**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| **In the Matter of** | ) | |
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| **Section 272(b)(1)'s "Operate Independently"** | ) | **WC Docket No. 03-228** |
| **Requirement for Section 272 Affiliates** | ) | |

## COMMENTS OF BELLSOUTH


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## COMMENTS OF BELLSOUTH

### I. Introduction and Summary

BellSouth Corporation, for itself and its wholly owned affiliated companies (collectively "BellSouth"), submits the following comments in response to the Wireline Competition Bureau's recent *Notice of Proposed Rulemaking* ("*Notice*") in the above referenced proceeding.[1]

With the passage of the Telecommunications Act of 1996 (the "Act"), Congress implemented a significant modification of the governing structure over the telecommunications industry. The Act, which eliminated the Modification of Final Judgment ("MFJ"), allowed for the opening of the local market to competition and the removal of the line of business restrictions against Bell Operating Companies ("BOCs") in the long distance market. In allowing the BOCs into the long distance market, however, Congress required that the BOCs provide such interLATA services through a structurally separate subsidiary.[2] Congress established parameters around how this subsidiary should function, including a requirement that the separate subsidiary

1 *In the Matter of Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, WC Docket No. 03-228, *Notice of Proposed Rulemaking*, FCC 03-272 (rel. Nov. 4, 2003).

2 *See* 47 U.S.C. § 272.

"operate independently" from the BOC. Although BellSouth contends that this requirement did not need further explanation or additional regulations to implement it, the Commission determined that further regulations were required and defined the "operate independently" phrase to place two additional restrictions on the BOC – a prohibition against joint ownership of transmission and switching facilities by a BOC and its 272 affiliate and a prohibition against the BOC and the 272 affiliate performing operating, installation, and maintenance ("OI&M") functions for each other.[3]

Practice has shown that the restrictions that the Commission read into the statute are unnecessary, burdensome, and lead to inefficiencies in the BOCs' operations. Accordingly, the majority of the BOCs filed petitions for forbearance from the OI&M portion of the rules. The Commission denied Verizon's petition but issued the *Notice* to take a fresh look at the entire set of rules currently governing the "operate independently" section of the statute, stating that it seeks comments on whether it "should modify the rules adopted to implement section 272(b)(1)'s 'operate independently' requirement."[4]

The "operate independently" restrictions are not a requirement of section 272 itself, but are 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 need[] little or no interpretation,"

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3 The OI&M restriction prohibits a BOC, or any affiliate of the BOC except a 272 affiliate, from performing OI&M functions for the 272 affiliate and also prohibits a 272 affiliate from performing OI&M functions for the BOC. *See In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd 21905, 21990-92, ¶¶ 178-180 (1996) ("*Non-Accounting Safeguards Order*").

4 *Notice,* ¶ 1.

the Commission held that section 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."[5] The Commission did this even though Congress chose not to adopt a specific definition for "operate independently" when applying that term to a separate affiliate for interLATA traffic.[6] The Commission's implementation of these rules therefore represents an additional safeguard on top of those Congress apparently believed to be sufficient.

The legislative history of section 272 reveals this point and underscores the position that "operate independently" should not restrict OI&M services or joint ownership. Had Congress intended for such restriction to apply to the BOC and its 272 affiliate it would have explicitly said so.[7] A comparison of the differences among prior bills and the final bill ultimately adopted by Congress makes Congress's intent abundantly clear. For example, the House bill (H.R. 1555), in addition to including the "operate independently" provision, also provided that a 272 affiliate "shall . . . (3) not enter into any joint venture activities or partnership with a Bell operating company or any affiliate thereof, (4) not own any telecommunications transmission or switching facilities in common with the Bell operating company or any affiliate thereof, and (5)

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5 *Non-Accounting Safeguards Order,* 11 FCC Rcd at 21916-18, ¶¶ 21, 23. *See id.* at 21981, ¶ 156 (adopting its tentative conclusion that the operate independently requirement "imposes requirements beyond those listed in sections 272(b)(2)-(5).").

6 *See, in contrast,* 47 U.S.C. § 274.

7 *See, e.g., Brown v. Gardner*, 513 U.S. 115, 120 (1994) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983) ("where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal marks omitted); *Railway Labor Executives' Ass'n v. National Mediation Board*, 29 F.3d 655, 666 (D.C. Cir. 1994) *(en banc)*, *cert. denied,* 514 U.S. 1032 (1995) ("The fact that Congress omitted equivalent language . . . cannot be deemed unintentional or immaterial.").

not jointly own or share the use of any other property with the Bell operating company or any affiliate thereof."[8] This language, however, is absent from the Act.

Because these items were omitted from the final bill that ultimately became the Telecommunications Act of 1996, section 272(b) contains no reference to restrictions on OI&M services or joint ownership between the BOC and its 272 affiliate. Congress's removal of these restrictions therefore was purposeful and intentional.

The plain text of the Act controls and the clear omission of language included in prior bills is compelling evidence that Congress did not intend the restrictions the Commission read into the "operate independently" language of Section 272(b)(1). Rather, the plain language of the Act and the legislative history make abundantly clear that "operate independently" was not intended to limit OI&M services or joint ownership activities between the BOC and the 272 affiliate.

The Commission's inclusion of these restrictions was based on little more than summarily concluding that the absence of the regulation might allow BOCs to discriminate against other providers of interLATA services. Such a conclusion, however, did not properly consider the other requirements that Congress had enacted to restrict any form of discriminatory activity. Since BOCs have been given authority to provide interLATA services, however, other safeguards as well as industry practice has shown that the Commission erred when it came down on the side of more regulation as opposed to less.[9]

When the Commission adopted the "operate independently" requirements, it did so based on the record at that time. The Commission could not have possibly looked into the future to see

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8 H.R. Rep. No. 104-204, at 10 (1995) (47 U.S.C. § 246(c) as introduced in House bill).

9 *See Non-Accounting Safeguards Order*.

how dramatically the industry would change, nor could it fully understand the costs and complexities of complying with its rules in this changing environment. Thus, in its analysis, the Commission only considered the regulatory cost of compliance with, and monitoring of cost allocations for, jointly owned facilities and personnel performing similar OI&M services for both the BOC and its section 272 affiliate.[10] 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 that would be caused to the competitive marketplace by the lopsided application of these artificial regulatory constraints. 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 done 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 that the services may be offered without the requirement of separate affiliates. These markets are successfully competitive with integrated operations, and local and long distance markets can be just as successful without the "operate independently" requirement.

It has been almost seven years since the Commission made its initial determination regarding the requirements. BOCs are authorized to provide interLATA service in all of their in-region states and the District of Columbia. Wireless carriers are making significant inroads 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,

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10 *See id.* at 21984, ¶ 163.

tested, and proven effective. BOCs 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. The world is entirely different from what it was when the Commission guessed that additional "operate independently" regulations might be necessary to prevent discriminatory conduct.

Time and experience have proven the Commission's restrictions to be unnecessary. The myriad of regulations under which BellSouth, as well as other BOCs, operates, including §§ 251, 252, 271 and 272, address any possible discriminatory conduct by BellSouth. The "operate independently" 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 Commission's goal should not be to regulate for regulation's sake – rather it should be to eliminate and streamline regulation such that no unnecessary redundancies exist, and to maximize efficiency such that the lower costs can be passed on to the consumer.

Complying with the "operate independently" regulations imposes unnecessary costs and inefficiencies in all BOCs' operations. These rules serve no regulatory purpose that cannot be achieved through less wasteful means. Moreover, the rules are 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.

In holding that its interpretation of "operate independently" was "consistent with . . . the letter . . . of section 272,"[11] the Commission also made clear that its rules were not the only possible interpretation and that they were influenced in large part by policy concerns. In

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[11] *Id.* at 21986, ¶ 167.

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."[12] Currently that balance weighs heavy of the side of eliminating the rules implemented regarding "operate independently."[13]

## II. The Commission Should Change Its Interpretation of Operate Independently and Do Away with the OI&M and Joint Ownership Restrictions

### A. The OI&M Regulations Are Redundant, Impose Unnecessary Costs and Inefficiencies, and Therefore Should Be Eliminated

The OI&M restrictions imposed duplicative costs on BellSouth by requiring it to hire a separate organization to do provisioning and maintenance work that could have otherwise been done more efficiently by another existing OI&M organization. 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.

Moreover, the inefficiencies imposed by the OI&M restriction in a narrowband environment will only be exacerbated as broadband technologies become more prevalent. -

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12 *Id.* Indeed, consistent with this view, when addressing the OI&M rules implemented through its interpretation of the "operate independently" statute, 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.

13 The Commission has full authority for changing its original interpretation of the statute. *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*, 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").

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 backbone. The ability to integrate services will certainly allow for greater efficiency gains in broadband technologies. Complying with the OI&M restriction in a broadband environment, however, 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.

The Commission's concerns about discrimination, which were the reason for implementing the OI&M restrictions, are not valid considering other existing regulations that protect against any discriminatory conduct. As set forth below, these regulations are more than adequate to ensure that discrimination will not occur.

#### 1. Price-cap Regulation Alleviates the Risk of Cross-Subsidization and Therefore Ensures Just and Reasonable Rates

One of the principal concerns the Commission stated it had with allowing the sharing of OI&M services was the perceived ability to misallocate costs between the operations, thus allowing the BOC to subsidize the 272 affiliate. This basis for denying sharing of OI&M, however, does not square with the fact that the Commission allowed the sharing of administrative services. There is no fundamental difference between the cost allocations necessary to monitor the sharing of OI&M services and the cost allocations that apply 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. Thus, the intellectual integrity of one of the Commission's lynchpin reasons for denying OI&M sharing is in question.

This rationale is even more suspect considering price cap regulation.[14] Price cap regulation combined with pricing flexibility has completely eliminated any link between BOCs' recorded costs and the prices they charge for services.[15] Cost misallocation and cross-subsidization were concerns when prices were set on a cost plus basis and there was very little, if any, competition in the market. The marketplace and the regulatory paradigms, however, have shifted. Competition has increased, and the BOCs operate under a price cap system that no longer provides a direct link between costs and consumer prices. The Commission has eliminated the sharing and the lower formula adjustment mechanism ("LFAM") that could have created potential incentives for price cap BOCs to shift costs.[16] Similarly, the Commission recently adopted the CALLS plan, which prevents BOCs from raising access rates based directly

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[14] BellSouth operates under price-cap regulation at the federal level and in all nine of its in-region states. Therefore, the direct link between costs and rates has been severed for BellSouth's services in all of its operating jurisdictions.

[15] *See In the Matter of 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 (1991), *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); *see also* Comments of American Telephone and Telegraph Company, CC Docket No. 93-251, at 10 (filed Dec. 10, 1993) ("the price regulation applied to AT&T creates no possible incentive to shift costs").

[16] *See In the Matter of Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, CC Docket Nos. 94-1 and 96-262, *Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262*, 12 FCC Rcd 16642, 16700, ¶ 148 (1997) ("*1997 Price Cap Review Order*"), *aff'd in part, rev'd in part, USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999). *See also In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, 98-157 and CCB/CPD File No. 98-63, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14304, ¶ 162 ("*Pricing Flexibility Order*").

on costs. Accordingly, under price-cap regulation, BOCs have no economic incentive to cross-subsidize between their local and long distance operations.

The Commission should allow the sharing of OI&M services consistent with its previous findings regarding administrative services. The Commission noted 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.[17] These conditions no longer exist, and therefore there is no reason that a BOC should not 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.

### 2. In Addition to Price Cap Regulation, Other Statutes and Regulations Prevent Discrimination

While price cap regulation eliminates cost misallocation and cross-subsidy concerns, other safeguards are in place that would protect against discrimination. Section 272(c)(1) provides that a BOC "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."[18] Moreover, section 272(e) specifically requires the provision of facilities, services, or information to unaffiliated entities in the same manner that the BOC provides such facilities, services or information to its section 272 affiliate, and specifically

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[17] *Non-Accounting Safeguards Order,* 11 FCC Rcd at 21911-12, ¶ 10.

[18] 47 U.S.C. § 272(c)(1).

precludes discrimination in access charges.[19] Finally, BOCs are subject to section 272 audits until section 272 is sunset; consequently, BOC compliance with the section 272 non-discrimination requirements will be audited even without the enforcement of the OI&M regulations.[20] Thus, if the Commission eliminated the current OI&M restriction and allowed BOCs to provide OI&M services to their 272 affiliates prior to sunset of section 272, such services would remain subject to the non-discrimination requirements of Section 272(c) and the BOCs would have the obligation to offer those same services on a non-discriminatory basis to non-affiliated entities and would be audited accordingly.

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. For example, prior to sunset, sections 272(b)(2)-(5) and 272(e)(1)-(e)(4) ensure separateness, parity of performance and access charge imputation for BellSouth's own interexchange services.[21] This includes the Commission's affiliate transaction rules in section 32.27. [22] OI&M transactions between the BOC and the long distance affiliate will have to be on an arm's length basis, reduced to writing, and made available for public inspection. In addition, the separate affiliates will continue to maintain separate 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.

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19 47 U.S.C. § 272(e).

20 47 U.S.C. § 272(d).

21 Section 272(e)(1) and 272(e)(3) exist even past sunset.

22 47 C.F.R. § 32.27.

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 BellSouth Telecommunications provides to its affiliates 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 the appropriate use of 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.

### 3. While There Will Be Long Term Cost Benefits from Eliminating OI&M Restrictions, It Must Not Be the Commission's Only Consideration

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. Indeed, any cost incurred from a redundant and unnecessary regulation is too much.

To the extent that the Commission considers costs, it is important to understand BellSouth's 272 affiliate's organizational structure.[23] Because BellSouth made a business decision to own fewer facilities than it leases, its 272 affiliate's OI&M costs (and therefore its

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23 It appears from review of the petition for forbearance filed by Verizon and SBC that those companies employed a different business plan and therefore have higher potential OI&M cost savings than BellSouth as it is currently structured.

potential savings) are lower than they would otherwise be had BellSouth made a decision to make a more extensive investment in its own facilities. The BellSouth 272 affiliate-owned voice network consists of 6 domestic tandems and 2 international gateways. The BellSouth 272 affiliate 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 BellSouth's BOC or other interexchange carriers. The facility owner performs the OI&M functions on the leased facilities.

BellSouth's 272 affiliate'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, BellSouth's BOC personnel perform work force administration ("WFA") functions. Due to the OI&M regulations, BellSouth's 272 affiliate 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 discontinue these needless regulations to ensure that BOCs have the flexibility to structure their operations in the future in a way that ensures the lowest costs and therefore the lowest prices to consumers. Indeed, Verizon and SBC demonstrated in their petitions for forbearance that 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 there is no potentially discriminatory conduct 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.

### B. The Commission Should Eliminate the Restrictions on Joint Ownership of Transmission and Switching Facilities

Just as the OI&M rules should be eliminated, the Commission should reverse the restrictions placed on joint ownership of transmission and switching facilities.[24] Despite the attempts of some carriers to have a specific set of carriers – the BOCs – drag outdated and useless regulations around like a ball and chain, they, must accept, as should the Commission, that the telecommunications industry has forever changed. No longer do customers look to specific carriers to provide one distance of voice calls and another carrier to provide a longer distance call.[25] Moreover, integration of services through technology is quickly changing the entire communications landscape. In the past, networks were largely circuit switch-based wires that completed voice calls. Today, the networks are moving toward packet-based technology that delivers data services, such as Internet access, as well as voice services. With the integration of voice into packet-based networks, as is evidenced by the Commission's interest in voice over Internet Protocol ("VoIP"),[26] it becomes readily apparent that separate networks for local and long distance or data and voice are fast becoming obsolete. Moreover, wireless carriers are on

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[24] To alleviate any concerns regarding the transfer of a portion of the BOC's assets to the 272 affiliate, the Commission could limit joint ownership only to equipment purchased subsequent to the Commission's findings in this proceeding.

[25] Indeed, the dramatic decrease in cost of interLATA transport and the migration to high bandwidth capabilities have changed the complexion of the telecommunications industry. Decreased cost has increased the demand for interLATA services and has caused consumers to seek packages that are increasingly an all-you-can-eat plan for minutes, no matter the distance.

[26] The Commission conducted a VoIP Forum on Dec. 1, 2003; the Forum proceedings were archived and can be accessed at http://www.fcc.gov/voip.

the verge of eclipsing wireline carriers in the number of voice calls that traverse their networks. Wireless carriers, of course, provide both local and long distance calls over a single network, as do most CLECs.

In this world of converged and integrated networks, requiring BOCs to break their network ownership into different companies defies logic. While the Commission was initially concerned that joint ownership of transmission and switching facilities by the BOC and its 272 affiliate would allow the BOC to discriminate in providing access to these types of facilities, such concern is no longer valid. Experience has shown that carriers can obtain these types of facilities not only from the BOCs but also from CLECs and other carriers. In most cases, IXCs operate with their own CLEC. Thus, while these IXCs may integrate their own facilities, BOCs are the only carriers that must maintain completely separate networks.

The efficiencies that can be gained through joint ownership are self-evident. Duplication of fixed plant in the telecommunications industry causes significant additional costs. For example, with the sunset of certain separate affiliate requirements pursuant to section 272(f)(2), BOCs are now allowed to provide both intraLATA and interLATA information services. As discussed previously, packet technology has allowed a more fluid ability of traditional telecommunications services, such as voice, to traverse the same facilities as information services. Thus, except for the current joint ownership restriction, there is no reason for BellSouth's BOC to build a network for the provision of information services and its 272 affiliate to build a duplicate network to carry interLATA telecommunications services. The added cost of this duplicate network not only causes additional costs that are eventually passed on to consumers, but it can create an added cost to society through disruption, e.g., road construction, and wasteful facilities. It also impacts network reliability. It is much easier to construct one network with the requisite redundancy to ensure the utmost reliability demanded by the public than to spread resources thin over two such networks. These duplicate costs would decrease carriers' ability to create innovative services and solutions. Decreased capital availability, caused by duplicate networks, limits the amount carriers can invest in new innovation. All of this naturally results in inefficiencies in provisioning and repair, which leads to stress on quality of service to consumers. Thus, at the end of the day, the prohibition on joint ownership does not serve to protect consumers but instead hampers their access to new innovative services and strains quality of service. Clearly, the benefits of allowing joint ownership of facilities far outweigh any concerns that the Commission may have, given today's technology environment.

## Conclusion

For the foregoing reasons, the Commission should eliminate its rules prohibiting BOCs and their 272 affiliates from performing OI&M functions for each other and from jointly owning switching and transmission facilities.

Respectfully submitted,

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<u>**CERTIFICATE OF SERVICE**</u>

I do hereby certify that I have this $10^{th}$ day of December 2003 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH** by electronic filing to the parties listed below.

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