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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Petition of BellSouth Corporation )  
for Forbearance From )  
The Prohibition Of Sharing Operating, )  
Installation, and Maintenance Functions )  
Under Section 53.203(a)(2)-(3) Of The )  
Commission's Rules )

CC Docket No. 96-149

PETITION FOR FORBEARANCE

Jonathan Banks  
L. Barbee Ponder, IV  
BellSouth D.C., Inc.  
1133 21<sup>st</sup> Street, N.W.  
Suite 900  
Washington, DC 20036  
(202) 463-4100

BellSouth Petition for Forbearance  
CC Docket No. \_\_\_\_\_  
July 14, 2003  
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**PETITION FOR FORBEARANCE**

**I. Introduction and Summary**

When the Commission adopted sections 53.203(a)(2) and (3) of its rules, prohibiting a former Bell Operating Company ("BOC") and its section 272 separate long distance affiliate from sharing operating, installation, and maintenance ("OI&M") services, it did not have the evidence necessary to conduct a proper cost/benefit analysis of this prohibition to determine whether it was in the public's best interest. BellSouth, which was the first BOC to receive region-wide interLATA authority under section 271, represents that the evidence now exists to show that the restriction is not in the public's interest and that the Commission has the authority and the responsibility to forbear from applying the OI&M prohibitions to BellSouth.

BellSouth has found that complying with the OI&M restrictions imposes unnecessary costs and inefficiencies on its operations. The prohibition, which was not mandated by the Act, serves no regulatory purpose that cannot be achieved through less wasteful means. Moreover, it is becoming increasingly burdensome and anachronistic as

companies such as BellSouth move into a broadband environment, which does not have a

clear demarcation between “local” and “long distance” calls. BellSouth should be permitted to use a single OI&M operation organized to serve both its local and long distance networks just as it is permitted to share administrative and other services.

BellSouth requests that the Commission exercise its authority under section 10I of the Communications Act of 1934, 47 U.S.C. § 160I, to forbear from applying section 53.203(a)(2) and (3) of its rules to BellSouth with regard to the sharing of OI&M services. The current rules already permit all other services to be shared between the BOC and its section 272 affiliate or to be provided by an affiliated central service organization. *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905, ¶¶ 178-180 (1996) (“*Non-Accounting Safeguards Order*”). The Commission should allow the sharing of OI&M services as well. If the Commission granted this petition, BellSouth would still be subject to the balance of the Commission’s rules implementing the section 272 safeguards until they sunset pursuant to section 272(f)(1).

## **II. OI&M Restrictions Impose Unnecessary Costs and Inefficiencies**

When the Commission adopted the OI&M restriction, it did not have a record to conduct properly a cost-benefit analysis of using structural separations rather than non-structural safeguards. The only cost that the Commission considered was the regulatory cost of monitoring cost allocations for personnel performing similar services for both the BOC and its section 272 affiliate. *See Non-Accounting Safeguards Order*, ¶ 163. The Commission did not have the information necessary to evaluate the duplication of cost and operational inefficiencies that the restriction would impose on the BOCs or the harm

caused to the competitive marketplace by the lopsided application of these artificial regulatory constraints.

The restrictions impose duplicative costs on BellSouth by requiring it to hire two separate staffs to do provisioning and maintenance work that could be done more efficiently by a single OI&M organization within the BOC. The OI&M restrictions also require BellSouth to develop and operate duplicative operating support systems (OSS) or outsource long distance support operations at additional cost.

The inefficiencies imposed by the OI&M restriction in a narrowband environment will only be exacerbated as broadband technologies become more prevalent. Unlike traditional circuit-switched telephony, broadband networking cannot be readily categorized into “local” and “long distance.” A broadband network provides a platform for integrating voice, data, and video into a single distance-insensitive backbone. The efficiency gains that can be achieved by integrating services is one of broadband’s greatest assets as a technology. However, complying with the OI&M restriction in a broadband environment would negate some of these benefits. Because there are no clear distinctions between “local” and “long distance” transmission it will only be more difficult and costly to artificially separate and manage broadband networks.

In addition, there is no regulatory need for this restriction that cannot be met by less costly measures already in place. The Commission adopted the OI&M restrictions primarily because it was concerned about its ability to monitor the allocation of costs between the BOCs and their section 272 affiliates. *See Non-Accounting Safeguards Order*, ¶ 163. However, there is no fundamental difference between the cost allocations necessary to monitor the sharing of OI&M services and the cost allocations that the

Commission already applies to administrative and other services that are currently permitted to be shared between BellSouth's local and long distance operations, such as finance, human resources, legal, and accounting. Like the sharing of administrative services, sharing of OI&M services after forbearance is granted would be subject to the Commission's affiliate transaction rules and other Section 272 mechanisms. These safeguards require the BOC and the 272 affiliate to reduce all transactions to writing and make them available for public inspection, to maintain separate books, and to be subject to audits, and to follow time reporting requirements. The methods and procedures for complying with these safeguards have been in place for several years and proven to be effective. They would be just as effective for the sharing of OI&M services.

**III. The Commission Has Authority To Forebear From Applying The OI&M Prohibitions To BellSouth.**

Section 10 of the Act requires the Commission to forbear from applying any regulation or any provision of the Act to telecommunications carriers if the Commission determines that the three conditions set forth in section 10 are satisfied. Section 10 is not discretionary – it states that if the conditions are met, the Commission “shall” exercise forbearance. *See* 47 U.S.C. § 160(a). The Commission must forbear from enforcing a rule or provision of the Act if:

- (202) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (202) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(202) forbearance from applying such provision or regulation is consistent with the public interest.<sup>1</sup>

With regard to the public interest determination required by section 10(a)(3), section 10(b) states that “[I]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.” 47 U.S.C. § 160(b).

All of these conditions are met here.

**IV. All Of The Requisite Conditions For Forbearance From Application Of The OI&M Prohibitions Are Met**

**A. Enforcement of the OI&M prohibition is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.**

If the Commission forbears from applying the OI&M restrictions to BellSouth, the same affiliate transaction rules and section 272 separate affiliate rules will apply to the sharing of these services as apply to other services that are currently permitted to be shared. *See Non-Accounting Safeguards Order*, ¶¶ 171-184. This includes the affiliate transaction rules in section 32.27 as well as the section 272 safeguards. The long distance affiliate will have to develop OI&M transactions with the BOC on an arms-length basis, reduce them to writing, and make them available for public inspection. The Commission will continue to apply its cost accounting rules and the imputation standards of section 272(e)(3) to ensure that the BOCs properly attribute their costs to their long distance operations. In addition, the separate affiliates will continue to maintain separate

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<sup>1</sup> 47 U.S.C. § 160(a). A petition for forbearance is deemed granted if the Commission does not issue an order denying it within 12 months. The Commission may extend the 12-month deadline by 90 days if necessary. *See* 47 U.S.C. § 160(b).

books and be subject to audits. These rules will ensure that the costs of shared OI&M services are properly allocated between BellSouth's local and long distance operations. Furthermore, even in the unlikely event that costs were improperly allocated to the BOC, rates would not be impacted, because the price cap system has broken the link between costs and rates. For these reasons, a prohibition on the sharing of OI&M services is not necessary to prevent unreasonable rates.

Nor is the OI&M restriction required to prevent unreasonable practices or unjust discrimination. The non-discrimination safeguards of sections 202, 251, and 272 of the Act would continue to apply. Moreover, the Commission has ample authority to monitor and enforce these rules under sections 4(i), 220, 503, and 206-209 of the Act.

**B. Enforcement of the OI&M restriction is not necessary for the protection of consumers.**

Forbearance will further consumer interests. As is noted above, the OI&M restrictions are not necessary to prevent unreasonable rates for consumers. In addition, the restriction is not necessary to protect consumers from anticompetitive behavior. The long distance marketplace is already so competitive that any efficiencies that BellSouth may gain will only ensure it can continue to compete with existing competitors who do not have this regulatory burden. In fact, the costs of complying with the OI&M restrictions divert capital from productive investments and the development of innovative services which benefit consumers. Removal of the OI&M restrictions from BellSouth will promote greater competition and better service to consumers.

**C. Forbearance from applying the OI&M restriction is consistent with the public interest.**

Forbearance from applying the OI&M restrictions to BellSouth will further the public interest. Elimination of unnecessary regulatory restrictions promotes efficiency and economic growth in a time when it is most important. In addition, lifting this restriction will promote the development of broadband services by removing artificial limitations and operational inefficiencies. Continued application of the OI&M restriction is not necessary to protect competition – in fact, it harms competition by placing a lopsided handicap on BellSouth that is not shared by its competitors. Removal of these restrictions is necessary to promote the public interest.

#### Conclusion

For the foregoing reasons, the Commission should forbear from applying the OI&M restrictions to BellSouth.

Respectfully submitted,

By: 

Jonathan Banks

L. Barbee Ponder, IV

1133 21<sup>st</sup> Street, N.W.

Suite 900

Washington, DC 20036

(202) 463-4100

Attorneys for BellSouth D.C., Inc.

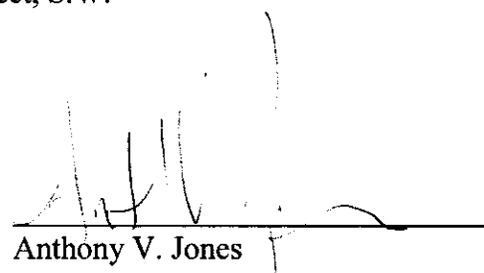
Dated: July 14, 2003

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 14th day of July 2003 served the following parties to this action with a copy of the foregoing **PETITION FOR FORBEARANCE** by hand delivery addressed to the parties listed below.

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
The Portals, 445 Twelfth Street, S.W.  
Room TW-A325  
Washington, DC 20554

Qualex International  
Federal Communications Commission  
The Portals, 445 Twelfth Street, S.W.  
Room CY-B402  
Washington, DC 20554



Anthony V. Jones