Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of BellSouth Telecommunications, Inc.	)	
For Forbearance Under 47 U.S.C. § 160(c) From	)	WC Docket No. 04-405
Application of *Computer Inquiry* and Title II	)	
Common-Carriage Requirements	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY…….……. 1

II. DISCUSSION…… 2

A. BellSouth Correctly Observes that the Marketplace for Broadband Services Is Highly Competitive……..……. 2

B. The Commission's Regulations for ILEC-Provided Broadband Services Are Out of Step With Marketplace Realities…….. 5

C. BellSouth Has Satisfied the Statutory Criteria for Forbearance……. 9

III. CONCLUSION…….. 13

I. INTRODUCTION AND SUMMARY

SBC Communications, Inc., and its affiliated companies (collectively, SBC) submit the following comments in support of BellSouth's above-captioned petition for forbearance.[1] As BellSouth demonstrates, and the Commission's own data show, the market for broadband services is highly competitive. Cable modem service has a commanding lead in the broadband market, while the wireline broadband services offered by telephone companies are in a distant second place. Inexplicably, the Commission's reflexive maintenance of legacy regulations completely ignores these marketplace realities and treats providers of wireline broadband as if they were the dominant providers of broadband service. Despite the Commission's repeated musings about the need to reform its disparate regulatory framework for broadband, *several years* have passed since the Commission launched two key wireline broadband reform proceedings and the Commission's reform efforts remain stalled in regulatory gridlock. Indeed, it is a particularly disappointing coincidence that today, December 20, 2004, marks the third

[1] Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Application of *Computer Inquiry* and Title II Common-Carriage Requirements, WC Docket No. 04-405 (Oct. 27, 2004) (BellSouth Petition). As the Commission is aware, SBC filed a petition for forbearance regarding IP platform services and a separate but related petition for declaratory ruling regarding these services. Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No. 04-29 (filed Feb. 5, 2004); Petition of SBC Communications Inc. for a Declaratory Ruling Regarding IP Platform Services, WC Docket No. 04-36 (filed Feb. 5, 2004). The arguments in SBC's petitions are based on the unique nature of the Internet Protocol (IP) and the unique characteristics of IP-enabled services, and we believe those petitions, as well as the Commission's *IP-Enabled Services NPRM*, are the appropriate vehicles in which the Commission should address IP-enabled services. *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services NPRM*). Accordingly, SBC's comments on BellSouth's petition for forbearance, and our references to "broadband" in these comments, are intended to address only legacy, non-IP enabled services covered by BellSouth's petition (e.g., traditional xDSL services, Asynchronous Transfer Mode (ATM) services, Frame Relay services, and other similar services).

anniversary of the *Non-Dominance NPRM*,[2] and nearly the third anniversary of the *Wireline Broadband NPRM*,[3] both of which remain dormant at the Commission.

In light of the Commission's complacency, it is hardly surprising that BellSouth felt compelled to file the instant petition for forbearance. In fact, much of the Commission action that BellSouth now requests in order to level the playing field with cable broadband providers should already have been taken by the Commission in the *Non-Dominance NPRM* and the *Wireline Broadband NPRM*. Notwithstanding the pendency of those proceedings, however, BellSouth has fully satisfied the statutory criteria for forbearance and, as discussed below, the Commission should expeditiously grant BellSouth's petition.[4]

II. DISCUSSION

A. BellSouth Correctly Observes that the Marketplace for Broadband Services Is Highly Competitive.

In its petition, BellSouth points out that when the Commission adopted the *Computer Inquiry* requirements and many of the other common carrier regulations that now apply to today's ILEC legacy broadband services, it did so in a "narrowband world in which a telephone

[2] *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (*Non-Dominance NPRM*).

[3] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Wireline Broadband NPRM*).

[4] BellSouth limits the broadband services covered by its petition to those capable of providing speeds of at least 200 Kbps in each direction. BellSouth Petition at 1 n.2. SBC believes, however, that broadband services are more appropriately understood as services that offer speeds of at least 200 Kbps in at least one direction (also known as "high-speed" services by the Commission), because consumers are choosing these services to meet their broadband needs today. *See* SBC Comments, GN Docket No. 04-54 (filed May 10, 2004) at 5-8. *See also Local Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, FCC 04-266 ¶3 n.7 (released Nov. 12, 2004) ("We use the terms 'broadband' and 'high-speed' as synonymous in the Form 477 program, to refer to connections that transfer information at rates exceeding 200 kbps in *at least one* direction.") (emphasis in original). Accordingly, SBC urges the Commission to include high-speed services within the scope of any relief it grants in response to BellSouth's Petition.

line was the sole mechanism for transmitting information services."[5] Indeed, as the Commission itself has recognized, "the core assumption underlying the *Computer Inquiries* was that the telephone network is the primary, if not exclusive, means through which information service providers can obtain access to customers."[6]

While such assumptions might have been reasonable more than two decades ago, they are entirely *unreasonable* today. As BellSouth explains, the current broadband marketplace is highly competitive and ILEC services are no longer the exclusive transmission mechanisms for information services.[7] In fact, ILECs are not even the leading providers of broadband services today. As the Commission is well aware, the cable industry is by far the market leader for broadband service in the U.S. The Commission's own data show that, as of June 2003, there were roughly 28.2 million high-speed lines in the U.S. (at least 200 Kbps in one direction), and cable companies controlled 16.4 million (58 percent) of those lines.[8] By contrast all four RBOCs *combined* provided service to only 8.7 million high-speed lines (31 percent of the market).[9] Cable's commanding lead in the market for "advanced services" (at least 200 kbps in both directions) is far more striking: 15.3 million cable modem lines (75 percent of the market) compared to 4.3 million ADSL and "other wireline" lines (21 percent of the market).[10]

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[5] BellSouth Petition at 7.

[6] *Wireline Broadband NPRM* ¶ 36.

[7] BellSouth Petition at 7-13.

[8] *High-Speed Services for Internet Access: Status as of December 31, 2003*, Wireline Competition Bureau, FCC, at Table 1 (June 2004) (*FCC June 2004 Broadband Data Report*). Consistent with past releases, we expect the Commission to issue updated broadband data in the near future. We will address that data (if available) in any reply comments that we may file in this docket.

[9] *Id*. at Table 5.

[10] *Id.* at Table 2.

Despite cable's lead in the provision of broadband services, the market for these services is intensely competitive. In addition to cable providers and telephone companies, satellite providers, licensed wireless providers offering both fixed and mobile services, providers of unlicensed wireless services (such as Wi-Fi), and broadband over powerline (BPL) companies are all offering broadband services that compete for consumer dollars.[11] The Commission itself recently cited "the existence of numerous emerging broadband competitors" and observed that "actual and potential intermodal competition" informs competitive decision-making in the marketplace.[12] Indeed, SBC has been aggressively responding to competitive pressure from cable companies and other broadband providers by, among other things, *lowering* the price of our DSL Internet access service.[13] At the same time, SBC and other providers have been rolling out higher-speed broadband services to meet consumer demand and to stay competitive in the marketplace. These market-driven product and pricing responses clearly show that the fundamental premise of BellSouth's petition is beyond doubt: the broadband marketplace is highly competitive.

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[11] *See* BellSouth Petition at 8-13; *Broadband Competition: May 2004* (attached as Appendix A to Competition in the Provision of Voice over IP and Other IP-Enabled Services, WC Docket No. 04-36, jointly filed May 28, 2004 by BellSouth, Qwest, SBC and Verizon). *See also Reaching Critical Mass: The US Broadband Market*, In-Stat MDR (March 2004); *Welcome to the Wi-Fi Revolution*, CNN (Sept. 8, 2003); *PowerPlay*, Time Magazine (May 3, 2004); *The Next Information Age*, CNN (Oct. 15, 2003); *Broadband Over Power Lines: Finally…After All Those Years*, Thomas Weisel Partners (May 3, 2004).

[12] *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, FCC 04-254 ¶22 (released Oct. 27, 2004) (*251/271 Forbearance Order*).

[13] *See* SBC Reply Comments, GN Docket No. 04-54 (filed May 24, 2004) at 3-8. *See also* BellSouth Petition at 9 (citing reports of price decreases for DSL service). SBC's separate affiliate, SBC Internet Services (SBCIS), is the entity that actually provides DSL Internet access service to consumers. SBCIS purchases wholesale DSL transport from SBC Advanced Solutions, Inc. (ASI), which is SBC's advanced services separate affiliate. For the sake of simplicity, however, we refer to SBC as the provider of DSL Internet access service in these comments.

B. The Commission's Regulations for ILEC-Provided Broadband Services Are Out of Step With Marketplace Realities.

The Commission has long recognized the critical need to ensure that its policies and rules keep pace with technological change and marketplace developments.[14] But when it comes to broadband, the Commission's policies and rules are woefully out of step with marketplace realities. As discussed above, cable companies dominate their telephone company competitors in the broadband market. But, if one were to completely ignore the mounds of market data and focus solely on the Commission's policies and rules for regulating broadband, one would be forced to conclude that the Commission is laboring under the misimpression that telephone companies exercise near complete control over the broadband marketplace.

Indeed, as BellSouth points out, in March 2002 the Commission concluded that as a matter of both law and policy, cable providers should not be subject to *Computer Inquiry* requirements or Title II common-carrier regulation in their provision of broadband services.[15] In effect, the Commission's decision declared the cable industry to be essentially unregulated in the provision of broadband. Yet nearly three years after that decision, and despite their second-place status in the broadband marketplace, the telephone industry is still subject to the very same regulations that the Commission found to be inappropriate and unwarranted for cable broadband providers -- regulations that were designed for a bygone era of monopoly telephone service, not

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[14] *See Authorization and Use of Software Defined Radios*, ET Docket No. 00-47, Notice of Proposed Rulemaking, 15 FCC Rcd 24,442 ¶20 (2000) ("In proposing new rules, we seek to ensure that our regulatory requirements keep pace with technology development."); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398 (1999) (*First 706 Report*) (Separate Statement of Commissioner Michael K. Powell: "The greatest danger for regulators, however, is our inability to keep pace with the speed of developments and innovations that the new networks will unleash. We must recognize that these new technologies, combined with the pro-competitive provisions of the 1996 Act, are shattering the traditional telecommunications paradigm.") (footnote omitted).

[15] BellSouth Petition at 13 (citing *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (*Cable Modem Declaratory Ruling*)).

today's competitive market for broadband service. By passively maintaining these legacy rules for existing wireline broadband services, the Commission has effectively made a decision to favor all other forms of broadband over wireline broadband services.

ILECs who offer wireline broadband service today, such as SBC, are subject to a plethora of regulations that impose a substantial burden on company resources, in terms of both time and expense, which could otherwise be devoted to the development of new and innovative broadband services.[16] For example, unlike cable companies, ILECs that offer broadband are required to: make their transmission facilities available to competitors pursuant to the *Computer Inquiry* requirements;[17] provide collocation space to their competitors; resell their services to competitors; interconnect with their competitors; comply with pricing and non-discrimination standards; comply with regulatory accounting requirements (such as Part 64 cost allocations);[18] contribute to universal service support mechanisms; and comply with other burdensome regulations (*e.g.*, SBC must provide advanced services through a separate affiliate so long as it wishes to avail itself of the Commission's forbearance from the tariffing requirements that would otherwise apply to those services).[19] Despite their commanding position in the broadband marketplace, cable companies are subject to none of these obligations.

The disparate regulatory obligations between DSL service and cable modem service has real consequences that severely slant the competitive playing field in cable's favor and directly

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[16] *See* BellSouth Petition at 21-23 (describing burdens on broadband services from legacy regulations).

[17] *See Wireline Broadband NPRM* ¶¶ 33-42.

[18] *See* BellSouth Petition at 24 (explaining why Part 64 cost allocation requirements for broadband information services are unnecessary under price cap regulation).

[19] *See Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Memorandum Opinion and Order, 17 FCC Rcd 27000 (2002).

undermine Congress's attempt to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans . . . ."[20] A prime example is universal service. Today, DSL service providers are required to contribute to the federal universal service fund, but cable modem service providers are not.[21] With the federal universal service contribution factor currently set at 8.9 percent, and scheduled to rise to 10.7 percent in the first quarter of 2005,[22] DSL providers like SBC's advanced services affiliate, ASI, are obligated to pay an average of more than $2.00 per line per month into the federal universal service fund. On an aggregate annual basis, this amounted to approximately $80 million in universal service contributions on DSL services by ASI in 2003. We expect that amount to approach $100 million for 2004 and rise even higher in 2005. This places DSL providers like ASI at a tremendous competitive disadvantage compared to cable modem service providers, who have no universal service contribution obligations whatsoever.

Moreover, it is hard to fathom how the Commission's one-sided approach to universal service contributions for broadband services is consistent with Congress's mandate that such contributions be imposed "on an equitable and nondiscriminatory basis."[23] It is entirely inequitable and highly discriminatory to treat DSL service and cable modem service differently for universal service contribution purposes when these two services are virtually identical in all

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[20] *See* Joint Explanatory Statement of the Committee of the Conference, S. Rep. No. 230, 104th Congress, 2d Sess. 1, 113 (1996).

[21] *Wireline Broadband NPRM* ¶¶ 72-79.

[22] *See Proposed Fourth Quarter 2004 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 04-2976 (released Sept. 16, 2004); *Proposed First Quarter 2005 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 04-3902 (released Dec. 13, 2004).

[23] *See* 47 U.S.C. § 254(d).

relevant respects. As Commissioner Abernathy stated, "the fact that LECs providing DSL service currently contribute to universal service, while cable modem providers do not, creates an obvious competitive distortion. We should either assess both broadband platforms or neither."[24] Indeed, the Commission's discriminatory contribution regime for broadband providers is a textbook example of arbitrary and capricious decision-making and would be highly unlikely to survive judicial scrutiny if challenged in court.[25]

The Commission should immediately end this competitive disparity by declaring that: (a) *both* DSL service providers and cable modem service providers must contribute to universal service; or (b) *neither* DSL service providers nor cable modem service providers must contribute to universal service. While SBC would prefer the former,[26] either outcome is preferable to the current situation where only DSL service providers contribute. And the Commission need not launch a brand new proceeding to resolve this matter. The question of universal service contributions, like so many other urgent broadband issues, has been raised in a notice of proposed rulemaking (the *Wireline NPRM*), has been put out for comment, has been the subject

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[24] Separate Statement of Commissioner Kathleen Q. Abernathy, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (2002). *See also* Statement of Commissioner Michael J. Copps, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (2002) ("I also urge the Commission to address expeditiously the issue of broadband providers' contribution to universal service. I am disappointed that the current disparity under which DSL providers contribute and cable modem providers do not will continue for an indefinite period of time.").

[25] *See Chadmore Communications, Inc. v. FCC*, 113 F.3d 235, 242 (D.C. Cir. 1997) ("We have long held that an agency must provide an adequate explanation before it treats similarly situated parties differently."); *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993) ("[W]e remind the Commission of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment."); *Melody Music, Inc .v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965) (The Commission "must explain its reasons [for disparate treatment] and do more than enumerate factual differences, if any, . . . it must explain the relevance of those differences to the purposes of the Federal Communications Act.").

[26] *See* SBC Comments, CC Docket No. 02-33, at 41-46 (May 3, 2002) ("The better approach, and the one that is more consistent with section 254 of the Act, is to require all providers of interstate telecommunications to contribute to the universal service fund.").

of a comprehensive record, and has been pending before the Commission for nearly three years.[27] The only thing left for the Commission to do is act.

Indeed, in light of the Commission's failure to act on the *Wireline NPRM* (as well as the *Non-Dominance NPRM*) over the last three years, it is not surprising that BellSouth filed the instant forbearance petition.[28] By leaving so many critical broadband issues unresolved, the Commission is unnecessarily prolonging regulatory uncertainty in the marketplace and disincenting broadband providers from making the massive investment required to build out the next generation of broadband networks across our nation. SBC urges the Commission to create a stable regulatory environment for investment in the U.S. broadband marketplace by fully and finally resolving its pending broadband proceedings and granting BellSouth's forbearance petition.

C. BellSouth Has Satisfied the Statutory Criteria for Forbearance.

Given the Commission's inability to resolve the *Wireline NPRM* and the *Non-Dominance NPRM*, the Commission should grant -- and is legally *compelled* to grant -- BellSouth's petition for forbearance. Under section 10 of the Communications Act, the Commission is required to forbear from applying regulations that are (1) "not necessary to ensure that . . . charges, practices, classifications, or regulations . . . are just and reasonable and are not unjustly or unreasonably discriminatory," (2) "not necessary for the protection of consumers," and (3) not consistent with "the public interest."[29] Forbearance under section 10 is not discretionary.

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[27] *See Wireline Broadband NPRM* ¶¶ 65-83.

[28] *See* BellSouth Petition at 5.

[29] 47 U.S.C. § 160(a).

Rather, section 10 provides that the Commission "shall forbear" when the statutory criteria are satisfied,[30] and it is abundantly clear that BellSouth has satisfied those criteria here.

Just and Reasonable Charges. The Commission has expressed a strong preference for allowing market forces -- not regulations -- to ensure that charges and practices are just and reasonable, and are not unjustly or unreasonably discriminatory.[31] As discussed above, the market for broadband services in the U.S. is already highly competitive.[32] Thus, it is quite clear that the Commission's *Computer Inquiry* requirements and other legacy common carrier regulations are not necessary to ensure just and reasonable rates and practices for broadband services. In fact, the Commission recently relied on the competitive nature of the broadband market as a reason to *grant* forbearance:

> [W]e specifically reject the assertions of competitive carriers that forbearance should be denied because the BOCs either are not subject to competition with respect to their broadband offerings, or are constrained only by a duopolistic relationship with cable operators. Again, we refuse to take the static view suggested by some competitors of this dynamic broadband market, thus leveling the terms of competition, providing real competitive choice, and furthering the goal of ensuring just, reasonable and nondiscriminatory rates, terms and conditions for these services. As explained above, broadband technologies are developing and we expect intermodal competition to become increasingly robust,

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[30] *Id*.

[31] *See Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)*, CC Docket No. 81-893, Report and Order, 95 F.C.C.2d 1276 ¶ 38 (1983) ("Regulation often can distort the workings of the market by imposing costs on market participants which they otherwise would not have to bear. . . . [T]he advent and growth of competition in a particular market eliminates the need for continued regulation."); A*ccess Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 ¶ 263 (1997) ("Competitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production. Accordingly, where competition develops, it should be relied upon as much as possible to protect consumers and the public interest."); *2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, Notice of Proposed Rulemaking, 15 FCC Rcd 20008 ¶ 18 (2000) ("requiring or permitting non-dominant carriers under a permissive detariffing policy to file tariffs impedes vigorous competition in the market for interexchange services by: (1) removing the incentives for competitive price discounting; (2) reducing or eliminating carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing or discouraging consumers from seeking or obtaining service arrangements specifically tailored to their needs.").

[32] *See supra* Section II.A.

> including providers using platforms such as satellite, power lines and fixed and mobile wireless in addition to the cable providers and BOCs.[33]

Moreover, as BellSouth aptly notes, the Commission has already waived the *Computer Inquiry* requirements for providers of cable broadband service (who lead the broadband market) and tentatively concluded that it should forbear from any Title II common carrier regulation of that service (to the extent that such regulation might otherwise apply).[34] If these regulations are not necessary to ensure the charges and practices for cable broadband service are just and reasonable, it would be absurd to conclude that such regulations are necessary for wireline broadband services, which rank a distant second-place in the broadband marketplace.

Protection of Consumers. BellSouth correctly argues that the Commission's *Computer Inquiry* requirements and other common carrier regulations are not necessary for the "protection of consumers," and, in fact, the continued imposition of these requirements is affirmatively harming consumers by raising costs and impeding competition and investment.[35] Indeed, in March 2002, the Commission came to this very same conclusion in the *Cable Modem Declaratory Ruling*, where it decided to waive the application of the *Computer Inquiry* requirements to cable modem service, and tentatively concluded that it should forbear from the application of any common carrier regulations to cable modem service because "enforcement of Title II provisions and common carrier regulation is not necessary for the protection of consumers."[36]

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[33] *251/271 Forbearance Order* ¶ 29.

[34] BellSouth Petition at 20.

[35] BellSouth Petition at 21-26.

[36] *Cable Modem Declaratory Ruling*, ¶¶ 45-47, 95.

The Commission's own data on the broadband marketplace demonstrate the wisdom of this approach. In the years following the *Cable Modem Declaratory Ruling*, consumers have continued to sign-up for cable modem service in droves. Between June 2002 and December 2003, cable modem service providers added more than 7 million new lines (compared to the roughly 4 million xDSL lines added by telephone companies).[37] Thus, despite what are sure to be howls of protest from those who claim the imposition of *Computer Inquiry* requirements and other common carrier regulations are necessary to protect consumers, it appears that *consumers themselves* are quite fond of subscribing to cable modem service, which is unencumbered by these legacy regulations. And if these legacy regulations are unnecessary for the protection of consumers who have chosen the leading form of broadband service (cable modem service), they are certainly not needed to protect consumers who have chosen the second-place form of broadband service (xDSL service).

The Public Interest. There is no dispute that the widespread deployment of affordable broadband services is in the public interest. Congress made this perfectly clear in the 1996 Act, the whole purpose of which is to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans . . . ."[38]

Congress also specifically urged the Commission to ensure that its policies fostered the availability of "[a]ccess to advanced telecommunications and information services" in "all

[37] *FCC June 2004 Broadband Data Report* at Table 1.

[38] *See* Joint Explanatory Statement of the Committee of the Conference, S. Rep. No. 230, 104th Congress, 2d Sess. 1, 113 (1996). *See also* 47 U.S.C. § 230(b)(2) ("It is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.")

regions of the Nation," and that such services are "quality services" offered at "affordable rates."[39]

As BellSouth points out, the best way to serve the public interest and achieve widespread deployment of affordable broadband services is for the Commission to establish a rational regulatory framework that fosters efficient competition among broadband providers.[40] But contrary to Congress's instructions and sound public policy, the Commission's current regulatory framework continues to create an artificial regulatory advantage for cable modem service providers, who are not subject to any of the *Computer Inquiry* requirements or other legacy common carrier regulations, while their wireline broadband service competitors are subjected to these burdensome obligations. Thus, forbearance is appropriate – indeed, it is urgently needed – to serve the public interest by eliminating outmoded and unwarranted common carrier regulations that are impeding full and fair competition in the broadband marketplace.

III. CONCLUSION

For the forgoing reasons, the Commission should grant BellSouth's petition for forbearance.

Respectfully Submitted,

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[39] 47 U.S.C. § 254(b)(1), (2).

[40] BellSouth Petition at 27-29.