

**BellSouth Corporation**  
**Legal Department**  
Suite 900  
1133 21st Street, N.W.  
Washington, D.C. 20036-3351

barbee.ponder@bellsouth.com

**L. Barbee Ponder IV**  
Senior Regulatory Counsel-D.C.

202 463 4155  
Fax 202 463 4605  
Cell 202 215-6364

July 29, 2003

Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
TW-A325  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Ex Parte Presentation, CC Docket Nos. 02-33, 95-20, 98-10, 02-52

Dear Ms. Dortch:

In response to inquiries from several Commission staff members, BellSouth provides the following additional information concerning the competitive marketplace for broadband services both nationally and within BellSouth's nine-state region.<sup>1</sup> Specifically, this letter addresses the extent to which there may exist a certain segment of residential or small business broadband subscribers that have available only a DSL-based broadband service offering. In BellSouth's serving area, no more than 6% of DSL subscribers are without a readily available cable modem alternative. As cable providers continue to aggressively build-out their networks, this number continues to shrink.

The Commission currently imposes a costly array of regulations on broadband services provided over wireline networks but not on functionally identical services delivered over cable networks. At a minimum, these rules raise the day-to-day costs of providing broadband services over wireline networks by over \$6.00 per month for *each* subscriber.<sup>2</sup> By raising the costs of one set of rivals, but not the others, the Commission's

---

<sup>1</sup> BellSouth has previously presented information concerning the respective share of various companies and technological platforms providing broadband Internet access services for small and medium size business customers. See Ex Parte Letters from Glenn T. Reynolds, for BellSouth, to Marlene Dortch, Secretary, FCC (May 1, 2003). Attachment "A" hereto is a copy of a recent Dow Jones article highlighting certain cable companies plans to build out broadband facilities to small/medium size business customers.

<sup>2</sup> These costs are discussed in detail, along with the reduction in innovation attributable to these rules. See Ex Parte Letter from L. Barbee Ponder IV, Counsel for BellSouth, to Marlene Dortch, Secretary, FCC (July 10, 2003).

current approach distorts and reduces broadband competition and harms all consumers of broadband services. In particular, the rules make it much more difficult for ISPs that seek to use wireline networks – both those affiliated with Bell companies and those that are not – to compete with cable. Whether these rules deliver any benefit to the small percentage of subscribers without a readily available cable modem alternative is debatable. What is not is that these rules very significantly harm competition for the remaining 94% and handicap the expansion of wireline broadband networks to develop new broadband products and to bring the benefits of broadband to new customers.

Based upon recently reported data, Lehman Brothers concludes that cable modem service is available to 90 million households, while DSL is available to 75 million households.<sup>3</sup> Presently there are approximately 110 million households nationwide.<sup>4</sup> If one assumes the least possible overlap between DSL and cable modem availability -- an extreme and conservative approach -- there are at most twenty million households that have only a DSL alternative.<sup>5</sup>

Thus, a mathematical maximum of only 18.2% of domestic households could have access to DSL-based broadband but no cable alternative. This would mean, however, that 35 million domestic households (31.8%) have only a cable modem broadband alternative. Given that far more households have only a cable modem alternative, the Commission cannot rely upon any lack of overlap between the deployment of DSL and cable modem services to justify regulating the facilities of the non-dominant wireline providers while leaving the dominant provider unregulated.<sup>6</sup>

Of course, the actual availability of broadband services does not comport with the extreme assumptions discussed above. Some households, especially those located in more rural areas, have no broadband alternative whatsoever. Further, both cable and wireline companies have concentrated the build-out of their broadband networks in the more urban domestic areas where demand is highest and costs per household are lowest.

Thus, the reality is that there is far greater overlap than the above conservative assumptions suggest. Consequently, there are far fewer households with only a DSL broadband alternative than the 18.2% figure above. Indeed, BellSouth has conducted a detailed analysis of the comparative availability of its DSL service and competing cable modem service within its region and has determined that, *at most, only 6% of BellSouth's DSL customers (both residential and business) do not have cable modem*

---

<sup>3</sup> S.M. Linde, *et al.*, Lehman Brothers, Investext Rpt. No. 7318130, Cable in Transition – Cable Enters the Next Frontier to Meet Its Critics Head On – Industry Report at \*106 (Apr. 9, 2003).

<sup>4</sup> J. Bazinet, *et al.*, J.P. Morgan, The Cable Industry at Table 4 (Nov. 2, 2001) (estimating 109.3 million households in 2003)

<sup>5</sup> See Attachment “B” that graphically represents the various subsets of the broadband marketplace under the above-described assumptions.

<sup>6</sup> See Ex Parte Letter from Jonathan Banks, Counsel for BellSouth, to Marlene Dortch, Secretary, FCC (June 5, 2003), discussing constitutional and legal requirements requiring parity in treatment of wireline and cable broadband services.

*service as a ready alternative.* A more detailed explanation of BellSouth's analysis follows:

BellSouth has approximately 1600 central offices within its nine-state region. 1300 of these central offices are equipped with DSL capability. In order to obtain a more accurate depiction of the overlap of cable modem and BellSouth DSL service availability, BellSouth utilized publicly available address qualification databases for cable modem services. By checking addresses in those databases, BellSouth determined that there are 975 BellSouth central offices in which a cable company provides cable broadband service. BellSouth's analysis conservatively assumes that there is no cable modem alternative in the remaining 625 central offices, even though cable providers may be offering service in those offices but not participating in the database services.

The 975 central offices where cable modem service is available represent over 75% of the central offices where BellSouth has deployed its own DSL services, and over 90% of all of BellSouth's access lines. More remarkable, these 975 offices represent 93% of BellSouth's DSL qualified lines, and 94% of the end-user customers (both residential and small business) who have BellSouth DSL service. In other words, only 6% of BellSouth's DSL customers do not have a readily available cable modem service alternative.

The minimal number of BellSouth's DSL customers that presently have no cable modem alternative cannot justify continuing with the present disparate regulation of such services. Indeed, this minimal lack of complete overlap should dissipate quickly as cable continues its aggressive build-out of cable modem infrastructure.

Pursuant to section 1.1206(b)(2) of the Commission's rules, this letter and attachments are being provided for inclusion in the record of the above-referenced proceedings.

Very truly yours,



L. Barbee Ponder, IV

LBPIV:kjw  
Attachments



ATTACHMENT "A"

Register Open An Account Pr

Portfolio Trading Research Strategies Services Hel

New COX Watch News Smith Barney Citigroup Research Option Pricing Interactive Total Industry Annual Quarterly Quote Quote List News Chain Chart Charts Return Comparison Financial Financial

DJ Cable Cos Eye Small Businesses For Internet, Phone Sales

Dow Jones News Service ~ July 10, 2003 ~ 8:54 am EST

By Ellen Sheng
Of DOW JONES NEWSWIRES

NEW YORK (Dow Jones)--When information technology consultant Greg McCullough had to pick a phone and broadband Internet service provider for a BMW dealership, he was surprised to see cable company Cox Communications Inc. (COX) among the bidders.

McCullough had overseen installations for numerous car dealerships and previously only dealt with phone companies. Cable companies came into play only when cable television was needed.

"Most people think of Cox as a baby in the marketplace; they don't trust Cox," McCullough said.

Ultimately though, Cox's rates and range of offerings swayed him. Today, the Irvine, Calif., dealership's 140 employees use Cox for phone, broadband Internet and video service. Even music piped into the dealership's lounge comes from Cox, which has music channels on its digital TV package.

Business services have traditionally been dominated by phone companies such as AT&T Corp. (T), while cable typically served bars or restaurants in need of video service.

But that's changing as cable companies, armed with a new bundle of services, are courting business customers more vigorously than ever. Their ranks include Cox, AOL Time Warner Inc.'s (AOL) Time Warner Cable and Cablevision Systems Corp. (CVC).

Business customers are still not as high a priority as residential, but "cable companies are starting to take note of the opportunity," said Adi Kishore of the Yankee Group.

Smaller businesses, especially those with 20 or fewer employees, are particularly good targets because they are more likely to sign up with cable operators. Large businesses have entrenched relationships with phone companies and aren't likely to switch service, as it could require rewiring.

That's not an issue for small businesses, many of which don't yet use high-speed Internet. And, for small-office and home-office users, or SOHO, cable's offering is on even terms or better than what phone companies have, said Joe Laszlo, an analyst at Jupiter Research.

The cable industry has already been successful in residential broadband Internet service, outselling DSL two to one. By bundling a voice and data offering, cable companies are confident they stand a good chance of competing against phone companies in the business market as well.

"There is still a lot of low-lying fruit," said Bobby Amirshahi, a Cox Communications spokesman.

About 3.7 million of 4.6 million businesses in the SOHO market have Internet access, but only 1.6 million, or 34% have broadband, according to Jupiter. In the small business category, describing businesses with 10 to 99 employees, Jupiter believes 1.2 million of 1.4 million have Internet access and about 700,000, or 53%, have broadband.

Cablevision Finds Health-Care Niche

Among the most aggressive to pursue new business customers has been Cox, the nation's fourth-largest cable operator.

The new market has expanded dramatically. Revenue from Cox Business Services has increased by at least 50% each year since 1999. In 2002, the company reported \$218.8 million in revenue - a 52% increase from the year before. In the first quarter, commercial revenue rose 27% from the fourth quarter, to \$63 million.

At Cablevision's business services unit, Lightpath, revenue increased 20% in 2002 to \$158.3 million. In the first quarter, revenue was \$43.3 million, up 18% from a year ago. The unit - which has about 4,500 customers subscribing to phone, Internet or a bundle of services - nearly doubled its number of broadband Internet subscribers in the past year to 18,600, from 9,600. It has over 140,000 access phone lines.

Though Lightpath targets businesses of all sizes, the bulk of its customers are small- and medium-sized companies, the company said. The Cablevision unit has also made inroads in certain industries, such as health care. At least 90% of hospitals on Long Island use Lightpath for voice, Internet, or both services, according to Jim Maiella, a Cablevision spokesman.

Time Warner Cable doesn't break out revenue by business unit, but reported its Road Runner Business class service had 90,000 subscribers as of the end of March, compared with 50,000 a year ago. Its customers, unlike those at Cablevision and Cox, are mostly only broadband Internet, as the company doesn't have phone service except in Portland, Maine, at present.

More Infrastructure Needed

Despite the heady growth, challenges remain.

"Talk to any cable operator, and they will tell you that small business is a priority, at least at the corporate level. It's something Wall Street likes to hear...but at the operations level, folks are of another mind. There are operations that cable operators can tap into, but many are so busy building out infrastructure that business kind of falls to second place," said Jupiter Research analyst Laszlo.

The cost of infrastructure is a major obstacle. Though the industry spent billions upgrading fiber networks, the improvements were largely limited to residential areas. Extending cables into large business complexes requires major investment that isn't always cost-effective. Because most large offices already have T1 connections - which are offered by phone companies - cable companies have to be strategic in deciding when and how to build out.

"That disadvantage grows with size of business," Laszlo said.

Yankee Group's Kishore adds that "some of it is just conditioned. Companies tend to choose phone companies as their primary provider since they already have a relationship."

Meanwhile, companies are carefully examining the market, figuring out their next move.

Cox is targeting smaller businesses, such as those in strip malls and office parks. The company estimates that 30% of its network runs 100 feet or closer to businesses, in which case it costs very little to extend the line. The company recently unveiled a new marketing campaign - "Hy-Life" - and will send direct mailings to prospective customers starting in July.

"The commandment with the sales force is to revisit and to bring those folks on board," said Amirshahi.

-By Ellen Sheng, Dow Jones Newswires; 201-938-5863; ellen.sheng@dowjones.com

(END) Dow Jones Newswires

07-10-03 0854ET

Used with permission. All rights reserved. You may not redistribute, retransmit or reproduce this story in any format or in any medium without the express prior written permission from Dow Jones & Company, Inc.

[Previous Story](#)

[Back to Headlines](#)

[Next Story](#)

<a href="#">New Quote</a>	<a href="#">COX Quote</a>	<a href="#">Watch List</a>	<a href="#">News</a>	<a href="#">Smith Barney Citigroup Research</a>	<a href="#">Option Chain</a>	<a href="#">Pricing Chart</a>	<a href="#">Interactive Charts</a>	<a href="#">Total Return</a>	<a href="#">Industry Comparison</a>	<a href="#">Annual Financial</a>	<a href="#">Quarterly Financial</a>
---------------------------	---------------------------	----------------------------	----------------------	---	------------------------------	-------------------------------	------------------------------------	------------------------------	-------------------------------------	----------------------------------	-------------------------------------

**Quotes**

Search By

ticker symbol     name

Enter one or more ticker symbols (separated by a space) or a security name and click the "Get Quote" button

\_\_\_\_\_

**Get Quote**



**Investment Products:**

- NOT FDIC INSURED
- NO BANK GUARANTEE
- MAY LOSE VALUE

Citicorp Investment Services, Member Cititrade® is a registered service

CitiOne<sup>SM</sup> and the Cititrade logo are service

©2003 Citicorp Investment Services. All Rights Reserved. [AME](#)  
[Terms & Conditions](#) P

## **Cable Modem/DSL Overlap Under Most Conservative Scenario Assuming 110 Million Domestic Households:**

