Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Petition of BellSouth Corporation	)	
For Forbearance From	)	CC Docket No. 96-149
The Prohibition of Sharing, Operating,	)	
Installation, and Maintenance Functions	)	
Under Section 53.203(a)(2)-(3) of The	)	
Commission's Rules	)	

REPLY COMMENTS OF BELLSOUTH CORPORATION

BELLSOUTH CORPORATION

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

Lisa S. Foshee
BellSouth Telecommunications, Inc.
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375
(404) 335-0754

Date: August 20, 2003

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

REPLY COMMENTS OF BELLSOUTH CORPORATION

INTRODUCTION AND SUMMARY

BellSouth Telecommunications, Inc. ("BellSouth") hereby replies to the comments of MCI, AT&T, and Sprint (the "IXCs") and Americatel in opposition to BellSouth's Petition for Forbearance. While the IXCs have filed broad generalizations about the need to prevent discrimination, the IXCs have not produced any specific evidence to support a denial of BellSouth's Petition. In a nutshell, the IXCs have failed to demonstrate any risk of discrimination addressed by the OI&M regulations that is not already addressed by some other rule or statute. Without such evidence, the IXCs cannot support their position that the costs and inefficiencies imposed on BellSouth by the regulations prohibiting the sharing of operations, installation, and maintenance ("OI&M") functions are necessary and in the public interest. Rather, the generalities espoused by the IXCs support only their global position that more regulation of the RBOCs is better than less, regardless of the actual merit or necessity of the regulation.

As Verizon and SBC both aptly demonstrated, Congress did not adopt the OI&M regulations for interLATA traffic. *See, in contrast,* 47 U.S.C. § 274. When it adopted the OI&M

regulations, the Commission implemented a safeguard on top of those Congress had believed to be sufficient. Notably, because of the status of the market at the time, there was no way to know if the safeguards implemented by Congress were enough. To deal with that uncertainty, the Commission erred on the side of more regulation as opposed to less. *See Non-Accounting Safeguards Order,* 11 FCC Rcd. 21905 (1996). It is now, however, almost eight years later. RBOCs are providing interLATA service in 43 states. Wireless carriers are making significant in-roads into both the local and long distance markets. Local competition is solidly established and growing and thus the mechanisms put in place by Congress and this Commission have been utilized, tested and proven effective. RBOCs are not only operating under federal price cap regulation for interstate services but are also operating under price cap regulation in the vast majority of states for intrastate services. In short, the world is entirely different from what it was when the Commission guessed that additional OI&M regulations might be necessary to prevent discriminatory conduct.

Time and experience have proven the Commission's guess to be wrong. The myriad of regulations under which BellSouth operates, including §§ 251, 252, 271 and 272, address any possible discriminatory conduct by BellSouth. The OI&M regulations do not address unique discriminatory conduct - rather, they are redundant regulations that increase the costs and decrease the efficiencies of BellSouth's operations without adding regulatory value. The goal should not be to regulate for regulation's sake – rather the goal should be to streamline regulation such that no unnecessary redundancies exist, and maximize efficiency such that the lower costs can be passed on to the consumer. Because the OI&M regulations are nothing but redundant regulation, and therefore are not necessary to ensure just and reasonable rates, to protect consumers, or to further the public interest, BellSouth asks this Commission to forebear from their enforcement.

ARGUMENT

In its Petition, BellSouth demonstrated that it met the three-prong test pursuant to which the Commission must forebear from the enforcement of the OI&M regulations. In this filing, BellSouth will demonstrate why the Commission must not deny that Petition based on the comments filed by the IXCs and Americatel.

I. The Commission Has The Authority To Forbear From Enforcement Of The OI&M Regulations.

Section 10(d), by its own terms, does not apply to section 272. It merely limits the Commission's forbearance from applying the "*requirements* of section 251(c) or 271 . . . until it determines that those requirements have been fully implemented." The OI&M restriction plainly is not a requirement of section 271. Indeed, it is not even a requirement of section 272, but is instead the Commission's own interpretation of that section's "operate independently" requirement. Section 10(d) does not apply at all to the Commission's interpretative regulations, which under well settled precedent the Commission may change at any time provided that it gives a reasoned explanation for doing so. But even if the Commission were to find that the OI&M restriction were a requirement of section 272, it could still forbear, given that section 10(d) does not apply to the requirements of section 272.

Contrary to MCI's claims (at 1-2), the OI&M restriction is not a requirement of section 272 itself, but is a Commission regulation promulgated to implement and interpret section 272. The Commission itself recognized this in the *Non-Accounting Safeguards Order*. Rejecting claims that the requirements of Section 272 were "self executing and needs little or no interpretation," the Commission held that 272 contained only "broad principles that require interpretation and implementation, and that the Commission would use its general rulemaking authority "to clarify and implement the requirements of section 272." *Non-Accounting Safeguards Order* ¶¶ 21, 23. The Commission made similar findings with respect to the "operate independently" requirement, again rejecting arguments that the term "impose[s] a straight-forward, descriptive requirement that needs no further clarification through the rulemaking process." *Id.* ¶ 153. The Commission first defined this term to impose various joint-ownership restrictions, and then went on to "*further interpret* the term 'operate independently' to bar a BOC from contracting with a section 272 affiliate to obtain operating, installation, or maintenance functions associated with a BOC's facilities." *Id.* ¶ 163.

While the Commission held that its interpretation of "operate independently" was "consistent with . . . the letter . . . of section 272," *id.*¶ 167, it also made clear that its rules were not the only possible interpretation and that they were influenced in large part by policy concerns. In particular, the Commission sought "to strike an appropriate balance between allowing the BOCs to achieve efficiencies within their corporate structures and protecting ratepayers against improper cost allocation and competitors against discrimination." *Id.* Consistent with this view, the Commission "decline[d] to read the 'operate independently requirement to impose a prohibition on all shared services," noting that "the economic benefits to consumers from allowing a BOC and its section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for competitive harm created thereby." *Id.* ¶ 168.

All this goes to show that the OI&M restriction is a policy-driven interpretation of broad statutory language, rather than a specific requirement of the statute itself. Thus, even assuming as MCI claims (at 1-2) that section 10(d) applied to the requirements of section 272 – which by its plain terms it clearly does not – the Commission still would be permitted to forbear from applying the OI&M restriction, because that restriction is not a requirement of section 272. By the same token, the Commission could at any time change its interpretation of the "operate independently" requirement – by, for example, eliminating the restriction on OI&M – provided that it gives a reasoned explanation for doing so. See, e.g., *Chisholm v. FCC*, 538 F.2d 349, 364 (D.C. Cir.) ("an administrative agency is permitted to change its interpretation of a statute, especially where its prior determination is based on error, no matter how long-standing"), cert. denied sub nom. *Democratic Nat'l Committee v. FCC*, 429 U.S. 890 (1976); see also *Columbia Broadcasting System, Inc. v. FCC*, 454 F.2d 1018, 1026 (D.C. Cir. 1971) ("We do not challenge the Commission's well established right to modify or even overrule an established precedent or approach . . ."); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) ("an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored").

Finally, and as noted above, even if the Commission were to find that the OI&M restriction was a requirement of section 272, it could still forbear, given that section 10(d) does not apply to the requirements of section 272. By its plain terms, section 10(d) applies only to the requirements of section 271. Congress clearly intended to treat the requirements of section 271 and 272 separately as not only did it put them in separate statutory sections, only one of which is mentioned in section 10(d), but Congress also subjected the requirements of section 272 – but not 271 – to an automatic sunset provision. *See* 47 U.S.C. § 272(f). This makes clear that Congress envisioned the requirements of section 272 to operate independently from those of 271.

The reference to the requirements of section 272 in section 271(d)(3) does not change this fact. That section – which is the only place in 271 where the requirements of 272 are mentioned – merely requires the Commission in its 90-day review of a section 271 Application that the BOC is in compliance with section 272. It does not serve as a separate statutory source to enforce the requirements of section 272 once authorization has been granted.[1] Indeed, the Commission itself has treated violations of requirements of section 272 as violations only of that section, and not also as violations of section 271. *See, e.g., Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, Memorandum Opinion and Order, 17 FCC Rcd 18660, ¶ 168 (2002). (holding that evidence presented during the course of a section 271 authorization proceeding that a Bell company has engaged in premature marketing of long distance service in violation of 272(g)(2) does not constitute a separate violation of the provisions of section 271 and therefore does not warrant rejection of the BOC's application; such evidence should instead be considered in a separate enforcement proceeding to determine whether the BOC has violated the provisions of section 272); *Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, Memorandum Opinion and Order, 17 FCC Rcd 21880, ¶ 194 (2002) (same).

---

[1] For that reason, the Commission's holding in the E911 Forbearance Order – "that prior to their full implementation we lack authority to forbear from application of the requirements of section 272 to any service *for which the BOC must obtain prior authorization under section 271(d)(3)*" – does not, as MCI claims (at 1), impose a barrier to forbearance here. Bell Operating Companies Petitions for Forbearance of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, Memorandum Opinion and Order, 13 FCC Rcd 2627, ¶ 22 (1998) (emphasis added). BellSouth is seeking forbearance of the OI&M restriction only with respect to services for which it has already obtained prior authorization under section 271(d)(3).

II. The Commission Should Grant Forbearance To BellSouth.

A. The OI&M regulations are redundant and therefore unnecessary to ensure just and reasonable rates, protect consumers, and further the public interest.

The OI&M regulations are redundant safeguards and thus raise costs and decrease efficiencies without assuring just and reasonable rates, protecting consumers, or furthering the public interest.

1. Price-cap regulation alleviates the risk of cross-subsidization and therefore ensures just and reasonable rates.

MCI's only response to BellSouth's argument that price-cap regulation will alleviate the risk of cross-subsidization is that the Commission rejected that argument. *MCI Comments,* at 3. Sprint argues, without support or explanation, that "even under a price-cap regime...BellSouth obviously can exploit its dominance in the local exchange and exchange access markets to subsidize its entry into the long distance market...." *Sprint Comments,* at 9-10. As discussed in more detail below, the market is much different from when the Commission adopted the Non-Accounting Safeguards Order, and even significantly different from when the Commission entered its *Third Order on Reconsideration.* Experience with price-cap regulation has demonstrated that it does prevent cross-subsidization, and no IXC demonstrated otherwise.

In fact, AT&T has admitted that cross-subsidization is inapplicable to a price-cap system with no sharing obligation. *See* AT&T Comments, CC Docket 93-251, 12/10/93 ("the price regulation applied to AT&T creates no possible incentive to shift costs"). AT&T further explained that:

> Even with respect to AT&T's services still subject to price caps, the specifics of AT&T's price cap plans eliminate any ability or incentive to shift costs...Most crucially, AT&T's endogenous costs, including the transfer prices of good and services from non-regulated affiliates have no effect whatsoever on AT&T's price caps or on the rates AT&T may charge.

Id.

As Verizon noted, when the Commission adopted the OI&M restriction, it stated that a carrier could have an incentive to misallocate costs only if it were regulated under rate-of-return regulation, a price-cap structure with sharing, or a price-cap scheme that adjusts the x-factor periodically based on changes in industry productivity, or if the revenues it is allowed to recover are based on costs recorded in regulated books of account. *Non-Accounting Safeguards Order,* ¶ 10. BellSouth operates under price-cap regulation at the federal level and in all nine of its states, and thus none of these scenarios applies. Under price-cap regulation, BellSouth has no economic incentive to cross-subsidize between its local and its long distance operations because it cannot raise regulated local rates. Significantly, since that order, the federal price cap structure has been modified to eliminate sharing and the lower formula cost mechanize ("LFAM").[2] These modifications have now truly severed the direct link between regulated costs and prices charged to consumers.[3] Moreover, the CALLS Order prevents BellSouth from raising access rates. Other than citing back to the Non-Accounting Safeguards Order, which is not relevant to a price-cap regime, the IXCs have no response to this argument.

2. Sections 272(c) and 272(e) prevent discrimination by BST in favor of BSLD.

[2] LFAM was eliminated for any price cap ILEC that chose to take advantage of pricing flexibility for access services. All of the major ILECs have taken advantage of pricing flexibility and thus have lost any right to LFAM.

[3] *See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Safeguards,* CC Docket No. 90-623, *Report and Order,* 6 FCC Rcd 7571, *California v. FCC,* 39 F.3d 919 (9th Cir. 1994), *cert. Denied,* 514 U.S. 1050 (1995) (because price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup misallocated nonregulated costs by raising basic service rates, thus reducing the incentive for the BOCs to allocate nonregulated costs to regulated services).

MCI argues that "[i]n the absence of the OI&M sharing restriction, unaffiliated carriers would not obtain installation and repair services in the same manner as BellSouth's interLATA affiliate." *MCI Comments,* at 4. Unfortunately for MCI's argument, MCI overlooked section 272(c)(1) which provides that BellSouth "may not discriminate [between its section 272 affiliate] and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards." 47 U.S.C. § 272(c)(1). MCI also overlooked section 272(e) that specifically requires the provision of facilities, services or information to unaffiliated entities that the BOC provides to its section 272 affiliate, and specifically precludes discrimination in access charges. 47 U.S.C. § 272(e). Finally, BellSouth is subject to section 272 audits until section 272 is sunset; consequently, BellSouth's compliance with the section 272 nondiscrimination requirements will be audited even without the enforcement of the OI&M regulations. 47 U.S.C. § 272(d). In short, if the OI&M regulations were lifted and BST provided OI&M services to BSLD, it would still have the obligation to offer those same services on a non-discriminatory basis to non-affiliated carriers, and the Commission would audit its compliance with this obligation.

3. <u>Other statutes and regulations prevent discrimination</u>.

There are numerous statutes and regulations that protect against discrimination, including many non-accounting safeguards, that obviate the need for the costs imposed by the redundant OI&M regulations.[4] For example, prior to sunset, sections 272(b)(2) – (5) and 272(e)(1) and

[4] AT&T alleges that BellSouth has been disingenuous in its position on accounting safeguards. *AT&T Comments,* at 6. On the contrary, BellSouth's position is entirely consistent – the Commission could abolish the cost allocation rules as described in CC Docket No. 02-33. The non-accounting safeguards in place are sufficient to prevent the type of discrimination AT&T alleges might occur. Moreover, the fact that BellSouth has suggested the elimination of

(e)(4) ensure separateness, parity of performance and access charge imputation for BellSouth's own interexchange services. Section 272(e)(1) and 272(e)(3), moreover, exist even past sunset. Sections 201 and 202 ensure the reasonableness of access charges, and Section 251(c) provides interconnection and unbundling obligations. State commissions have imposed performance measurement plans on BellSouth requiring BellSouth to report upwards of 2,000 measures per state per month, and this Commission has imposed 272 performance measurements on BellSouth to assess the performance BST provides to its affiliate against the performance it provides to non-affiliates. The Commission conducts extensive 272 audits to ensure BellSouth's compliance with section 272, and conducts compliance investigations to ensure that BellSouth maintains its compliance with section 271. Independent auditors audit BellSouth's cost allocation manuals every year and the results of those audits are submitted to the Commission. Finally, the Commission has ample enforcement authority over any alleged violations through Sections 503 and 206-209 of the Act.

Congress evidently believed these mechanisms to be sufficient to prevent discrimination. While MCI and Sprint argue that the OI&M regulations are "Congressionally-mandated," this statement is incorrect. *MCI Comments,* at 6; *Sprint Comments,* at 3. Congress did not impose the OI&M regulations – rather, the Commission imposed them on top of the safeguards that Congress deemed to be sufficient. *See* 47 U.S.C. § 272. If Congress had intended to prohibit sharing of OI&M services, it would have done so in section 272 as explicitly as it did in section 274, where it prohibited a BOC from performing installation and maintenance services on behalf of its separate electronic publishing affiliate. 47 U.S.C. § 274(b)(7)(B). Congress' decision not

---

the cost allocation rules has no bearing on whether BellSouth has demonstrated compliance with the three criteria for forbearance under section 10.

to prohibit the sharing of services between the BOC and the section 272 affiliate demonstrates that it did not intend the "operate independently" requirement of section 272(b)(1) to include a restriction on the sharing of OI&M services.

4. The IXCs offered no proof that the OI&M regulations are not redundant.

Most notably, the IXCs did not, and could not, point to one concrete example of potentially discriminatory conduct that is addressed solely by the OI&M regulations and not also by the myriad of other regulations to which BellSouth is subject. On the contrary, it seems even the IXCs would concede that the OI&M regulations, implemented at a time when RBOC interLATA services were only speculative, are duplicate safeguards that impose additional costs without preventing discrimination.

AT&T's comments are illustrative. On page 5, AT&T argues that the removal of the OI&M safeguards would "materially weaken the effectiveness of section 272 as a safeguard for preventing the Bells from acting on their incentives to raise rivals' costs…." Notably, AT&T never states *how* Section 272 would be weakened other than that, from AT&T's point of view, more regulation is always better. Sprint's comments are even more egregious. Sprint argues that "even under a price-cap regime, however, BellSouth obviously can exploit its dominance in the local exchange and exchange access markets to subsidize its entry into the long distance market." *Sprint Comments,* at 9-10. Sprint then fails to support this generalization with even one example of how the OI&M regulations prevent potentially discriminatory conduct not covered elsewhere.

To bolster its argument that redundant regulation is necessary, Sprint contends that "the accounting scandals of the past year and a half underscore the inadequacy of accounting safeguards alone." *Sprint Comments,* at 10. Sprint's contention is inapposite. It is not "accounting safeguards alone" that will remain in place if the Commission forbears from the

OI&M restriction. Until sunset, Section 272(c) places a non-discrimination requirement on BellSouth for any OI&M function that may be offered to its Section 272 affiliate. Furthermore, Sprint's veiled reference to WorldCom should hardly be the standard by which this Commission sets regulation.[5] The Commission should not use a company that allegedly engaged in deliberate, calculated and knowing accounting violations as the benchmark against which regulation is imposed.

B. The Commission can grant forbearance in spite of the Non-Accounting Safeguards Order.

All of the IXCs cite back to the Non-Accounting Safeguards Order as the grounds for denying BellSouth's Petition. *See e.g. AT&T Comments,* at 5; *MCI Comments,* at 3; *Sprint Comments,* at 9. For them to succeed in this argument, one must accept the premise that the telecommunications market has remained static and that decisions made in 1996 premised on what the market *might* become cannot be changed despite eight years of experience as to what the market *has* become. This premise is, of course, ludicrous. The Commission now has actual, extensive experience with sections 271, 272 and the local competition rules under sections 251-252, as local competition has grown and flourished. BellSouth is operating under all of the aforementioned statutes and the rules associated with them – the Commission's decision making no longer needs to be made in the abstract as it was in 1996. Moreover, the Commission now has substantial experience with Customer Premise Equipment, inside wire, and intraLATA toll – all markets in which competition has flourished with no damaging side effects in spite of the fact they may be offered without the requirement of separate affiliates. These markets are

---

5 This is especially true given that the most egregious violations were of financial accounting rules by companies who are not even subject to the FCC's regulatory accounting rules.

successfully competitive with integrated OI&M operations, and not one of the IXCs can explain why but BellSouth local and long distance OI&M operations could not be just as successful.

C. The IXCs do not have the same costs as BellSouth despite some use of BellSouth's facilities.

The IXCs argue that the OI&M regulations do not impose additional costs on BellSouth and the other RBOCs because "the costs or operational complexity are no different from those faced by competing interLATA carriers." *MCI Comments,* at 6; *AT&T Comments,* at 8; *Sprint Comments,* at 12. This proposition is, of course, incorrect for the highly profitable (and therefore most competitive) enterprise market in which the IXCs have built end-to-end networks and can use integrated operations to service those networks. No IXC makes a serious attempt to deny this fact. *See MCI Comments,* at 6.

This argument also ignores the significant loss of local lines that BellSouth has experienced in all of its states since the inception of the Act. While AT&T argues that the BOCs' facilities are "virtually always required inputs for the BOCs' competitors," *AT&T Comments,* at 7, this statement is less and less true with the advent of local competition, in both the residential and the business markets, as well as with the growth of wireless and cable as substitutes for the RBOCs' facilities. As the Commission found in approving BellSouth's section 271 applications, "we also recognize BellSouth for the progress it has made in opening its local exchange markets to competition…."[6] This line loss translates into competitive options for the IXCs for the last mile to the customer, options which translate into competitive markets and potential cost savings.

---

6 *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region,*

Moreover, what the IXCs studiously ignore is the fact that, in any given situation, the IXCs have a *choice* as to whether to build an end-to-end network and utilize its integrated operations or to utilize the BOCs' (or others') facilities. Thus, in every situation the IXC is in a better position than BellSouth because the IXC can balance the costs of building facilities versus the efficiencies of integration and make a rationale economic choice whereas BellSouth has no choice but to accept the inefficiencies inherent in separate operations.

Regardless of the costs incurred, the question of amount of cost is not an element of a forbearance analysis. AT&T argues that cost savings are not relevant to a forbearance decision. *AT&T Comments,* at 1 ("and even if such costs were relevant..."). BellSouth agrees that it is not necessary to prove substantial cost savings in order to be entitled to forbearance under section 10. Section 10 provides three criteria that must be met to seek forbearance – none of the three include cost savings. 47 U.S.C. § 10(a). It is not the amount of cost that could be saved that is relevant in this instance – rather, it is the fact that costs exist as a direct result of regulations that are redundant and unnecessary. For that type of regulation, any costs are too high and any inefficiencies are unnecessary. In short, any cost incurred from a redundant and unnecessary regulation is too much cost.

To the extent that the Commission considers costs in its forbearance analysis, it is important to understand BSLD's organizational structure.[7] Because BSLD has made a business decision to own fewer facilities than it leases, its OI&M costs (and therefore its potential savings) are lower than they would otherwise be had BSLD made a more extensive investment in its own

---

interLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina, CC Docket No. 02-150, September 18, 2002, at ¶ 3.

7 It appears from review of the forbearance petitions of Verizon and SBC that those companies employed a different business plan and therefore have higher potential OI&M cost savings than BSLD as it is currently structured.

facilities. The BSLD-owned voice network consists of 6 domestic tandems and 2 international gateways. BSLD owns digital cross connect equipment where necessary, and it deploys the necessary SS7 Network elements such as STP pairs and AIN equipment. Most of the remaining network equipment and services are leased from BST or other interexchange carriers. The OI&M functions on the leased facilities are performed by the facility owner.

BSLD's network architecture, therefore, has mitigated the costs associated with the OI&M restrictions. That does not mean, however, that costs do not exist. In BellSouth's case, for example, BST personnel perform Work Force Administration ("WFA") functions. Due to the OI&M regulations, BSLD also has outsourced WFA functions. The same holds true for network traffic management and measurement functions; OSS integration and maintenance; and performance management. While this list certainly is not exhaustive, it does exemplify the areas in which BellSouth could experience cost savings if it were permitted to make rational business decisions based on economic analysis rather than on redundant regulations. BellSouth needs the flexibility to decide whether it is more efficient (and therefore less costly) to combine duplicative functions.

The Commission also should grant BellSouth's Petition to ensure that BellSouth has the flexibility to structure its operations in the future in a way that ensures the lowest costs and therefore the lowest prices to consumers. As Verizon and SBC demonstrated, they incur millions of dollars in costs due to the OI&M regulations. Were the OI&M regulations performing an important role in ensuring non-discrimination, those costs and that lack of flexibility might be necessary. In this situation, however, where no IXC has demonstrated independent potentially discriminatory conduct that is addressed only by the OI&M regulations, the costs and inefficiencies are unnecessary, and, therefore, cause harm to consumers through lack of innovation and higher prices.

D. The characterization of BellSouth's alleged "272 violation" is wrong and irresponsible.

AT&T and Sprint contend that the OI&M regulations need to remain in place because "BellSouth has already shown that it will violate section 272's requirements." *AT&T Comments,* at 7; *see also Sprint Comments,* at 8. With respect to the Consent Decree, BellSouth entered into a Consent Decree with the Commission regarding certain instances of alleged pre-relief marketing that occurred from errors on BellSouth's part. BellSouth voluntarily disclosed these errors to the Commission and, as the Consent Decree makes clear, BellSouth did not admit any liability. Any characterization that the Consent Decree represents a "willingness" on BellSouth's part to violate the rules is irresponsible.[8]

E. BellSouth's Petition is not premature.

Americatel argues that BellSouth's Petition is premature in light of the Commission's Further Notice of Proposed Rulemaking, WC Docket No. 02-112, CC Docket No. 00-175, FCC 03-111. The Act, however, states otherwise. Section 10 of the Act is a mandatory provision that states that the Commission "shall" grant forbearance when the requirements set forth in the statute are met. 47 U.S.C. § 10(a). There is no exclusion for pending regulatory proceedings or other events that may influence the petition one way or another. Consequently, regardless of what the Commission might decide in the 272 NPRM, it is obligated to assess BellSouth's Petition now, and grant it if it deems that the conditions set forth therein have been met. *Id.*

[8] Sprint's allegation that BellSouth's payment of "penalties" is also a gross exaggeration. The vast majority of those so-called "penalties" are the result of the state performance measurement plans – plans that impose extensive payments on BellSouth for performance that is often greater than 95% perfect for its CLEC customers.

CONCLUSION

For the reasons set forth herein and in its Petition, BellSouth respectfully requests that the Commission grant its Petition for Forbearance.

Lisa Spooner Foshee

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

Lisa S. Foshee
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375
(404) 335-0754

CERTIFICATE OF SERVICE

I do hereby certify that I have this 20th day of August 2003 served the parties of record to this action with a copy of the foregoing **REPLY COMMENTS OF BELLSOUTH CORPORATION** by electronic mail and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.

Lynn Barclay

Lynn Barclay

SERVICE LIST CC DOCKET NO. 94-129

*Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Room TW-A325
Washington, DC 20554

*Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle
United States Telecom Association
1401 H Street, NW
Suite 600
Washington, DC 20005

David L. Lawson
C. Frederick Beckner III
Michael J. Hunseder
Sidley Austin Brown & Wood, LLP
1501 K Street, NW
Washington D.C. 20005

Leonard J. Cali
Lawrence J. Lafaro
Aryeh S. Friedman
AT&T Corp.
One AT&T Way
Bedminster, New Jersey 07921

Alan Buzacott
WorldCom, Inc. d/b/a MCI
1133 19th Street, N.W.
Washington, DC 20036

Judith L. Harris
Robert H. Jackson
Reed Smith LLP
1301 K Street, N.W.
Suite 1100 – East Tower
Washington, D.C. 20005

John E. Benedict
H. Richard Juhnke
Sprint Corporation
401 Ninth Street, NW, Suite 400
Washington, DC 20004

***via Electronic Mail**