

rules are not in the public interest as applied to the market leaders, there is no rational basis to continue to apply them to secondary players. Existing asymmetrical regulation has caused, and is continuing to cause, significant *harm* to all broadband consumers in the form of artificially increased prices. As BellSouth has demonstrated, in attempting to comply with the existing *Computer Inquiry* requirement to break out and offer a basic transmission service for each of its enhanced service offerings, the least costly approach in many instances is to segregate the regulated and non-regulated functions, a process that erodes entirely the efficiencies and benefits of the enhanced services that justified their development in the first place.⁹⁸ And as technology improves and permits the deployment of more efficient and more sophisticated network designs that integrate enhanced and basic functionalities, the cost of continued compliance with the legacy *Computer Inquiry* requirements increases sharply.⁹⁹

The Commission itself stressed the burdensome nature of the *Computer* requirements in the context of their application to market leading cable providers. Among other things, these economic regulations require “radical surgery” by forcing carriers to “extract” a telecommunications service from every information service and to subject it to the common carrier requirements of Title II.¹⁰⁰ Imposition of the *Computer Inquiry* requirements on cable modem access providers, the Commission explained, would discourage facilities-based

⁹⁸ Letter from L. Barbee Ponder IV, Senior Regulatory Counsel-D.C., BellSouth Corporation, to Marlene Dortch, Secretary, FCC, CC Docket No. 02-33, *et al.*, at 2 (Apr. 20, 2004).

⁹⁹ *Id.*

¹⁰⁰ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185 & CS Docket No. 02-52, *Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd 4798, 4825, ¶ 43 (2002) (“*Cable Modem Declaratory Ruling*”).

competition in both voice telephony and broadband services,¹⁰¹ and “disserve the goal of Section 706 that we ‘encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing . . . measures that promote competition in the local telecommunications market or other regulatory methods that *remove barriers to infrastructure investment.*”¹⁰²

As SBC explains, the Commission must ensure competitive neutrality by adopting symmetrical rules for intermodal providers of competing services.¹⁰³ If it waives or forbears from the application of Title II obligations, including *Computer Inquiry* requirements, to cable modem service, it is legally obligated to forbear to the same extent from the application of these regulations to any IP-enabled service that might be characterized as a telecommunications service.¹⁰⁴

The Commission should also reject the appeals of the New Jersey Department of the Ratepayer Advocate (“NJDR”) to “enforce separate affiliate requirements in order to regulate VoIP providers who are also providers of interexchange, local exchange, and cable services in lieu of imposing economic regulation.”¹⁰⁵ While the NJDR does not specify which requirements it seeks the Commission to enforce, BellSouth believes that promulgation of structural separation requirements in the wake of the 1996 Act in general, and in the context of IP-enabled services and broadband Internet access in particular, is completely unwarranted. Structural separation and separate affiliate requirements are amongst the most pernicious of economic regulation, and two decades ago the Commission noted, in the very order cited by the

¹⁰¹ See *id.* at 4826, ¶¶ 46-47.

¹⁰² *Id.* ¶ 47 (internal quotation marks omitted; ellipses in original; emphasis added).

¹⁰³ SBC Comments at 40, citing *USTA II*.

¹⁰⁴ *Id.*

¹⁰⁵ NJDR Comments at 19.

NJDRA, that these requirements can “decrease efficiency” and negatively affect a carrier’s ability to compete.¹⁰⁶ There is simply no factual record indicating the need to impose or reimpose any such requirements in the highly competitive IP-enabled and broadband communications services markets.

VI. MINIMALLY INTRUSIVE CALEA, E911, DISABILITIES ACCESS, CONSUMER PROTECTION, AND TRS OBLIGATIONS SHOULD APPLY TO VOIP SERVICES

BellSouth agrees with those commenters who state that the Commission can and should require certain IP-enabled information services to be subject to the same important public interest, consumer protection, and safety regulations that providers of both traditional and IP-enabled telecommunications services are.¹⁰⁷ BellSouth has a long history of cooperation with law enforcement, which has existed long before the promulgation of CALEA. BellSouth has been an active participant in the development of technical standards and products necessary to comply with CALEA and has devoted substantial time and resources to upgrade its network to deploy CALEA-compliant solutions. BellSouth remains committed to working together with the FBI, DOJ, and other members of the industry to develop standards for IP-enabled services that fall within the scope of CALEA. Moreover, BellSouth believes that the interest of safety requires all providers of VoIP, regardless of the technology used in providing the services, to provide E9-1-1 features and functionalities. BellSouth strongly encourages the Commission to use NENA for guidance on leading the industry in developing technical and operational solutions and standards that would allow VoIP and IP-enabled services to progress in implementing 911

¹⁰⁶ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, *Fifth Report and Order*, 98 F.C.C. 2d 1191, 1197, ¶ 8 (1984) (noting the Commission’s commitment to minimum degree of separation necessary). This *Order* did not impose any structural separation requirements, and those that it refers to have been eliminated or waived; thus, the NJDRA’s citation to it is simply inapt.

¹⁰⁷ See, e.g., CWA Comments at 16-24; NASUCA Comments at 47-57; Verizon Comments at 47-55.

capabilities in manageable stages.¹⁰⁸ BellSouth does not believe that the promulgation of best practices for IP-enabled services can be established before the technical solutions to a well-defined set of requirements are identified.¹⁰⁹ To assist in the adoption of VoIP E9-1-1 solutions, once NENA's has provided guidance, the Commission could authorize a set of best practices to be published through the NRIC-7 Focus Group 1, Subcommittees 1A and/or 1B, a committee chartered by the Commission. In sum, while BellSouth believes that the time is right for the Commission to begin considering E9-1-1 rules for VoIP and IP-enabled services, the Commission should not mandate any rules that do not take into consideration the NENA findings and recommendations.

The 1996 Act and FCC rules impose important consumer protections on telecommunications carriers that must apply to all VoIP services providers. Consumer protections designed to prevent slamming, enforce truth-in-billing and CPNI requirements, and ensure that customers are able to choose their long distance providers should be afforded to those customers using IP-enabled services.

Most of these commenters focus their attention, with respect to these topics, on VoIP, and these requirements should certainly adhere to VoIP. BellSouth believes that the Commission should adopt the following three-part test to determine whether any particular IP-enabled information service should subject to these requirements:

The service:

- (1) includes a voice capability component; and

¹⁰⁸ NENA already has a working group, the VoIP/Packet Technical Committee Working Group - Migratory Definitions Working Group, that is currently addressing short-term proposals through industry participation in order to develop appropriate industry standards.

¹⁰⁹ For example, number portability poses a significant problem for E9-1-1 systems and non-911 operational support systems ("OSS's"). The assignment of the telephone numbers is critical to E9-1-1 systems. Accordingly, significant thought must be given to all aspects of E9-1-1 service before reaching final conclusions.

(2) is either:

- a. assigned a NANP telephone number, or
- b. can call a line assigned to a NANP telephone number; and

(3) either

- a. originates or terminates or both originates and terminates calls on the PSTN; or
- b. is a substitute for traditional voice communications.

A number of comments suggest one or more of the foregoing indicia.¹¹⁰

BellSouth generally agrees with those parties that argue that standards in these areas are best developed in the context of industry forums.¹¹¹ At the same time, however, providers of IP-enabled information services should not be subject, to the extent possible, to substantially less rigorous requirements than providers of functionally equivalent IP-enabled telecommunications services or circuit switched services. Therefore, the Commission should be prepared to use its statutory powers of forbearance to forbear from applying non-essential requirements to telecommunications service providers in order to equalize the playing field for both providers of IP-enabled information services and IP-enabled telecommunications services.

The Commission should take a similar approach with respect to other regulatory requirements that arise out of the provision of Title II common carrier services. Thus, if the Commission grants APCC's request to assure the passage of payphone ANI by providers of information services, the technical details should be resolved by the industry, and providers of

¹¹⁰ See, e.g., Verizon Comments at 48; NCTA Comments at 9-11, 16-19; Time Warner Inc. Comments at 7-10; Association of Public-Safety Communications Officials-International, Inc. ("APCO") Comments at 6-7.

¹¹¹ See, e.g., Missouri Public Service Commission Comments at 10; CompTel/ASCENT Comments at 18-19; Consumer Electronics Association ("CEA") Comments at 6-7; Dialpad Comments at 20-21; Net2Phone, Inc. Comments at 22-25.

telecommunications services should not be subject to more burdensome requirements.¹¹²

Similarly, some IP-enabled service providers seek non-discriminatory access to utility poles and rights-of-way. Assuming these service providers meet the three-part test outlined above, they should theoretically have the same rights of access to utility poles and rights-of-way as entities that provide a similar service; however, the Commission must be especially sensitive to the disparate rate structures inherent in the Pole Attachments Act.¹¹³ Prior to allowing such access, the Commission must undertake a thorough evaluation of its current rules implementing section 224, and forbear where necessary from statutory provisions grounded, as the outdated and irrelevant *Computer Inquiry* rules are, on an outdated one-wire, single provider view of the world. The assumption that LECs possess anywhere near the pole plant, market strength, or bargaining power of electric and other utilities covered by the Act is simply unsupportable.

VII. THE COMMISSION SHOULD BE ESPECIALLY VIGILANT OF NETWORK SECURITY ISSUES AND ALLOW THE INDUSTRY TO CONTINUE TO REACH DEFINITIVE CONCLUSIONS ON INDUSTRY-WIDE SECURITY STANDARDS

ATIS recently announced the unanimous approval and endorsement by its board of directors of two comprehensive technical work plans designed to produce a full suite of

¹¹² American Public Communications Council (“APCC”) Comments at 7-9.

¹¹³ Telecommunications service providers are subject to different (higher) pole attachment rates than cable service providers. In addition, while pure information service providers are not covered by the Pole Attachments Act, cable service providers that offer cable modem service, an information service, get the benefit of the lower cable service rate. However, telecommunications service providers that offer equivalent broadband Internet access services must pay the higher telecommunications rate. Finally, even though electric utilities that provide telecommunications or cable services and own the majority of pole plant and thousands of miles of transmission facilities may have available to them the benefits and remedies afforded to CLECs and cable companies, ILECs currently lack similar rate protection and procedural remedies. Accordingly, the Commission should comprehensively reform its current pole attachments scheme to ensure an approach that treats all providers of voice communications the same by providing all providers rights and remedies.

standards supporting carrier-class VoIP and network security.¹¹⁴ This is precisely the kind of mutual collaboration that the industry is capable of undertaking to achieve overarching network related standards, and that the Commission should continue to encourage. These work plans “clear[] the path for industry-wide consensus on open technical and operational standards supporting VoIP and network security.”¹¹⁵ Nothing the Commission does in this proceeding should hamper or alter the consensus achieved within ATIS or the future work of the industry in building open standards based on a universal set of requirements. Indeed, the Commission should encourage ATIS to continue to develop a security operational guideline that identifies the functions and information necessary to manage security-related services throughout the network infrastructure. The Commission should endorse an IP-enabled services policy that favors a single approach for denial of service attacks and for an interoperable application layer protocol access control mechanism.

VIII. CONCLUSION

The Commission should, among other things, use its ancillary Title I authority and its forbearance authority under Title II to craft an even-handed IP-enabled services regulatory regime as outlined above and in BellSouth’s comments and avoid the disparate treatment of competing technologies that might otherwise accompany the legacy “classification” of an IP-enabled service.

Respectfully submitted,

BELLSOUTH CORPORATION

By: /s/ Theodore R. Kingsley

¹¹⁴ *Telecom Industry Releases VoIP and Network Security Work Plans*, Business Wire (June 18, 2004), at http://biz.yahoo.com/bw/040618/185393_1.html.

¹¹⁵ *Id.*

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I do hereby certify that I have this 14th day of July 2004 served the parties of record to this action with a copy of the foregoing **REPLY COMMENTS** 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.

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