Cir. 2002). In inviting comments in Phase 3 of this proceeding, the Commission properly warned commenters that if they could not articulate *specific* reasons why there is a “federal need” for a *specific* rule or regulation, the Commission simply is “not justified in maintaining such a requirement at the federal level.” *Report and Order*, ¶¶ 207, 209. Because no convincing and *specific* reasons exist to create the new wholesale and retail subaccounts to Account 6620, and because the creation of these accounts would impose burdensome obligations on Petitioners, they should not be added.

Other than stating that the wholesale/retail distinction was “important,” the only reason the Commission mentioned for creating the new wholesale and retail subaccounts

to Services Account 6620 was that it believed the subaccounts would “assist the states in developing UNE rates that properly reflect the costs of providing a wholesale service.” *Report and Order*, ¶ 64. However, it is dramatic overkill for the Commission to require carriers to undertake burdensome, systematic accounting system changes only in order to possibly “assist” states in better determining one *portion* of LEC’s accounting costs (those for Services), when these costs may (or may not) be used as one *factor* in setting UNE rates that will be independently studied and analyzed in a UNE ratemaking proceeding. Indeed, under the Commission’s current pricing rules, states set rates based on the costs of a hypothetical carrier using a newly rebuilt network.⁴ Moreover, as the PFR pointed out, not only is the wholesale and retail split completely *unnecessary* for UNE rates, it is not even *arguably* relevant to much of Account 6620, as two of the three services reflected in that account (Call Completion Services and Number Services) are not even required to be offered at UNE rates. *See PFR*, at 4.⁵

Nonetheless, AT&T argues that creating these subaccounts is warranted because cost data is relevant for UNE rates (presumably only for the one of the three Account 6620 services for which UNE rates must be offered) and for setting resale rates. AT&T concedes (as it must) that UNEs are based on TELRIC, which reflects not actual accounting costs, but “forward-looking economic cost-based pricing.” AT&T Opposition, at 7. However, it argues that TELRIC pricing also “reflects common costs, loading factors and other overhead costs attributable to the costs of operating a

⁴ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996), *aff’d*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁵ The third part of Account 6620 is Customer Services, formerly Account 6623. *See PFR*, at 3 n.3.

‘wholesale’ network” and “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.” *Id.*⁶ It also argues that distinct subaccounts “are important to assessing the incumbent LEC’s compliance with its duty ‘to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers.’” AT&T Opposition, at 6-7 (quoting 47 U.S.C. § 251(c)(4)(A)). What these arguments ignore, however, is the fact that when costs are used as a “starting point” for UNE rates or to determine resale rates, *carriers already are providing the states information about these costs that is more detailed than the two numbers that would be reported in the wholesale and retail subaccounts being proposed.* In both UNE *and* resale ratemaking proceedings, where wholesale cost data is used, carriers must perform studies to determine these costs. In those state proceedings, ILECs must not only give the results of those studies, but also set forth the details of how the analyses were performed. This information is made available not only to state regulators, but also to interested parties (such as AT&T).

Thus, adding the retail and wholesale subaccounts will *not* help those states who use cost information, because those states can (and are) gathering such information

⁶ Of course, just because costs “may” serve as a proxy or starting point for setting UNE rates (for *some* carriers in *some* states) does not mean that data from these costs *must* be calculated that way for all Account 6620 accounting records, or journalized in that account on a monthly basis.

already. What it *will* do is unnecessarily increase the burden to ILECs. *See* PFR, at 5-6.⁷ The burden will increase because carriers will have to conduct additional studies (for *all* states, not just those where accounting costs are used as a “starting point” for UNE rates or in the resale ratemaking process), undertaken on a more frequent basis (rather than only as needed for ratemaking proceedings), and would have to journalize these costs on a monthly basis.

In grasping for arguments why new wholesale and retail subaccounts would be “necessary,” AT&T only highlights how paltry the record in support of these new subaccounts was. AT&T cites three sets of comments as having been “properly credited” by the Commission in setting up the new subaccounts. *See* AT&T Comments, at 6 n.4. However, in each of these three examples, the commenters spent *only one sentence*, making a conclusory statement about why the Commission should adopt these subaccounts. Two commenters said that the Commission “should” (or, less forcefully “might want to”) create subaccounts to monitor competition/ILEC dominance.⁸ However, they did not state any support for these assertions, and it is difficult to imagine how requiring carriers to separately calculate and book accounting costs between wholesale and retail subaccounts, for only certain services, has anything to do with

⁷ Strangely, AT&T also claims that the PFR did not make an adequate showing of the costs that would result from the addition of these new accounts, AT&T Opposition, at 8 & n.5, even after Petitioners estimated that it would cost carriers between \$3.5 million and \$12.5 million *per carrier* to initially implement the necessary changes, and set forth descriptions of the type of work that would be required. *See* PFR, at 5-6. Regardless, the burden is on the *proponents* of regulation to show it is *necessary*, especially where, as here, the costs (whatever the specific quantification) are not trivial. *See Fox Television Stations*, 280 F.3d at 1050; *Report and Order*, ¶¶ 207, 209.

⁸ *See* New York Department of Public Service Comments, at 1 (filed Dec. 18, 2000); Letter from James Bradford Ramsey, NARUC, to Magalie Roman Salas, App. A, at 6 (filed Sept. 6, 2001).

monitoring “competition” or “ILEC dominance.” Another commenter simply stated that the new subaccounts would “greatly aid” in determining resale discounts.⁹ However, as stated above, that simply is not the case. Moreover, none of those comments addressed whether such new subaccounts were *necessary* to monitor competition or determine appropriate resale discounts, and none analyzed whether less burdensome measures could be used to achieve those goals. For example, requiring company-wide journalization of these numbers on a monthly basis is particularly inefficient for UNE and resale purposes, because UNE and resale ratemaking proceedings generally do not take place every year, much less every month. Even if the new subaccounts might “assist” the states (which, as explained above and in the PFR, they do not), that does not establish that they are *necessary*. Plainly, as regulators have been “monitoring competition” and regulating resale discounts and UNE rates for years without the existence of these retail and wholesale subaccounts, there can be no real argument that the new subaccounts are “necessary” for such purposes.

II. The Commission Should Allow Any Reporting of Information About Broadband Infrastructure to Occur Through Broadband and Local Competition Report Form 477, Rather Than ARMIS

It is ironic that, of all commenters, it is AT&T who is arguing that the Commission should require only the “largest monopoly incumbent LECs – which serve the vast majority of lines – to report data relating to fiber and xDSL investment.” AT&T Opposition, at 11. Currently, the biggest danger of broadband “monopoly” comes not from DSL, but from cable broadband providers (such as AT&T), who have the

⁹ See GSA Comments, at 5 (filed Dec. 21, 2000).

undeniable lead in broadband services.¹⁰ The District of Columbia Circuit Court of Appeals recently noted that the Commission has repeatedly recognized cable's "dominance" in the broadband market, and vacated and remanded the Commission's line sharing order, requiring it to consider "the relevance of competition in broadband services coming from cable (and to a lesser extent satellite)."¹¹ Indeed, the largest single provider of broadband may soon be AT&T itself: If the proposed AT&T/Comcast merger is consummated, AT&T Comcast would become the nation's largest provider of broadband Internet access services, with approximately 22.7% of all broadband subscribers – roughly *twice* the subscriber base as its nearest DSL competitors.¹² In light of AT&T's current situation, its claims that broadband infrastructure reporting is necessary only for the "monopoly" ILECs rings particularly hollow.

It is also ironic that, given AT&T's bluster about the Petitioners' purported failure to provide sufficient detail regarding the burdens that would be caused by creating new subaccounts for Account 6620, AT&T provides absolutely *no* support for its bald statement that "shifting the reporting of fiber and DSL deployment to Form 477 would

¹⁰ See *High-Speed Services for Internet Access: Subscribership as of June 30, 2001*, Industry Analysis Division, Common Carrier Bureau, at 2, and Table 7 (February 2002) ("High-Speed Services Report") (reporting that as of June 30, 2001, of high speed lines in service, cable modem services "remained the most numerous," and accounted for 5.2 million of the total 9.6 million high speed lines).

¹¹ See *USTA v. FCC*, No. 00-1012, 2002 U.S. App. LEXIS 9834, at * 37 (D.C. Cir. May 24, 2002) (quoting *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 14 FCC Rcd 2398 (1999) and *Third Report Pursuant to § 706*, 2002 FCC LEXIS 655 (Feb. 6, 2002)).

¹² See Petition to Deny of Verizon Telephone Companies and Verizon Internet Solutions d/b/a Verizon.Net, MB Docket No. 02-70, at 2, 5-6, 23 (filed April 29, 2002).

impose substantial new burdens on all other LECs that meet the Form 477 reporting threshold.” AT&T Opposition, at 11.¹³ If AT&T is correct that requiring this new reporting would impose “substantial new burdens” that are not justified, *id.*, those burdens should not be imposed on *any* carriers – including Petitioners.

And AT&T’s purported concerns for the “very onerous” reporting requirements that would be imposed on “smaller carriers” (which do not include AT&T) if broadband infrastructure is reported on Form 477, *id.*, have been addressed by the Commission, which (as AT&T recognizes) has set a threshold for reporting on Form 477.¹⁴ For carriers that have little or no broadband infrastructure, they will either fall below the reporting threshold (and thus have *no* additional burdens) or will have only small additional reporting obligations under Form 477, commensurate with the small amounts of infrastructure. Moreover, some of the broadband infrastructure data the Commission is proposing to add to ARMIS 43-07 is similar to information providers *already* report on Form 477.¹⁵

¹³ As stated in section I, *supra*, and the PFR, at 5-6, Petitioners have demonstrated that significant burdens would result from the creation of Account 6620 wholesale and retail subaccounts.

¹⁴ See AT&T Opposition, at 11 (noting that only carriers “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 requirements are shifted from ARMIS 43-07 Reports to Form 477”).

¹⁵ Form 477 already collects information regarding asymmetric xDSL lines terminating at the customer premise, which is similar to the Report and Order’s newly required category of “Total xDSL Terminated at Customer Premises,” and “xDSL Terminated at Customer Premises via Hybrid Fiber/Metallic Interface Locations.” *Compare Report and Order*, ¶ 175 & nn.332-35 (setting forth new broadband infrastructure reporting categories) *with* Form 477, Section I, Item A I,1.

If information is “necessary” for regulatory purposes, it should be reported by *all* competing providers – including cable modem providers – not just certain ILECs.¹⁶ Despite AT&T’s “monopoly” claims, the Commission recently reported that as of the middle of last year, almost 68% of high-speed lines were provided by entities *other than* the RBOCs.¹⁷ Other commenters in the Phase 3 proceeding have argued that any infrastructure information should be gathered through the Local Competition and Broadband Data Gathering Program (*i.e.*, on Form 477), so that information can be obtained from more than just some of the ILECs.¹⁸ If it is *not* “necessary” for some providers to report this data, it should not be necessary for *any* to report it.

¹⁶ The new categories of information the Commission ordered reported focus on the provision of DSL (“Hybrid Fiber/Metallic Loop Interface Locations,” “Switched Access Lines Served from Interface Locations,” “Total xDSL Terminated at Customer Premises,” and “xDSL Terminated at Customer Premises via Hybrid Fiber/Metallic Interface Locations.”). *See Report and Order*, ¶ 175 & nn.332-35. However, as the District of Columbia Circuit Court of Appeals recently held, the broadband inquiry should be into *all* modes of competition – including cable modem and satellite – not just DSL. *See USTA v. FCC*, 2002 U.S. App. LEXIS, at * 37.

¹⁷ *See High-Speed Services Report*, Table 5.

¹⁸ *See, e.g.*, Oregon Phase 3 Comments, at 7-8 (filed March 1, 2002) (arguing that “[o]btaining information from only mandatory price cap carriers does not paint a complete picture” and that moving information collection to the Local Competition and Broadband Data Gathering Program “would help provide a more adequate assessment of infrastructure status”); NARUC Phase 3 Comments, at 19-20 (filed April 8, 2002) (while opposing a complete shift of ARMIS data to Form 477, arguing that “[m]ore information regarding telecommunications infrastructure is needed, especially as competitive carriers own more of the infrastructure. . . . Moving the ARMIS 43-07 information collection to the Local Competition and Broadband Data Gathering Program could possibly help provide a more adequate assessment of infrastructure status”). *See also* Wisconsin Phase 3 Comments, at 7 (filed April 4, 2002) (while stating it had “no preference” as to the “mechanism” for collecting the data, arguing that if data was reported in the Local Competition and Broadband Reporting Proceeding, it “should be collected on a mandatory basis from the larger universe of carriers rather than only the price-cap companies”).

AT&T challenges Petitioners' confidentiality concerns with ARMIS, by arguing that because ARMIS 43-07 information "will be collected and reported only at the 'study area' level" it "would not provide potential competitors with competitively sensitive information that could be used to compete against incumbent LECs." AT&T Opposition, at 10. In ARMIS, carriers must report information individually, whereas the Commission's reports that are based on Form 477 aggregate the data. While AT&T is correct that ARMIS data is reported on the "study area" level, that level is not always large enough to protect competitively sensitive information. In fact, in several cases, the study area is small, and may include only one city and its surroundings. In some study areas, the majority of the data may be for only one or two large cities in the area. Making carriers publicly report this information in ARMIS 43-07 would provide highly valuable detail for competing broadband providers (such as cable providers, like AT&T). Indeed, AT&T argued as much when commenting on data that would be reported in the Local Competition and Broadband Reporting Proceeding. In addressing the Commission's tentative conclusion to make public the data it gathered regarding local competition and broadband, AT&T argued that it "cannot emphasize strongly enough that the information the Commission seeks is extremely competitively sensitive" and that "[e]ven public statewide reporting does not always provide sufficient safeguards."¹⁹

¹⁹ See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, AT&T Comments, at 17-18 (filed Dec. 3, 1999). See also *id.* at 18, 20 ("[I]f a new entrant only operates in one area, public, statewide reporting provides no protection for that carrier's information. . . . To the extent there are only two or three carriers in a particular industry segment (e.g., CMRS or broadband providers), it would be extremely difficult to conceal the source of the reported data, if such data is supplied for a particular geographic area instead of a state").

AT&T also argues that “[t]he Commission’s rules do not preclude carriers from seeking confidential treatment of information provided in ARMIS reports” and, conversely, “the mere fact that information is reported on Form 477 does not guarantee confidential treatment of that information.” AT&T Opposition, at 10. However, the fact is that information reported on Form 477 is typically protected as confidential by aggregating data that is publicly reported, while ARMIS reports typically are not. And even if certain Form 477 confidential data was made publicly available, the Commission has stated that would occur only on a case-by-case basis, after a request for inspection was made and after the reporting carrier had an opportunity to demonstrate a case for non-disclosure.²⁰

²⁰ See *Local Competition and Broadband Reporting*, 15 FCC Rcd 7717, ¶ 88 (2000).

Conclusion

The Commission should reject AT&T's objections, and grant Petitioners' requests to eliminate the newly created wholesale and retail subaccounts of Account 6620, and to use Form 477, not ARMIS 43-07, for broadband infrastructure reporting. It also should change reporting requirements for "Loop Sheath Kilometers" back to "Sheath Kilometers," a request to which no commenter objected.

Respectfully submitted,

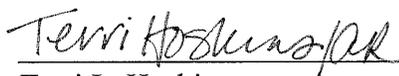
BELLSOUTH CORPORATION
By its Attorneys



Stephen L. Earnest
Richard M. Sbaratta

675 West Peachtree Street, N.E.
Suite 4300
Atlanta, Georgia 30375
(404) 335-0711

SBC COMMUNICATIONS, INC.
By its Attorneys



Terri L. Hoskins
Gary L. Phillips
Paul K. Mancini

1401 I Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 326-8893

-and-

VERIZON

By its attorneys



Ann H. Rakestraw

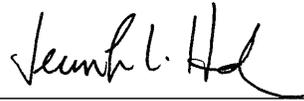
Michael E. Glover
Edward Shakin
Of Counsel

1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3174

May 28, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of May, 2002, copies of the foregoing "Reply of BellSouth, SBC and Verizon to AT&T's Opposition to Joint Petition for Reconsideration of Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286" were sent by first class mail, postage prepaid, to the parties listed below.



Jennifer L. Hoh
703-351-3063

David L. Lawson
Paul J. Zidlicky
Christopher T. Shenk
Attorneys for AT&T
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005

Mark C. Rosenblum
Judy Sello
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920

- + By Facsimile and First Class Mail
- * By Electronic Mail and First Class Mail