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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

***Re: CC Docket 02-33; Framework for Broadband Access to the Internet
over Wireline Facilities***

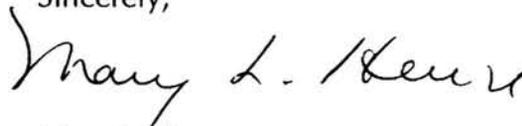
Dear Ms. Dortch,

On June 18, the undersigned, Steve Earnest, Lyn Haney, Don Barbour, Barbee Ponder, and Glenn Reynolds of BellSouth met with Jane Jackson, Carol Matthey, Cathy Carpino, and Terri Natoli of the Wireline Competition Bureau.

The purpose of the meeting was to discuss the accounting issues raised in the above proceeding. In addition to the items covered in the attached handout, we also addressed how DSL is currently handled for separations and price cap ratemaking purposes.

This notice is being filed pursuant to Sec. 1. 1206(b)(2) of the Commission's rules. If you have any questions concerning this filing please do not hesitate to contact me.

Sincerely,



Mary L. Henze

cc: J. Jackson
C. Matthey
C. Carpino
T. Natoli

Accounting for Broadband Telecommunications

The Commission should adopt its tentative finding that broadband Internet access is an information service.

As part of this finding, the Commission should declare the stand-alone telecommunications used in the provision of broadband services (broadband telecommunications) to be private carriage services that are:

- fully deregulated, or
- subject only to Title I regulation

The Commission has asked how such reclassification would implicate its Part 64 cost allocation rules.

- Absent an accounting rule modification, reclassification would trigger Part 64 cost allocation.
- Allocation would have devastating negative effects on the broadband deployment; not consistent with public interest.

Two Potential Solutions

The solution is Part 64 should not be applied to broadband telecommunications. There are at least two ways to achieve this. The justification, however, for either solution is the same: Part 64 cost allocation of broadband telecommunications is not necessary to ensure just, reasonable, and non-discriminatory rates; to protect consumers; or, further the public interest.

1. Rule Change

In order to avoid undesirable effects of cost allocation, the Commission should modify Part 32.23 (a) to classify broadband telecommunications as regulated for accounting purposes.

“(a) This section describes the accounting treatment of activities classified for accounting purposes as “nonregulated.” Preemptively deregulated activities, [insert: except for broadband telecommunications,] and activities (other than incidental activities) never subject to regulation will be classified for accounting purposes as “nonregulated.” Activities that qualify for incidental treatment under the policies of this Commission [insert: and broadband telecommunications] will be classified for accounting purposes as regulated activities. ...”

2. Forebearance

The Commission could forbear from applying Part 64 cost allocation rules to broadband telecommunications.

Market/Regulatory Changes Support Not Applying Part 64

In 1996, the Commission stated “[w]e recognize that changes in the competitive condition of local telecommunications markets in the future may cause us to re-examine the continued need for our Part 64 cost allocation rules.”

These changes have taken place:

- Price cap regulation combined with pricing flexibility has completely eliminated any link between ILECs’ recorded costs and the prices they charge for services.
- The Commission has eliminated the sharing and the lower formula adjustment mechanism (“LFAM”), that could have created potential incentives for price cap ILECs to shift costs
- The Commission adopted the CALLS plan, which is “an integrated access reform/universal service plan that restructured access rates to remove implicit subsidies. Rates under CALLS are not based on the development and reporting of costs under any of the Commission’s accounting and reporting rules.
- Passage of the 1996 Act ensured that consumers participate in BOCs economies of scale and scope. opening up the regulated markets to competition and allowing competitors to access and purchase the BOCs unbundled network elements at below cost TELRIC pricing to provide regulated as well as un-regulated services to consumers has allowed all consumers to share in the BOCs economies of scale and scope.
- Cable modem service currently dominates the broadband market and there are no signs of this trend changing

Based on this analysis the Commission clearly would be justified in not applying Part 64 to a highly competitive area such as broadband. In fact, the analysis supports a complete elimination of Part 64.

What About 254(k)?

The Commission's statutory obligations under Section 254(k) are met by classifying the broadband telecommunications as regulated for accounting purposes

Section 254(k) of the 1996 Act states: "The Commission ... shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."

Part 64 allocation of broadband telecommunications is not *necessary* for Universal Service because:

- Contributions to the universal service fund are based on interstate revenues. Price cap carriers no longer determine prices to customers on costs. A carrier's revenue is based on the prices it charges customers. Accordingly, cost allocation will not affect the contributions to the universal fund.
- The distributions of universal service funds are based on a hypothetical cost model and thus Part 32 or Part 64 cost structure has no impact on distributions.
- Prices charged for services included in the definition of universal service are not tied to changes in accounting costs and thus the concept of bearing a share of costs is irrelevant.

Any action taken to explicitly implement 254(k) would have to apply to all telecommunications carriers, not just ILECs.

- Many carriers that provide broadband also provide services within the definition of universal services.