

costs that cannot be directly assigned to regulated or non-regulated activities are to be grouped into pools and allocated pursuant to a hierarchy or allocation methods. Thus, Part 64 places an extraordinary burden on ILECs to maintain extensive and tedious accounting records. In addition, an independent accountant must audit Part 64 records every two years with the report covering the entire two-year period.

Just as with the *Computer Inquiry* requirements, the allocation of costs to non-regulated accounts required by Part 64 should not apply to facilities used to provide broadband information services. Part 64 cost allocation is simply not needed. Every ILEC subject to Part 64 is no longer under rate-of-return regulation for federal ratemaking purposes. In 1990, the Commission adopted incentive, or price cap, regulation for ILECs.⁸⁵ Unlike rate of return regulation, under price cap regulation there is no link between cost and price. Indeed, the purpose of price cap regulation was to adopt an incentive-based pricing theory that promoted ILEC efficiencies as opposed to cost-plus pricing. For price cap ILECs, rates are driven by changes in the price cap formula, which incorporates changes in inflation and other non-accounting factors, such as demand changes. The price cap system was intentionally designed to prevent cross-subsidy between services, and thus, obviates the need for Part 64 cost allocation. Accordingly, along with the *Computer Inquiry* rules, the Commission should forbear from Part 64.900 cost allocation requirements for broadband information services.

As the Commission has long understood, the existence of regulatory costs impedes investment and hinders achievement of what the Commission has properly identified as its

⁸⁵ Second Report and Order, *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786 (1990).

central policy goal: “encourag[ing] the ubiquitous availability of broadband to all Americans.”⁸⁶

The Commission has thus concluded that broadband services “should exist in a minimal regulatory environment” precisely because such an environment “promotes investment and innovation in a competitive market.”⁸⁷ In fact, in the *Triennial Review Order*, the Commission relied on the need to encourage investment in broadband facilities to conclude that it would be contrary to the 1996 Act, particularly section 706, to require the unbundling of most broadband facilities under section 251. According to the Commission, by limiting forced access to high-speed transmission facilities, it would enhance the “incentive” of ILECs to deploy those facilities.⁸⁸ The D.C. Circuit affirmed that analysis.⁸⁹

Notably, equipment manufacturers – which have the same interest in enhancing broadband deployment that this Commission does – agree that the current asymmetrical regulatory sharing obligations create disincentives for wireline investment. As Alcatel explained,

unbundling, *network sharing*, and resale regulations disparately impact incumbent local exchange carriers when compared to the other widely recognized broadband platforms, such as cable television, fixed wireless, and satellite. While consumers may acquire the same broadband Internet services from any of these platforms, it is only ILECs that are burdened with these heightened regulatory requirements. . . . The present regulatory disparity can create false presumptions that one platform possesses greater capabilities or is favored by government regulators. Such presumptions can directly impact investment decisions by consumers and operators, which is evident by the investment reduction of the ILECs and corresponding increase by MSOs.⁹⁰

⁸⁶ *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4801-02, ¶ 4 (internal quotation marks omitted).

⁸⁷ *Id.* at 4802, ¶ 5 (internal quotation marks omitted).

⁸⁸ See *Triennial Review Order*, 18 FCC Rcd at 17150, ¶ 290.

⁸⁹ See *USTA II*, 354 F.3d at 585.

⁹⁰ Comments of Alcatel USA, Inc. at 3-4, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 (FCC filed May 3, 2002), available at

The Telecommunications Industry Association concurs, stating that it “continues to believe that the regulatory framework that governs broadband and high-speed Internet access networks, particularly ‘wireline’ ones (referring to the evolving telecommunications infrastructure operated traditionally by local exchange carriers), impedes the investment that is necessary to make these service offerings more widely available and more robust.”⁹¹

Cable companies, BellSouth’s rivals in the marketplace, echo these concerns. They have explained that the “costs” of a mandatory access regime are “enormous.”⁹² “The costs and uncertainty of accommodating multiple ISPs in a manner dictated by the government rather than the marketplace would almost certainly have significant adverse effects on investment in and deployment” of broadband.⁹³ Indeed, “‘even a hint’” of regulation “could prove disastrous” to deployment.⁹⁴

http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf&id_document=6513189268
(emphasis added; footnote omitted).

⁹¹ Comments of the Telecommunications Industry Association at 4, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC filed Apr. 5, 2002), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513181978.

⁹² Comments of AT&T Corp. at 13, *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52 (FCC filed June 17, 2002), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513198027 (“AT&T Cable Broadband Comments”); see also Comments of Cox Communications, Inc. at 4, *Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, CS Docket No. 02-52 (FCC filed June 17, 2002), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513198369 (government intervention would “impose prohibitive costs and discourage capital investment”).

⁹³ Comments of the National Cable & Telecommunications Association at 24, *Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, CS Docket No. 02-52 (FCC filed June 17, 2002), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513198039.

⁹⁴ *Comcast President: Cable TV Industry Would Wither if New Rules Enacted*, TR Daily (June 10, 2002) (quoting Comcast president Brian L. Roberts).

Third, for all the reasons discussed above, forbearance here is not only “consistent with the public interest,” as required by section 160, but would also strongly advance that interest.

The Commission has explained that public interest analysis in this context must be undertaken with reference to the three “goals” that the Commission has established for broadband policy.⁹⁵ Granting the forbearance relief requested in this Petition would further all of those goals. First, by reducing unnecessary costs, that relief would encourage deployment and thus its “ubiquitous availability” to all Americans.⁹⁶ Second, such relief would move the Commission closer to ensuring that “broadband services . . . exist in a minimal regulatory environment that promotes investment and innovation.”⁹⁷ Third, given that the Commission has already determined that cable providers should not be burdened with *Computer Inquiry* requirements, forbearance relief would help “create a rational framework for the regulation of competing services that are provided via different technologies and network architectures.”⁹⁸

Indeed, as the Commission’s third principle makes clear, the imposition of regulatory requirements on one company but not on its competitors is strongly contrary to the public interest because it leads to some competitors prevailing not because they are more efficient or have a better product, but rather because they have an artificial regulatory advantage. Accordingly, here, as in prior cases, forbearance is warranted because the elimination of asymmetrical regulation would make wireline ILECs “a more effective competitor.”⁹⁹

⁹⁵ *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4847-48, ¶ 95.

⁹⁶ *Id.* at 4801, ¶ 4 (internal quotation marks omitted).

⁹⁷ *Id.* at 4802, ¶ 5 (internal quotation marks omitted).

⁹⁸ *Id.* at 4802, ¶ 6.

⁹⁹ *Directory Assistance Order*, 14 FCC Rcd at 16278-79, ¶ 49.

In addition, no regulatory rule is necessary to ensure independent ISPs access to BellSouth's network. BellSouth has every incentive to negotiate mutually beneficial network-access arrangements with these companies. BellSouth has hundreds of ISP customers and has no desire to lose the revenues created by their use of BellSouth's broadband transmission. Simply put, BellSouth has a strong economic incentive to maximize the utilization of its broadband capacity. Current rules, however, perversely inhibit BellSouth's ability to structure mutually beneficial relationships with ISPs.

For instance, if permitted to do so, BellSouth might seek to negotiate private-carriage arrangements that would be tailored to the unique circumstances of particular ISPs just as cable companies have done. As described in the attached Fogle Affidavit (¶ 6), existing End User Aggregation ("EUA") platforms had only DS3/OC3/OC12 interfaces (suitable for larger ISPs with significant customer volume within a LATA). Many of BellSouth's smaller ISPs are simply not large enough to efficiently utilize a full DS3 or larger connection to BellSouth, so BellSouth developed a DS1 EUA interface, as well as the ability to aggregate their EUA traffic onto an existing ATM interface. In addition, since BellSouth cannot afford to competitively develop products on multiple architectures, its 256kb and 3Mb DSL services are only available via BellSouth's more efficient EUA interface. In order to help smaller ISPs manage through the transition, BellSouth has provided multiple promotions, including providing a DS3 EUA interface at DS1 rates for over six months while continuing to develop the new interfaces. This continued innovation, in spite of the regulatory hurdles demonstrates BellSouth's continued desire to serve the needs of the wholesale ISP market.

In sum, as cable companies have explained, regimes that "impair the implementation of 'case-by case' access arrangements tailored to meet" the demands of the marketplace, such as the

one under which wireline providers currently function, have “disastrous” effects.¹⁰⁰ Such an “inflexible regulatory mandate” prevents “the vibrant commercial experimentation that is necessary to develop the most efficient [broadband] solutions” to meet customers’ needs.¹⁰¹ Accordingly, the public interest strongly favors allowing broadband providers and ISPs to “retain the flexibility to modify their arrangements in response to actual commercial experience,” or else *consumers* – whose interests, after all, are paramount – will suffer.¹⁰²

C. The Commission Should Also Forbear From Applying Title II Common-Carrier Regulation To The Extent It Would Apply To Wireline Broadband Transmissions

To the extent they apply, the Commission should also forbear from applying Title II common-carrier requirements to ILEC broadband transmissions so that ILECs may structure tailored private-carriage arrangements that meet the needs of independent ISPs without the burden and expense of Title II obligations.¹⁰³

Forbearance from common-carrier obligations is required here for a simple reason: for all the reasons discussed above, ILECs do not have market power in broadband transmission. This Commission has long concluded that common-carrier obligations should not be imposed in the absence of market power. The Commission has stated that it will require a service to be provided on a common-carrier basis only where the incumbent operator “has sufficient market

¹⁰⁰ AT&T Cable Broadband Comments at 5.

¹⁰¹ *Id.* at 2, 19.

¹⁰² *Id.* at 18.

¹⁰³ BellSouth’s request here does not seek forbearance from section 271 or 251 to the extent they would otherwise apply. Forbearance from those requirements is at issue in other Commission dockets.

power to warrant regulatory treatment as a common carrier.”¹⁰⁴ When market power is absent, there is no “compelling reason” to impose common-carrier regulation.¹⁰⁵ Accordingly, in instances in which market power was lacking, the Commission has authorized providers to offer private carriage of a wide variety of services, including satellite services,¹⁰⁶ submarine cables,¹⁰⁷ for-profit microwave systems,¹⁰⁸ dark fiber,¹⁰⁹ and various mobile services,¹¹⁰ among others.¹¹¹

¹⁰⁴ See Memorandum Opinion and Order, *AT&T Submarine Sys. Inc.*, 13 FCC Rcd 21585, 21589, ¶ 9 (1998) (“*AT&T Order*”), *aff’d*, *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

¹⁰⁵ See Memorandum Opinion, Declaratory Ruling, and Order, *Cox Cable Communications, Inc.*, 102 F.C.C.2d 110, 121-22, ¶¶ 26-27 (1985).

¹⁰⁶ See Declaratory Ruling, *Licensing Under Title III of the Communications Act of 1934, as amended, of Non-common Carrier Transmit/Receive Earth Stations Operating with the INTELSAT Global Communications Satellite System*, 8 FCC Rcd 1387 (1993) (allowing certain satellite services on a private-carriage basis, including mobile voice, data, facsimile, and position location for both domestic and international subscribers); Order and Authorization, *Application of Loral/Qualcomm Partnership, L.P.*, 10 FCC Rcd 2333 (Int’l Bur. 1995) (allowing use of the Globalstar system for mobile voice, data, facsimile, and other services as a non-common carrier).

¹⁰⁷ *AT&T Order*, 13 FCC Rcd 21585; Cable Landing License, *FLAG Pacific Limited*, 15 FCC Rcd 22064 (Int’l Bur. 2000).

¹⁰⁸ See, e.g., Memorandum Opinion and Order on Reconsideration, *General Tel. Co. of the Southwest*, 3 FCC Rcd 6778 (Priv. Rad. Bur. 1988) (providing that for-profit microwave systems may be offered as private carriage, even if interconnected with the public switched telephone network).

¹⁰⁹ See *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

¹¹⁰ See Policy Statement and Order, *Amendment of the Commission’s Rules To Establish New Personal Communications Services*, 6 FCC Rcd 6601 (1991); Memorandum Opinion and Order on Reconsideration, *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, 89 F.C.C.2d 58 (1982) (dispatch services may be offered either on a common or non-common carrier basis); Memorandum Opinion and Order, *Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission’s Rules Concerning Use of Subsidiary Communications Authorization*, 98 F.C.C.2d 792 (1984) (private carrier paging system may be offered either on a common or non-common carrier basis).

¹¹¹ A listing of further examples was included as Exhibit C to Verizon’s opening comments in this proceeding.

The Commission should reach the same result here. Simply put, the lack of ILEC market power means that the market, not regulation, can be trusted to bring benefits to consumers and that the specific criteria for forbearance are met here.

First, because ILECs lack market power in broadband transmission, they cannot charge unjust or unreasonably discriminatory rates. If ILECs seek to do so, consumers will simply choose other facilities-based broadband competitors. As the Commission has explained, it is “competition,” not unnecessary and asymmetrical regulation, that is the “most effective means of ensuring that the charges, practices, classifications, and regulations” offered by broadband providers are “just and reasonable, and not unjustly and unreasonably discriminatory.”¹¹²

There is no doubt that competition is serving that function in broadband today. Again, to quote the Commission’s recent *Fourth Advanced Services Report*,¹¹³ “the competitive nature of the broadband market, including new entrants using new technologies, is driving broadband providers to offer increasingly faster service at the same or even lower retail prices.”¹¹⁴

Indeed, the Commission has expressly concluded that firms lacking market power cannot charge unjust or unreasonably discriminatory rates. “[F]irms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, would contravene Sections 201(b) and 202(a) of the Act.”¹¹⁵ “[T]he extent to which a carrier can ‘discriminate’ between and among its various customers or classes of customers (and thus the potential for unreasonable discrimination violative of the Act) is related directly to the degree of

¹¹² *Directory Assistance Order*, 14 FCC Rcd at 16270, ¶ 31.

¹¹³ See *Fourth Advanced Services Report*, 2004 FCC LEXIS 5157, at *12. *Fourth Advanced*.

¹¹⁴ *Id.*

¹¹⁵ First Report and Order, *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 F.C.C.2d 1, 31, ¶ 88 (1980).

market power it possesses. Absent market power, price differentials should generally reflect only competitive forces at work."¹¹⁶

Second, instead of protecting consumers, the regulatory restraints placed on ILECs harm them by preventing ILECs from providing tailored broadband offerings that respond to consumers' specific needs. As discussed above, ILECs have every incentive to make market-based deals with independent ISPs in order to ensure maximum utilization of the capacity of the ILECs' broadband facilities. Common-carrier regulation thus deprives consumers of choices that would respond to their needs.

Third, for all these same reasons, the current regulatory requirements are not necessary to serve the public interest, but in fact are contrary to the public interest. And, again, subjecting ILECs to these requirements is fundamentally inconsistent with this Commission's commitment to creating a regime that does not pick winners and losers by imposing asymmetrical regulation on a subset of broadband providers.

The fact is that, right now, cable providers are entering into private-carriage arrangements with independent ISPs. Far from concluding that such a practice is contrary to the public interest, the Commission has taken no steps to require that they act as common carriers and has tentatively concluded that, to the extent Title II applied, it would forbear from applying it to cable companies *in toto*. As a matter of both law and logic, the Commission's decision to permit the market leaders to offer their services through private carriage arrangements necessarily means that there is no policy reason for refusing to grant the same relief to secondary market players. Any other result would contravene both basic principles of reasoned

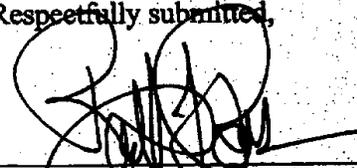
¹¹⁶ Notice of Inquiry and Proposed Rulemaking, *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 77 F.C.C.2d 308, 337, ¶ 53 (1979).

decisionmaking as well as the Commission's own stated commitment to "create a rational framework for the regulation of competing services that are provided via different technologies and network architectures" that will "promot[e] development and deployment of multiple platforms" and thus "ensur[e] that public demands and needs can be met."¹¹⁷ The Commission should, at long last, act on that insight and move wireline broadband providers closer to a level playing field with cable providers by granting this petition.

IV. CONCLUSION

To the extent they would otherwise apply, the Commission should forbear from applying to ILEC broadband service (1) *Computer Inquiry* requirements to the extent they require ILECs to tariff and offer the transport component of ILEC broadband services on a stand-alone basis (as well as the Part 64 accounting requirements discussed above) and (2) Title II common-carrier requirements.

Respectfully submitted,



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¹¹⁷ *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4802, ¶ 6.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
)
Petition of BellSouth Telecommunications, Inc.)
For Forbearance Under 47 U.S.C. § 160(c) From) WC Docket No. _____
Application of *Computer Inquiry* and Title II)
Common-Carriage Requirements.)
)

AFFIDAVIT OF ERIC FOGLE

I, Eric Fogle, being of lawful age and duly sworn upon my oath, depose and state:

I. PROFESSIONAL EXPERIENCE

1. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director in BellSouth Telecommunications, Inc. ("BellSouth") Interconnection Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I attended the University of Missouri in Columbia, where I earned a Master of Science in Electrical Engineering Degree in 1993 and Emory University in Atlanta, where I earned a Master of Business Administration degree in 1996. After graduation from the University of Missouri, I began employment with AT&T as a Network Engineer, and joined BellSouth in early 1998 as a Business Development Analyst in the Product Commercialization Unit. From July 2000 through May 2003, I led the Wholesale Broadband Marketing group within BellSouth. I assumed my current position in Interconnection Operations in June of 2003. First, as a Business Analyst, and then as the Director of the Wholesale Broadband Marketing Group and continuing in my current position, I have been, and continue to be, actively involved in the evolution and growth of BellSouth's broadband network and product development, including the initial rollout of BellSouth's Regional

Broadband Aggregation Network ("RBAN"), and its subsequent improvements.

II. PURPOSE OF AFFIDAVIT

2. The purpose of this affidavit is to describe some of the product development difficulties and additional costs BellSouth has incurred as a result of the current set of *Computer Inquiry* obligations.

III. AFFIDAVIT

Product Development Difficulties

3. BellSouth created RBAN as an enhanced service offering at one (1) Internet Service Providers ("ISPs") request. In discussions with this ISP, it became clear that this ISP was not interested in purchasing the basic tariffed DSL transmission offering that BellSouth is obligated to provide under existing regulations, but rather was interested in purchasing a more efficient broadband information service arrangement that included regional traffic aggregation and protocol conversion. In order to develop a broadband service that incorporated protocol conversion, BellSouth was forced by the *Computer Inquiry* rules to create a completely new enhanced service offering, even though existing equipment in BellSouth's regulated network was fully capable of performing this task. Nevertheless, and despite the fact that no other company had expressed interest in obtaining the basic transmission underlying this RBAN offering, BellSouth was required by existing *Computer Inquiry* rules to make several changes to its tariff and its network systems to support the development and competitive position of such a pure transmission product before it could meaningfully commence the development of its RBAN product. The two-

year delay in BellSouth's ability to deliver RBAN was due in large part to the imposition of these kinds of regulatory burdens.

4. Moreover, because of the *Computer Inquiry* requirements, almost all enhancements to RBAN have had to be implemented via a time consuming two-stage process. BellSouth must first make any changes to the underlying tariffed transmission functionality available to all ISPs through the tariff development and filing process, and then develop the corresponding non-regulated enhanced service offering. Thus, in the past year, BellSouth has rolled out a number of enhancements to its non-regulated RBAN (or other Internet access) services aimed to meet the needs of its smaller wholesale ISP customers via this two-stage process. This two-stage process caused considerable delay in developing new products. Specifically, even though BellSouth had tariffed its 256 kilobit per second ("kbps") Digital Subscriber Line ("DSL") service in August 2003, it was only able to make available its RBAN service in May 2004 (a delay of more than six months). Due to increased competitive pressure by cable companies rolling out higher-speed cable modem services, BellSouth developed and deployed a 3 megabit per second ("Mbps") DSL service. BellSouth's offering of this 3 Mbps DSL service was delayed due to the necessity of redirecting limited development resources to implement state commission orders requiring BellSouth to provide its DSL services over CLEC loops. It then took three additional months for BellSouth to utilize the functionality gained with the development of the 256 kbps service within RBAN to make its 3 Mbps DSL available in RBAN in a manner consistent with *Computer Inquiry* requirements. In addition, since BellSouth can not afford to competitively develop products on multiple architectures, its 256kbps and 3Mbps DSL services used in RBAN are only available via BellSouth's more efficient End User Aggregation ("EUA") interface.

5. Earthlink has been one of the strongest advocates for continuing existing *Computer Inquiry* regulations. Earthlink's position is not consistent with their actions. Since Earthlink's May 12, 2003 ex parte presentation to the Commission, BellSouth has filed yet another Open Network Architecture ("ONA") report, and Earthlink has not purchased any of these ONA services, nor provided any requests for new ONA services. Since Earthlink is not purchasing any of these ONA services required by current regulation, Earthlink is apparently relying on a broadband service provided by a competitor, or the non-regulated BellSouth service announced in a joint press release on March 24, 2003 where "BellSouth is providing Earthlink with a new, enhanced broadband service..." That non-regulated BellSouth service, and any product requests related to any other enhanced service offering, could be made available via a commercial agreement between Earthlink and BellSouth, and would not rely on the ONA process Earthlink claims is necessary.
6. BellSouth continues to strive to meet the needs of all of its ISP customers. ISPs' business plans and product needs come in many shapes and sizes. This variation leads to each ISP having individual needs that, under the current regulatory requirements, must be negotiated and offered via a universal tariff. Addressing the individual needs of hundreds of ISPs to attempt a "one size fits all" tariff is a complex task that takes considerable time, and generally is not satisfactory to any individual ISP. In spite of this complexity, BellSouth has continued to develop its services to meet the needs of smaller ISPs. Many smaller ISPs have only recently started purchasing BellSouth's tariffed EUA service instead of its Virtual Circuit ("VC") based DSL service (nearly two (2) years after it was originally tariffed). This is because BellSouth has continued to work its way through the regulatory complexities described above and offered a number of smaller ISPs friendly

enhancements to this platform. For example, existing EUA platforms had only DS3/OC3/OC12 interfaces (suitable for larger ISPs with significant customer volume). Many of BellSouth's smaller ISP customers are simply not large enough to efficiently utilize a full DS3 or larger connection to BellSouth's network, so BellSouth developed a DS1 EUA interface, as well as the ability to aggregate an ISP's EUA traffic onto an existing Asynchronous Transfer Mode ("ATM") interface. While BellSouth continued to develop the new interfaces, it assisted smaller ISPs to manage through the transition. For example, BellSouth has provided multiple promotions, including providing a DS3 EUA interface at DS1 rates for over six months. This promotion was made available via a universal tariff, but it was necessary to devote a significant amount of time to carefully develop and word the tariff so that it would benefit the targeted smaller ISPs. BellSouth's efforts to innovate, in spite of the regulatory hurdles, demonstrates its continued desire to serve the needs of the wholesale ISP market, including the smaller ISPs. However, BellSouth would be in a better position to meet the needs of both large and small ISPs, via modifications to its enhanced service offerings sold under commercial contracts, in a faster and more flexible manner if it were relieved of the wasteful burdens imposed by the current *Computer Inquiry* requirements.

Computer Inquiry Costs

7. BellSouth has incurred significant operational costs to comply with the *Computer Inquiry* rules. In 2003, these excessive costs directly attributable to the *Computer Inquiry* rules amounted to approximately \$28.5 Million, and are estimated to cost BellSouth another \$24.5 Million in 2004. BellSouth conservatively estimates that the increased annual cost of the redundant personnel located in support centers needed for using existing separate

regulated and non-regulated systems for customer trouble handling processes alone has grown from approximately \$13.5 Million in 2003, to an estimated \$15 Million in 2004. This growth has been largely in the redundant personnel required in BellSouth's ISP and Broadband Support operations. For example, many customer trouble phone calls require both a non-regulated and a regulated technician to effectively troubleshoot the end-user customer's trouble using existing regulated and non-regulated systems. These redundant personnel cost BellSouth over \$6 Million annually, and are a significant driver of the total growth of the costs associated with the *Computer Inquiry* rules (as subscriber volumes have increased). If the *Computer Inquiry* rules at issue in BellSouth's petition were removed, BellSouth could more efficiently integrate its customer support groups so that a single customer support representative could access all of the necessary systems, and could handle a customer's trouble in its entirety, not just in regulated and non-regulated piece parts. Non-regulated and regulated (dual) dispatches on the same customer trouble is another unnecessary cost resulting from the *Computer Inquiry* rules. Due to improvements in repair processes, and a relentless drive to improve its customers' service experiences, BellSouth has reduced the overall number of dispatches, and therefore reduced the costs associated with dual dispatches. The estimated annual cost of the operational separation of these dispatch and repair processes has been reduced from approximately \$3.5 Million in 2003, to an estimated \$2 Million in 2004. If the *Computer Inquiry* rules at issue in BellSouth's petition were removed, BellSouth could more efficiently designate a single organization to be responsible for all dispatches to a customer's location regardless of the location of the trouble. This would eliminate any possibility of a non-regulated group, and a regulated group both dispatching repair personnel on the same customer trouble. Further, the utilization of separate support

organizations and/or separate existing regulated and non-regulated support systems for the basic and information service parts of otherwise integrated broadband information services leads to the creation of unnecessary system redundancy, including ticketing and troubleshooting systems, and caused additional estimated costs of \$9.5 Million in 2003, and an estimated additional \$5.5 Million in 2004. The majority of system costs in 2003 and 2004 were directed towards the creation of ticketing and troubleshooting systems that effectively replicate the regulated troubleshooting data and trouble status information readily available in regulated systems through a Comparably Efficient Interconnection ("CEI") interface to BellSouth's ISP customers (including non-regulated groups). If the *Computer Inquiry* rules at issue in BellSouth's petition were removed, BellSouth could more efficiently provide direct access to the required ticketing systems to a single support group, without building costly interfaces that almost all competing ISPs do not utilize.

8. Further, because alarm monitoring/surveillance activities must be separated for deregulated and regulated equipment and because equipment manufacturers do not incorporate separate interfaces into their product offerings for deregulated and regulated monitoring/surveillance, different monitoring systems and alarm clearing processes must be utilized, causing BellSouth to incur approximately \$2.0 Million in additional annual cost to support these services in both 2003 and 2004. If the *Computer Inquiry* rules at issue in BellSouth's petition were removed, BellSouth could collapse the dual alarm monitoring/surveillance of both organizations into a single group. This would greatly simplify the infrastructure, process and manpower requirements associated with staffing two (2) 7 x 24 organizations. The above described costs are those that could be quantified and are directly attributable to the *Computer Inquiry* rules. There are substantial additional costs caused by the outdated *Computer Inquiry* regime that are not easily

quantified and have not been included herein. These additional costs fall into the areas of lost revenue due to delays in rolling out new products, increased costs for network equipment designed and deployed to comply with the Computer Inquiry rules, and the considerable time and effort required by support organizations (product management, project management, software developers, regulatory, legal, etc.) spent in developing products and services that comply with the complicated web of existing Computer Inquiry rules.

9. This concludes my affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

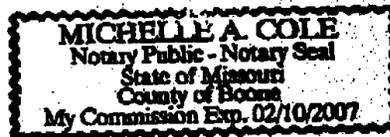


Eric Fogle
Director - Interconnection Operations

Subscribed and sworn to before me

This 27 day of October, 2004


Notary Public Michelle A. Cole



Equal Access Obligations

<i>Source of EA Req.</i>	<i>Carriers Required to Provide EA</i>	<i>Parties entitled to EA</i>	<i>Elements of EA Required</i>	<i>Geographic Markets Covered</i>
AT&A MFJ	BOCS	"all interexchange carriers and informa- tion service providers"	"exchange access information access and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality, and provided to AT&T and its affiliates."	BOC INTER LATA
GTE Consent Decree	GTE	Modeled on AT&T MFJ	Modeled on AT&T MFJ	
FCC Order	non-GTE independent ILECs		same as AT&T MJF	
State Orders	don't know may vary	don't know	don't know	Intra LATA

Equal Access Obligations

<i>Source of EA Req.</i>	<i>Carriers Required to Provide EA</i>	<i>Parties entitled to EA</i>	<i>Elements of EA Required</i>	<i>Geographic Markets Covered</i>
§ 251 © (3)	all LECs	competing providers of telephone exchange service and telephone toll service	1) dialing parity 2) ND access to tel. 3) ND access to operator services to directory listing 6) no unreasonable dialing delays	Inter and Intra LATA
§ 251 © (2) *	all ILECs	facilities and equipment of any requesting tele communications carrier	<u>Interconnection</u> for transmission and routing of tel. service and exchange access that is equal in quality to that provided to the ILEC itself or any other party on rates, term, and conditions that are just reasonable and non discriminatory	Inter and Intra LATA

*} may no longer be in effect

**} may not be relevant. Interpreted very narrowly in the Local Competition Order





