

BellSouth D.C., Inc.
Suite 900
1133 21st Street, N.W.
Washington, D.C. 20036-3351

jonathan.banks@bellsouth.com

Jonathan Banks
Vice President-Executive and
Federal Regulatory Affairs

202 463 4182
Fax 202 463 4198

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation in Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. ("BellSouth") has previously provided information to the Commission establishing that Competing Local Exchange Carriers ("CLECs") are not impaired without unbundled access to high-capacity loops and transport. BellSouth submits this ex parte letter presentation in the above-referenced proceeding to provide additional information to refute claims that CLECs are impaired because of an alleged "lack of intermodal alternatives" for business customers.¹ To the contrary, cable companies are actively competing in the high-speed data market for business customers as the Commission recognized in its recent *271 Forbearance Order*,² which is fatal to CLEC impairment claims.

As discussed more fully below, cable companies are presently providing high-speed data services to several hundred thousand business customers across the nation

¹ E.g., Ex Parte Letter from Michael H. Pryor, Counsel to NuVox, Inc., to Marlene H. Dortch, Secretary, FCC (October 26, 2004) ("*NuVox Ex Parte*"); Ex Parte Letter from Ruth Milkman, counsel to MCI, to Marlene H. Dortch, Secretary, FCC (November 5, 2004).

² *In the Matters of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); 271 Forbearance Order, Memorandum Opinion and Order, WC Docket Nos. 01-338, 03-235, 03-260, 04-48 (rel. Oct. 27, 2004)* ¶ 24 ("*271 Forbearance Order*").

ranging from one employee home offices to Fortune 500 companies and are actively expanding their range of data services to small, medium and enterprise business customers. For instance, Cox advertises optical Internet services with bandwidth scalable up to OC-12 in capacity. Additionally, Cox offers *wholesale* carrier services including customer end loops available in DS-1 to OC-12 bandwidths.³

Similarly, Time Warner Cable's "Road Runner" business service offerings range from 1 Mbps downstream/256 kbps upstream for small business customers to scalable bandwidths of over 1 Gbps for enterprise class customers.⁴ Further, these cable companies stress the fact that their business services are provided over their own facilities in order to ensure control and reliability.

Consistent with its *271 Forbearance Order*, the Commission's impairment analysis must recognize the broad availability of an entirely separate, intermodal, fiber network that business customers are using to meet their high-speed data needs, including services equivalent to DS-1 and above speeds. The Commission would fail to do so if it were to make national findings of impairment with respect to DS-1 loops, as some CLECs have urged.⁵

Similarly, the Commission would be disregarding the prevalence of intermodal alternatives in the business market if it were to accept an impairment test that requires the presence of a significant number of fiber-based collocation arrangements as a prerequisite for unbundling relief.⁶ Although cable networks may collocate in incumbent wire centers in order to take transport business, those networks are fully independent, and have no need to collocate to gain access to unbundled loops or other facilities.

I. In the recent *271 Forbearance Order*, the Commission found that cable facilities are a substantial competitive alternative to incumbent LEC facilities used to serve business customers.

The Commission recently granted forbearance from enforcing the requirements of Section 271 with regard to the broadband elements that the Commission, on a national basis, relieved from unbundling in the Triennial Review Order. In so doing, the Commission reiterated, "competition is the most effective means of ensuring that ... charges, practices, classifications, and regulations ... are just and reasonable, and not unreasonably discriminatory."⁷

³ See discussion *infra* at pp. 6-8.

⁴ See discussion *infra* at pp. 10-11.

⁵ *NuVox Ex Parte*, at 2.

⁶ *E.g.*, Ex Parte Letter from Brad E. Mutschelknaus, Counsel for Loop and Transport CLEC Coalition, to Marlene H. Dortch, Secretary, FCC (October 18, 2004) ("*CLEC Coalition Ex Parte*")

⁷ *271 Forbearance Order*, ¶ 24.

Specifically, the Commission found: “The broadband market is still an emerging and changing market, where, as the Commission previously has concluded, the preconditions for monopoly are not present. ... The record demonstrates that cable operators have had success in acquiring not only residential and small-business broadband customers, but increasingly large business customers as well.”⁸ Thus, due to the presence of intermodal competition from cable in the business market, the Commission agreed that forbearance from the Section 271 unbundling provisions was in the public interest.

Further, the Commission found that section 271 unbundling access obligations for broadband have the effect of discouraging BOC investment in the emerging broadband market, diminishing their potential effectiveness as competitors today and in the future, to the detriment of the goals of section 10(a)(1). *Id.*

In reaching this decision, the Commission rejected CLEC arguments that a fully competitive wholesale market is a mandatory precursor to a finding that section 10(a)(1) is satisfied, regardless of the state of intermodal competition in the retail market and the effects on incumbent LEC investments. *Id.* at ¶28. The Commission found persuasive evidence of a competitive broadband market *at the retail level* with numerous existing and developing intermodal alternatives. The Commission quoted the D.C. Circuit’s ruling that it “cannot ignore intermodal alternatives when evaluating wholesale unbundling obligations.” *Id.*

While the Commission did state in a footnote that the evidence regarding cable competition for business customers is “not as powerful as residential customers,” where cable has, by far, the largest share of the market, the Commission rejected AT&T’s argument that “cable providers tend not to serve business customers, allowing the BOCs to retain monopoly power for those services.”⁹ The additional information provided herein reveals that cable companies have a considerable share of the business market and are actively growing their share of that market with a full suite of data services for businesses of every size.

II. Cable companies compete for business customers in BellSouth’s region.

Cable broadband can substitute directly for traditional private line services used by small businesses,¹⁰ and the following is a summary of cable company offerings of

⁸ *Id.* at ¶¶ 21-22.

⁹ *Id.* at note 68.

¹⁰ C. Munroe, IDC, *U.S. Private Line Forecast and Analysis, 2002-2007* at Table 2 (Dec. 2003) (“Broadband [*i.e.*, cable modem and DSL] substitution for sub-T1 and T1 lines will account for over \$3 billion in lost private line revenue” between 2003 and 2007.); K. Burney, *et al.*, In-Stat/MDR, *Cash Cows Say “Bye-Bye”: The Future of Private Line Services in US Businesses* at Table 15 (Dec. 2003) (“*In-Stat/MDR Private Line Report*”) (77% of “enterprise” respondents and 55% of “middle market”

high-speed services to business customers in direct competition with BellSouth's DS-1 offerings.

A recent study by In-Stat/MDR found that 41 percent of "enterprises," 32 percent of "middle market" businesses, and 44 percent of small businesses were using cable modem service in their main offices for some high-capacity services.¹¹ An increasing number of business customers are using cable modem service in lieu of traditional special access and private line services.¹²

Although fiber-to-the-curb cable networks reach ubiquitously in residential areas, they already pass many businesses as well.¹³ Cable operators also are now aggressively extending their fiber to the premises of large office buildings.¹⁴ In recent presentations to analysts, Cox Business Services announced a major 2004 plan to "expand [the] capabilities of the HFC infrastructure,"¹⁵ while Time Warner explained that "we do have an opportunity to go more aggressively after the enterprise business."¹⁶ Comcast "has been delivering service to commercial organizations since 1995 and has thousands of customers leveraging the Comcast network for critical business applications."¹⁷

respondents were considering replacing or had plans to replace their T1 line with a cable modem or DSL connection.)

¹¹ *In-Stat/MDR Private Line Report* at 19, Tables 9 & 10.

¹² See, e.g., C. Munroe, IDC, *U.S. Private Line Services Forecast and Analysis, 2002-2007* at 1 (Dec. 2003). (Special access revenues are declining "due to continued decline in price on a per-megabit basis, as well as competition from broadband circuits in the form of DSL and cable modem adoption by enterprises."); *In-Stat/MDR Private Line Report* at 12 ("As broadband offerings penetrate businesses in more ways, including in home offices, they will become a more compelling replacement to good, ole' private lines.").

¹³ See, e.g., *In-Stat/MDR Private Line Report* at 19, Table 9 (41 percent of "enterprises" and 32 percent of "middle market" businesses were using cable modem service in their main offices); Jim Robbins, President and CEO, Cox Communications, presentation before the Sanford Bernstein 19th Annual Strategic Decisions Conference (June 2003) (Cox is "leveraging the residential infrastructure" in deploying services to business customers.); J. Reif-Cohen, *et al.*, Merrill Lynch, *Cox Communications Inc.* at 6 (July 30, 2004) ("Cox's business unit leverages all its existing infrastructure by using the same switches, NOC (network operating center), billing system, brand and technicians/truck that the core cable business uses.").

¹⁴ See *Triennial Review Order* ¶ 40; see also D. Chang, EVP, Finance & Strategy, Charter Communications, presentation before the JP Morgan High Yield Conference, at 23 (Feb. 2, 2004) (Charter is moving "'up-market' to compete in Enterprise RFP environment").

¹⁵ J. Hayes & B. Stemper, Cox Communications, presentation before the UBS Media Week Conference, at 23 (Dec. 2003).

¹⁶ Thomson StreetEvents, *TWX - Q2 2004 Time Warner Inc. Earnings Conference Call Final Transcript* at 8 (July 28, 2004) (quoting Don Logan, Chairman of Media, Communications Group, Time Warner).

¹⁷ Comcast Commercial, *Services*,

<http://www.comcastcommercial.com/index.php?option=content&task=view&id=6&Itemid=27>.

Either directly or through an affiliate, each of the nation's major cable operators is now actively pursuing business customers, both by deploying fiber in urban areas, and by extending their hybrid fiber/coaxial networks to provide cable modem services to business locations. Based on information contained on their websites, cable companies appear to be offering service to business customers in at least 90 MSAs nationwide.¹⁸ Analysts estimate that nearly 60 percent of "small- to medium-sized businesses (SMB) are located within a few hundred feet of the local hybrid fiber/coaxial network,"¹⁹ and that roughly 25 percent already have a cable drop.²⁰ And cable operators have been rapidly expanding their networks to make service even more widely available.²¹

Comcast. "Comcast has been delivering service to commercial organizations since 1995 and has thousands of customers leveraging the Comcast network for critical business applications. Comcast delivers unique service capabilities on our own national

¹⁸ See Cox Business Services, *Carrier Markets*, <http://www.coxbusiness.com/carriermarkets.pdf> (carrier services in 23 MSAs); Lightpath, *About Lightpath*, <http://www.lightpath.net/Interior7.html> (business service in 1 MSA); Comcast Commercial Services, *Our Network*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=4&Itemid=34> ("Presence in 22 of the top 25 US markets"); Time Warner Telecom, *Dedicated High Capacity Services*, <http://www.twtelecom.com/Documents/Resources/PDF/MarketingCollateral/1701.1DedicatedHighCapac.pdf> (Time Warner Telecom serves 41 MSAs); Road Runner Business Class, *National Presence*, <http://www.rrbiz.com/RoadRunner/index.asp?sid=1> (Road Runner Business Service in 46 MSAs); Charter Business Networks, <http://www.charter-business.com/default.htm> (business service in 35 states); TelCove, *Fiber Infrastructure*, <http://www.telcove.com/network/090304%20Network%20Infra.pdf> (TelCove, formerly Adelphia Business Solutions, offers service in 48 MSAs).

¹⁹ J. Shim & R. Read, Credit Lyonnais Securities, *The U.S. Cable Industry – Act I* at 196 (Nov. 20, 2002) (estimating six million SMBs within a few hundred feet); see also K. Burney, In-Stat/MDR, *The Big Comeback? Excerpts from 'Business Broadband in a Changed Economy'* at 2, 4 & Fig. 2 (May 2002) (there are an estimated 10.5 million small and medium businesses nationwide (2.2 million with 5-99 employees, 85,000 with 100-999 employees, and 8.2 million characterized as small office/home office)); Citigroup Smith Barney, *Cable: Capitalizing on the SME Opportunity; Detailed Note* (June 4, 2003) (30 to 50 percent of the small- and medium-enterprise market is located within 50 to 100 feet of existing cable modem networks).

²⁰ J. Shim & R. Read, Credit Lyonnais Securities, *The U.S. Cable Industry – Act I* at 196 (Nov. 20, 2002) (estimating 2.5 million SMBs passed by existing cable infrastructure); D. Sweeney, *Cable's Plumb Position*, *America's Network* (July 1, 2002) (Jedai Networks, which develops equipment "intended to enable [cable] MSOs to serve business customers," estimates "that roughly 25% of businesses already have a cable drop, including many in downtown office buildings.").

²¹ See, e.g., D. Chang, EVP, Finance & Strategy, Charter Communications, presentation before the JP Morgan High Yield Conference, at 23 (Feb. 2, 2004) (Charter is moving "'up-market' to compete in Enterprise RFP environment"); *Comm. Daily* at 7 (Feb. 2, 2004) (RCN "[s]igned several agreements to expand its business" to provide "voice, video, data, business cable, Internet access, transport," to "customers including universities, hospitals, and the financial and legal industries."); J. Hayes & B. Stemper, Cox Communications, presentation before the UBS Media Week Conference, at 23 (Dec. 2003) (noting that one of the major plans for Cox Business Services in 2004 was to "[e]xpand [the] capabilities of the HFC infrastructure.").

network, which allows you to have reliable service and competitive rates.”²² According to Comcast Commercial Services, it “leverages the massive network of our parent company,” which allows business customers to enjoy “managed access on a carrier class transport network designed for broadband applications.” Comcast boasts that the reach of its cable network “is broad and deep, with capacity in dense urban, sprawling suburban and even many rural areas others don’t reach.”²³

Comcast operates cable networks that pass approximately 5.9 million homes in Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee.²⁴ Comcast offers high-speed Internet access to small- and medium-sized businesses in numerous areas throughout its footprint within the BellSouth region.²⁵

Cox. Cox Communications (“Cox”) is a Fortune 500 company and the nation’s third-largest cable television provider. Cox serves more than 100,000 business customers in more than 18 markets nationwide.²⁶ According to Cox, more than 320,000 businesses with “a total telecom spend of roughly \$3.3 billion annually” lie within 100 feet of Cox’s network.²⁷ Cox expects to “reach more than 25% of businesses within its franchise” at year-end 2004.²⁸

Cox operates cable networks that pass approximately 1.9 million homes in Florida, Georgia, Louisiana, Mississippi, and North Carolina.²⁹ Cox Business Services is the Cox division which provides facilities-based “high-speed Internet services; switched voice and long-distance services; and dedicated voice, data and video transport services for home offices, small, medium and large-sized businesses, school districts and hospitality, government and military proprietries.”³⁰ Cox Business Services operates

²² Comcast Commercial Services, *Services*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=6&Itemid=27>.

²³ Comcast Commercial Services, *Solutions: Telecommunications*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=33&Itemid=71>.

²⁴ Media Business Corp., *Top 10 MSOs by County* (Mar. 2004). This estimate includes homes passed outside of BellSouth’s service area in each state.

²⁵ See BellSouth Comments, WC Docket No. 04-313, CC Docket No. 01-338 (filed October 5, 2004), Tipton Affidavit, Exhibits PAT-2 – 4; Comcast, *Business Products: Small Business*, <http://work.comcast.net/smallbusiness.asp>.

²⁶ J. Rief-Cohen, *et al.*, Merrill Lynch, *Cox Communications: Chasing Profits and the 4 Million Non-Video Homes* at 6 (July 30, 2004).

²⁷ J. Rief-Cohen, *et al.*, Merrill Lynch, *Cox Communications: Chasing Profits and the 4 Million Non-Video Homes* at 6 (July 30, 2004).

²⁸ J. Rief-Cohen, *et al.*, Merrill Lynch, *Cox Communications: Chasing Profits and the 4 Million Non-Video Homes* at 6 (July 30, 2004).

²⁹ Media Business Corp., *Top 10 MSOs by County* (Mar. 2004). This estimate includes homes passed outside of BellSouth’s service area in each state.

³⁰ Cox Business Services Press Release, *Cox Business Services Turns Up the Speed on Broadband Internet Service* (Aug. 24, 2004).

in numerous areas throughout BellSouth's service territory.³¹ According to Cox Business Services, "[l]arger businesses looking for reliable communications solutions will find that and more at Cox Business Services – your true technology partner."³² Cox Business Services "serve[s] the daily communications needs of enterprises ranging from Fortune 500 corporations with multiple locations to locally based companies, with special expertise in many industry-specific businesses."³³

Cox states that it offers "downstream bandwidth up to 3 Mbps" and "provides the equivalent data transfer speed of more expensive T-1 connections Cox Business Internet is delivered over Cox's widely available hybrid fiber coax (HFC) infrastructure, and leverages Cox Communications' redundant, Tier 1, fully meshed ATM network (OC-3 and up)."³⁴ In New Orleans, Cox Business Services asks potential business customers to "Choose Cox Business Internet for consistent, reliable high-speed service, with download speeds up to 6.0 Mbps now available. Or go with Cox Optical Internet, with bandwidth scalable up to OC-12 in capacity, for even greater operating speed and efficiency."³⁵

In addition to the above retail high-speed services offered directly to business customers, Cox also offers *wholesale carrier services*:

Cox Carrier Services utilizes our local fiber backbone to deliver bandwidth speeds up to OC-48, giving you the speed and capacity you need to handle your customer or network's bandwidth-heavy applications. We are also in the process of deploying Dense Wavelength Division Multiplexing (DWDM) technology in select markets for greater bandwidth capabilities. We offer several services for wholesale customers who need high-speed connectivity, including:

Cox Private Line Service: Provides point-to-point connections between points of presence (POPs). Connect your own points of presence or interconnect to another carrier, whether that carrier is an ISP, ILEC, IXC, CLEC, BLEC, or wireless provider. Cox offers you a choice of four high-volume, digital transmission bandwidths: DS-3, OC-3, OC-12 and OC-48.

³¹ See BellSouth Comments, WC Docket No. 04-313, CC Docket No. 01-338 (filed October 5, 2004), Tipton Affidavit, Exhibits PAT-2 – 4; Cox Business Services, *Flexible Communications Solutions for Your Enterprise*, <http://www.coxbusiness.com/solutions/>.

³² Cox Business Services, *Flexible Communications Solutions for Your Enterprise*, <http://www.coxbusiness.com/solutions/>.

³³ Cox Business Services, *Flexible Communications Solutions for Your Enterprise*, <http://www.coxbusiness.com/solutions/>.

³⁴ Cox Business Services, High-Speed Fiber & Cable, <http://www.coxbusinessmga.com/cbi.html>

³⁵ Cox Business Services, http://www.coxbusiness.com/systems/la_neworleans/Oct_04/index_NewOrleans.html

Cox Carrier Access Service: Provides you with dedicated local loop access to your customers through hubbed, point-to-point private line connections. Cox Carrier Access consists of two components, a Carrier Interconnection Circuit and a Customer End Loop. Choose from two bandwidth levels on the Carrier Interconnection Circuit and four bandwidth levels on the Customer End Loop.

Carrier Interconnection Circuits connect the Cox POP to your POP and are available in OC-12 and OC-48 bandwidths. Customer End Loops connect your network to your customer's office or facility and are available in DS-1, DS-3, OC-3 and OC-12 bandwidths.³⁶

On October 27, 2004, Cox reported financial results for the three and nine months ended September 30, 2004. During the third quarter of 2004, Cox:

- Added 184,446 high-speed Internet customers, the most Cox high-speed Internet customers ever added in a quarter. Cox ended the quarter with over 2.4 million high-speed Internet customers, representing year-over-year growth of 32%.
- Added 82,596 Cox Digital Telephone customers, the most Cox Digital Telephone customers ever added in a quarter. Cox ended the quarter with over 1.2 million telephone customers, representing year-over-year growth of 33%.

The above numbers include growth in both residential and business subscribers. Indeed, Cox explained that its 11% increase in total revenues over the third quarter of 2003 was due, in part, to an increase in Cox Business Service customers.³⁷

Time Warner Cable/Bright House Networks. Time Warner Cable has stated that it has “an infrastructure there that is just ripe for commercial services,” with its network passing “1.2 million businesses . . .”³⁸ Time Warner Cable is “[d]elivering cost effective, high capacity access solutions to several Fortune 500 customers,”³⁹ and as of the end of second quarter 2004 the company provided service to 149,000 business customers nationwide.⁴⁰ According to the company, “[c]able is not incredibly difficult

³⁶ Cox Business Services, *Carrier Services*, http://www.coxbusiness.com/carrierservices_general.asp

³⁷ <http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=636526&>

³⁸ A. Figler, *Turning Businesses into Customers*, CableWorld (Dec. 9, 2002) (quoting Ken Fitzpatrick, senior vice president of commercial services for Time Warner Cable).

³⁹ Road Runner Business Class, *Internet Access*, <http://www.twcbroadband.com/solutions/internet.cfm>.

⁴⁰ Thomson StreetEvents, *TWX – Q2 2004 Time Warner Inc. Earnings Conference Call – Final Transcript* at 8 (July 28, 2004).

to get to the business,” and “[m]ost RBOCs, CLECs and ILECs have ignored that space.”⁴¹ Time Warner Cable considers the small business market “as a high-growth opportunity,”⁴² and has stated that it “[has] an opportunity to go more aggressively after the enterprise business.”⁴³

Time Warner Cable operates cable networks that pass approximately 4.1 million homes in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.⁴⁴ Bright House Networks operates cable networks that pass approximately 2.5 million homes in Alabama and Florida.⁴⁵ Time Warner Cable and Bright House Networks provide high-speed Internet solutions “to businesses of all sizes,” “[n]o matter if your business has one or one thousand employees,” through the Road Runner Business Class service.⁴⁶

Time Warner Cable offers its Road Runner branded, high-speed data service to both residential and commercial customers in all of Time Warner Cable's 31 divisions.⁴⁷ On November 3, 2004, Time Warner Cable reported financial results for its third quarter ended September 30, 2004. The company reported that its cable division revenues climbed 10% and that growth in subscription revenues was driven by a 22% increase in high-speed data revenues, enhanced digital video service revenues and higher basic cable rates. Further, Time Warner Cable stated that it “remains on track to deploy Digital Phone to all 31 of its divisions by the end of 2004. At September 30, Digital Phone was available commercially or on a test basis in all but one Time Warner Cable division.”⁴⁸

Time Warner Cable describes its Road Runner Business class as follows:

Road Runner Business Class is a service of Time Warner Cable that provides high-speed Internet solutions to businesses of all sizes. In addition to instant connectivity and fast downloads, Road Runner Business Class delivers the important advantage of

⁴¹ M. Stump, *Road Runner Gears Up 'Business Class' Offer*, Multichannel News (Feb. 25, 2002) (quoting Jason Welz, vice president of commercial services for Road Runner).

⁴² J. Barthold, *Small Business, Big Money, No Guarantees*, Telephony Online (Aug. 12, 2002), http://telephonyonline.com/ar/telecom_small_business_big/index.htm.

⁴³ Thomson StreetEvents, *TWX – Q2 2004 Time Warner Inc. Earnings Conference Call – Final Transcript* at 8 (July 28, 2004)

⁴⁴ Media Business Corp., *Top 10 MSOs by County* (Mar. 2004). This estimate includes homes passed outside of BellSouth's service area in each state.

⁴⁵ Media Business Corp., *Top 10 MSOs by County* (Mar. 2004). This estimate includes homes passed outside of BellSouth's service area in each state.

⁴⁶ Road Runner Business Class, <http://www.rrbiz.com/RoadRunner/index.asp?sid=1>.

⁴⁷ Time Warner Cable, 2003 Annual Report on Form 10K (filed March 15, 2004) p.10.

⁴⁸ http://ir.timewarner.com/downloads/3Q_2004_Earnings_Financials_Release.pdf

one network, with a backbone wholly owned by a single, stable company.

Road Runner Business Class solutions are available in major U.S. urban and suburban areas, and are supported by our more than 40 divisions nationwide. Road Runner Business Class products and services are offered where small and middle-sized businesses exist. And our solutions stretch across cities and states, linking businesses together. We also develop solutions for home offices and teleworkers – giving them the tools they need while working at home or on the road.

Road Runner Business Class local representatives will provide a customized and integrated solution appropriate for your business. No matter if your business has one or one thousand employees, Road Runner Business Class solutions are shaped from our complete suite of business products and services offering the convenience of single billing and the promise of dedicated, local support.⁴⁹

Road Runner Business Class service offers speeds of 1 Mbps downstream/256 kbps upstream to 4 Mbps downstream/2 Mbps upstream.⁵⁰ Road Runner Business Class's Dedicated Access Solutions provide "dedicated Internet access and point-to-point connectivity, leveraging the fiber distribution network that supplies service to millions of Time Warner Cable customers today. While the principal product focus is on high-bandwidth solutions, this technology also provides robust point-to-point and Internet connectivity – which are critical for the ever-growing teleworker and branch office market."⁵¹ Road Runner Business Class services are currently available in numerous areas within Time Warner Cable's footprint in BellSouth's service territory.⁵²

Time Warner Cable also offers Road Runner Business Class Enterprise Solutions:

Road Runner Business Class brings high-speed Internet access solutions to branch offices and teleworkers, regardless of whether a company's multiple worksites are located within one geographic area or scattered

⁴⁹ www.rrbiz.com/RoadRunner/index.asp?sid=1

⁵⁰ Road Runner Business Class, *Products & Services: Access*, http://www.rrbiz.com/RoadRunner/sec_unformatted.asp?TRACKID=&CID=24&DID=29.

⁵¹ Road Runner Business Class, *Products & Services: Dedicated Access Solutions*, http://www.rrbiz.com/RoadRunner/sec_unformatted.asp?TRACKID=&CID=348&DID=463.

⁵² See BellSouth Comments, WC Docket No. 04-313, CC Docket No. 01-338 (filed October 5, 2004), Tipton Affidavit, Exhibits PAT-2 – 4; Road Runner Business Class, *Check Availability*, <http://www.rrbiz.com/RoadRunner/index.asp?sid=1>.

across several states. Our programs deliver specific, sophisticated services to all locations, and consolidate these connections into a single monthly bill.⁵³

Time Warner Cable also offers “National Programs” through its Road Runner Business Class services:

Road Runner Business Class National Programs are designed for companies whose multiple teleworkers and branch offices are located in multiple geographic areas. Through National Programs, high-speed Internet solutions serve every teleworker and branch office in the enterprise over a single network, its backbone wholly owned by Time Warner Cable. Plus, National Programs offer the timesaving, streamlined administration of one provider, one invoice for all connections. Whether you have 50 or 50,000 teleworkers or branch offices, National Programs efficiently delivers a new dimension of high-speed Internet connectivity, and security.⁵⁴

Time Warner Cable touts the fact that it is delivering cost effective, high capacity access solutions to “several Fortune 500 customers” at bursts of speed of up to 6 Mbps downstream and up to 2 Mbps upstream.⁵⁵ Time Warner Cable’s Road Runner Enterprise offering is scalable from 5 Mbps to over 1 Gbps.⁵⁶

Time Warner Cable advertises the advantages that Road Runner has over DSL technology, stating: “DSL service speeds are distance sensitive. The DSL service you get depends on how close you are to their central office. With Road Runner Business Class that does not matter. You will be able to get the product you have purchased no matter how far away you are from Time Warner’s offices.” Further, if Time Warner Cable does not currently have facilities in a particular building, its “construction department will do a site survey to determine the serviceability.”⁵⁷

Charter. Charter has stated that it is moving “‘up-market’ to compete in Enterprise RFP environment,”⁵⁸ and that 91 percent of its business subscribers are

⁵³ http://charlotte.rrbiz.com/rr_charlotte/sec_formatted.asp?TRACKID=&CID=77&DID=100

⁵⁴ <http://rrbizcentx.com/tabNationalprograms.html>

⁵⁵ <http://www.twcbroadband.com/solutions/internet.cfm>

⁵⁶ <http://www.twcbroadband.com/solutions/enterprise.cfm>

⁵⁷ <http://www.rrbusiness.com/faqs.asp>

⁵⁸ D. Chang, EVP, Finance & Strategy, Charter Communications, presentation before the JP Morgan High Yield Conference (Feb. 2, 2004).

medium or large businesses.⁵⁹ Nationwide, “[o]ver 600,000 small- and medium-sized businesses” are “located within reach of [Charter’s] networks.”⁶⁰

Charter operates cable networks that pass approximately 3.4 million homes in all nine states in BellSouth’s region.⁶¹ Charter Business claims to be the “one source for advanced high-speed data, video and Internet services,” “[w]hether you are a small organization seeking a cost-effective, reliable connection to the Internet, a large organization with intensive networking requirements between dispersed locations, or looking to provide business-class video programming to [] customers.”⁶² Charter Business’s network services “provide the ultimate in flexibility to organizations with wide area network (WAN) needs. Using a single fiber connection for data, Internet, video and internal voice communications, Charter provides data transmission speeds that are defined by [customers’] needs rather than the size and cost limitations of T1 and DS-3 circuits. Today [Charter Business’s] network services deliver speeds from 5 Mbps up to 1 Gigabit per second, including local access.”⁶³ “Today Charter Business provides communications solutions to businesses, hospitals, schools and municipalities located primarily in communities served by Charter Communications.”⁶⁴ According to Charter Business, “[o]ur reach will continue to grow as we aggressively lay fiber and extend our next-generation network into more communities every day.”⁶⁵ Charter Business provides services in Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.⁶⁶

Mediacom. Mediacom operates cable networks that pass approximately 771,000 homes in Alabama, Florida, Georgia, Kentucky, Mississippi, and North Carolina.⁶⁷ Mediacom’s “Southern Network” passes 400,000 homes in Mobile, Ala. and the neighboring Mississippi area; Tallahassee and Pensacola, Fla.; and Albany and Valdosta, Ga.⁶⁸ Mediacom offers Mediacom Online Business High-Speed Internet Service, which is “specifically designed to meet the data communications needs of

⁵⁹ Charter Communications, presentation before the UBS Media Week Conference, at 19 (Dec. 11, 2003) (reporting that 91% of business customers are small businesses).

⁶⁰ A. Figler, *Turning Businesses into Customers*, CableWorld (Dec. 9, 2002) (quoting Charter Communications spokesman David Andersen)

⁶¹ Media Business Corp., *Top 10 MSOs by County* (Mar. 2004). This estimate includes homes passed outside of BellSouth’s service area in each state.

⁶² Charter Business, <http://www.charter-business.com/>.

⁶³ Charter Business, *Services*, <http://www.charter-business.com/services.html>.

⁶⁴ Charter Business, *Reach*, <http://www.charter-business.com/reach.html>.

⁶⁵ Charter Business, *Reach*, <http://www.charter-business.com/reach.html>.

⁶⁶ Charter Business, <http://www.charter-business.com/>.

⁶⁷ Media Business Corp., *Top 10 MSOs by County* (Mar. 2004). This estimate includes homes passed outside of BellSouth’s service area in each state.

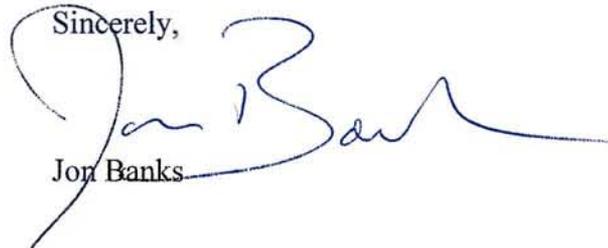
⁶⁸ See Mediacom, presentation at the Banc of America Securities 34th Annual Investment Conference (Sept. 23, 2004).

small and growing companies,” and “features high performance speeds and applications that larger companies use without the high expense.”⁶⁹

III. Conclusion

As the foregoing clearly establishes, the nation’s largest cable operators are actively competing for small, medium and enterprise business customers throughout BellSouth’s service territory. These cable companies are offering a variety of high-speed Internet access products that are scalable to 1 Gbps over their own network facilities and will build out facilities to new commercial locations as demand warrants. There are, undoubtedly, additional cable companies that are also entering the business segment of the market.

The same facts and analysis employed by the Commission in its recent *271 Forbearance Order* require that cable’s formidable competitive offerings to business customers be adequately taken into account in assessing CLEC claims of impairment. Due to the widespread intermodal competition for business customers over cable’s own facilities, the Commission could not lawfully make a national finding of impairment for DS-1 and above loops and transport. Nor could the Commission lawfully adopt an impairment test that requires the presence of a significant number of fiber-based collocation arrangements as a precondition for high-capacity loop and transport unbundling relief.

Sincerely,

Jon Banks

Cc: Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Daniel Gonzalez
Scott Bergmann
Jeffrey Carlisle
Michelle Carey
Thomas Navin
Jeremy Miller
Ian Dillner

Russell Hanser
Marcus Maher
John Rogovin
John Stanley
Christopher Killion
Jeffrey Dygert
Pamela Arluk
Robert Pepper
Rodger Woock
Robert Tanner

Tamara Preiss

⁶⁹ Mediacom, *Mediacom Online Business High-Speed Internet Service*, http://www.mediacomcc.com/products_highspeedbusiness.html.