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

In the matter of	)	
	)	
Petition of BellSouth	)	WC 04-405
Telecommunications, Inc. for Forbearance	)	
Under 47 U.S.C. § 160(c) from Application	)	
of *Computer Inquiry* and Title II Common	)	
Carriage Requirements	)	

OPPOSITION OF MCI, INC.

Kecia Boney Lewis
Alan Buzacott
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 736-6270

Dated: December 20, 2004

TABLE OF CONTENTS

Executive Summary iii

I. Introduction. 1

II. CONTINUED ECONOMIC REGULATION IS NECESSARY IN ORDER TO ENSURE THAT RATES ARE JUST, REASONABLE AND NONDISCRIMINATORY. 4

A. Insufficient Competition Exists to Constrain BellSouth's Market Power. .5
B. BellSouth's Petition Fails to Satisfy Section 10(a). 7
C. Absent Computer II and Title II Requirements, ISPs Would Have No Alternatives for Underlying Transmission Services 10
D. The Requirements of Sections 251(c) and 271 Have Not Been Fully Met. 11

III. FORBEARANCE OF *COMPUTER II* AND TITLE II IS CONTRARY TO THE PUBLIC INTEREST. 12

A. Part 64 Remains Necessary to Protect Consumers. 12
B. BellSouth Would Be Exempt From Universal Service Contributions. . . 14

CONCLUSION. 15

EXECUTIVE SUMMARY

MCI strongly opposes BellSouth's request for forbearance from *Computer II* and Title II regulations that apply to the transport component of its broadband services. Eliminating the requirement that incumbent LECs unbundle the telecommunications transport functionality that they use to provide information services, and offer it as a tariffed service, would be unwise policy because it would harm competition in the information services market.

As the Commission considers this and other BOC petitions for forbearance from regulation of key bottleneck transmission facilities, the Commission should conduct its analysis through what has been called a "layers approach." MCI believes that this is the most appropriate policy framework, an approach that distinguishes between the physical layer, where bottlenecks still exist, and the application and content layers, where Internet access exists, that are subject to competition and market discipline.

The market for underlying broadband transmission services is not competitive. Although BellSouth claims that ISPs have competitive alternatives to access end user customers, it fails to demonstrate this in its Petition. Instead, its analysis focuses on the competitive alternatives *end users* have for retail Internet access services. MCI does not dispute that end users have a competitive alternative for Internet access service. The appropriate focus, however, should be on the wholesale market for BellSouth's underlying transmission facilities, where there is little to no competition. While end users do have an alternative to the incumbents' high-speed broadband services, this is not true for ISPs. Unaffiliated ISPs largely depend on the incumbent LECs' broadband transmission facilities to provide high-speed Internet access. As long as the carriers that

own the broadband transmission networks can exercise market power because transmission is not yet available on a competitive basis, they will exercise that market power by controlling downstream markets that depend on those transmission services.

Moreover, MCI strongly disagrees with BellSouth that the Part 64 allocation rules are "simply not needed" and should not apply to facilities used to provide broadband information services. The Part 64 cost allocation rules play an important role in preventing BOCs from improperly using their non-competitive services to subsidize the prices of their competitive services. Part 64 is perhaps the Commission's single most important regulatory safeguard to prevent the BOCs from using their non-competitive services to subsidize their competitive services. The operation of the Commission's cost allocation rules remain necessary to prevent improper cross-subsidization as barred by section 254(k) and ensure compliance with the just and reasonable requirements of section 201.

Finally, BellSouth's request for forbearance is an effort to force the Commission's hand to exempt BellSouth from paying into the universal service fund before the Commission has fully vetted the issues surrounding the appropriate universal service contribution obligations for wireline broadband services. Among other things, grant of BellSouth's Petition would apparently further reduce the already-declining universal service contribution base and would shift contribution obligations for other services.

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

In the matter of	)	
	)	
Petition of BellSouth	)	WC 04-405
Telecommunications, Inc. for Forbearance	)	
Under 47 U.S.C. § 160(c) from Application	)	
of *Computer Inquiry* and Title II Common	)	
Carriage Requirements	)	

OPPOSITION OF MCI, INC.

MCI, Inc. (MCI), by its attorneys, hereby submits its comments in opposition to BellSouth Telecommunications, Inc.'s (BellSouth) Petition for Forbearance in the above-captioned proceeding.[1] BellSouth's underlying transmission facilities should continue to be regulated. The wholesale market for transmission services is not competitive. As a result, information service providers ("ISPs") have no alternatives to the incumbent LEC network.

I. INTRODUCTION

According to BellSouth, today's broadband market is competitive independent of the *Computer II* regime.[2] This ignores the important role the Commission's rules have played in fostering a competitive Internet as well as the existing need for continued regulation of bottleneck facilities. The thrust of the *Computer II* proceeding was that bottleneck transmission facilities need to be shared in order for there to be a competitive information services market. As long as the underlying transmission was made available

[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 04-405, (filed October 27, 2004) ("Petition").

[2] Petition at 18.

on a common carrier basis, any and all communications services could develop and prosper in an unregulated marketplace. In 1996, Congress later adopted this scheme in amending the Communications Act of 1934, maintaining the premise that deregulation of telecommunications markets is possible only with regulation of bottleneck telecommunications facilities.

The importance of protecting enhanced service providers from abuse of market power by companies that control bottleneck transmission facilities is no less important now than when the *Computer II* rules were first adopted. Contrary to BellSouth's claims, today, the incumbent LEC's last-mile facilities are still the primary means for independent information service providers (ISPs) to access their customers. The future development of the Internet hinges on the Commission's continuing its policy of imposing economic regulation on bottleneck facilities – a policy that has allowed the Internet to experience the remarkable growth it has thus far enjoyed.

As the Commission considers this and other Bell Operating Company ("BOC") petitions for forbearance from regulation of key bottleneck transmission facilities, the Commission should conduct its analysis through what has been called a "layers approach." [3] MCI believes that this is the most appropriate policy framework, an approach that distinguishes between the physical layer, where bottlenecks still exist, and the application and content layers, where Internet access exists, that are subject to competition and market discipline. As long as the carriers that own the broadband

[3] MCI has proposed that the Commission adopt a simplified layers model consisting of four layers: A content layer; an application layer; a logical layer; and a physical layer consisting of both transport (*e.g.,* point of presence ("POP")-to-POP connections) and access (*e.g.,* last-mile connections between end users and central offices or POPs). Richard S. Whitt, Senior Director for Global Policy and Planning, MCI, "A Horizontal Leap Forward: Formulating a New Public Policy Framework Based on the Network Layers Model (December 2003).

transmission networks can exercise market power because transmission is not yet available on a competitive basis, they will exercise that market power by controlling downstream markets that depend on those transmission services.

While BellSouth attempts to obscure the significant risk that a company with market power in one layer can act to impede competition in other layers, the Commission has long recognized the need to safeguard against the potential for a carrier with market power in an upstream market to leverage its power to harm competition in a downstream market.[4] Specifically, a firm that possesses market power over physical access to the network has both the incentive and the ability to restrict competitors' access to end users, effectively preventing end users from enjoying applications or content from specific providers. It is this issue in particular that BellSouth ignores.

BellSouth claims that ISPs have competitive alternatives to access end user customers, but then focuses its analysis on the competitive alternatives end users have for retail Internet access services. While end users do have an alternative to the incumbents' high-speed broadband services, this is not true for ISPs. Unaffiliated ISPs largely depend on the incumbent LECs' broadband transmission facilities to provide high-speed Internet access. Left unchecked, BellSouth could provide an unfair advantage to its affiliated ISP by restricting the ability of non-affiliated ISPs to provide broadband Internet access to end users. Such anti-competitive behavior can be forestalled only if the Commission has in place rules that constrain carriers from exercising market power with respect to the physical layer in a manner that undermines competition in other layers.

---

[4] *See*, *e.g.*, *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756 (1997) ("*LEC Classification Order*"); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 77 F.C.C.2d ¶ 229 (1980) *(Computer II)*.

A distinction between the physical layer and the content and applications provided over lower layers is consistent with the enhanced/basic and information service/telecommunications service distinctions that have served the FCC well for over 20 years. Economic regulation should remain in place as long as it is necessary to constrain BellSouth and other dominant carriers from exercising their market power in one segment, or layer, in a manner that undermines competition in others. It is this kind of targeted approach to regulation, as embodied in *Computer II*, that has led to the openness, innovation and extraordinary growth that characterize the Internet today.

As the Commission moves forward, it should not lose sight of the basic market power concerns that are the impetus for much of the FCC's current dominant carrier regulation. Under a layers approach, economic regulation is critical to ensure that companies with market power in the physical layer, including wholesale DSL services, cannot act anticompetitively to impede competition in the applications and content layers, which depend on access to the broadband platform.

II. CONTINUED ECONOMIC REGULATION IS NECESSARY IN ORDER TO ENSURE THAT RATES ARE JUST, REASONABLE AND NONDISCRIMINATORY

In order to satisfy the requirements for forbearance under section 10(a) of the Act, BellSouth must demonstrate that Title II regulation of its broadband transmission facilities: (1) is not necessary to ensure that the charges and practices for such services "are just and reasonable and are not unjustly or unreasonably discriminatory;" (2) is not necessary "for the protection of consumers;" and (3) is not necessary to protect the public interest.[5] The Commission must deny BellSouth's Petition if it finds that "any one of the

[5] 47 U.S.C. § 160(a).

three prongs is unsatisfied."[6] In considering whether forbearance is consistent with the public interest, the Commission must focus on whether forbearance from Title II would promote competitive conditions in the marketplace.[7]

BellSouth has not even attempted to show that marketplace forces within its region would be adequate to constrain its market power and ensure that rates and practices are just, reasonable, and not unreasonably discriminatory; that consumers are protected; and that forbearance would be in the public interest. Nor has BellSouth shown that the requirements of sections 251 or 271 have been "fully implemented" as required by section 10(d).

A. Insufficient Competition Exists to Constrain BellSouth's Market Power

In its Petition, BellSouth did not, and cannot, demonstrate that wireline alternatives exist for ISPs such that deregulation of incumbent LEC facilities is justified at this time. Incumbent LECs do indeed continue to have bottleneck control over the network used to provide broadband data services. As a result, the Commission should re-affirm its conclusion that "enhanced service providers remain dependent on ILECs for local access to their customers" since it "recognizes that ILECs may be able to leverage control over their local exchange facilities into market power over new or existing services."[8]

A proper finding of competition sufficient to warrant forbearance requires more than BellSouth has put forth here. As an initial matter, BellSouth must first define the relevant product market. There are two distinct markets that should be addressed here,

---

[6] *CTIA v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003).

[7] 47 U.S.C. § 160(b).

[8] *In re Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 F.C.C.R. 7418, ¶ 58 n.237 (2001) (*CPE/Enhanced services Bundling Order*").

the retail broadband market, in which end user customers are served by ISPs, and the wholesale broadband transmission market, in which ISPs take service from incumbent LECs, competitive LECs and, to a very limited extent, cable companies. Second, BellSouth has failed to define the relevant geographic scope of the market, which Commission dictates would be local.[9] Based on the facts, the Commission cannot conclude that the broadband market faced by end users *and* ISPs is sufficiently competitive throughout BellSouth's entire service territory.

As stated above, all of BellSouth's evidence supporting its petition goes to the retail Internet access market. MCI does not dispute that end users have a competitive alternative for Internet access service. The appropriate focus should be on the wholesale market for BellSouth's underlying transmission facilities, where there is little to no competition. Although BellSouth claims that ISPs have alternatives for accessing their customers,[10] incumbent LECs remain the primary source for access to wholesale broadband transmission services. Absent *Computer II* requirements, there will be far fewer alternatives for ISPs to obtain access to their customers.

There is no other network or technology capable of providing broadband services that can match the ubiquity of incumbent LEC facilities. Even the Commission has recognized that there are no third parties offering alternative narrowband or broadband transmission facilities.[11] Competitive data LECs like Covad do not have widespread

---

[9] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner, Inc. and America Online, Inc., Transferors, to AOL Time Warner, Inc.*, *Transferee*, 16 FCC Rcd 6547, ¶ 74 (2001).

[10] Petition at 7-8.

[11] Report and Order and order on Remand and Further Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd 16978, ¶ 233 (2003) ("*Triennial Review Order*").

presence in the residential market. Competitive LECs that provide underlying transmission facilities are in turn dependent upon incumbent LEC facilities.

Cable modem systems are not a sufficient alternative for ISPs for several reasons. First, cable modem systems do not serve businesses. Cable companies target their build-outs to residential areas. Rarely is their service available to business customers. Second, cable companies are not required to provide access to their networks on a wholesale basis to competitive LECs or ISPs. The Commission has declined to require cable companies to provide a wholesale broadband transmission services that ISPs can use to serve their end users.[12] As BellSouth describes, at most, ISPs may be able to negotiate a commercial agreement to partner with the cable company under a private carriage arrangement. This is a far cry from ensuring that ISPs are able to obtain access on a just, reasonable and nondiscriminatory basis.

As for wireless, satellite and power line broadband services, these providers are not significant players in the broadband market. At best, wireless and satellite providers are niche players in the market. And, as BellSouth acknowledges, the potential of broadband over power lines is as of yet unknown.[13] Even if these providers did serve as viable alternatives for broadband transmission services, they are not required to make their networks available to ISPs.

B. BellSouth's Petition Fails to Satisfy Section 10(a)

The Commission may grant forbearance only if it concludes that marketplace forces are sufficiently well-established to prevent unjust, unreasonable and unreasonably

---

[12] *Inquiry Concerning High-Speed Access to the Internet over Cable and other Facilities; Internet over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 ¶ 43 (2002) ("*Cable Modem Order*").

[13] Petition at 12-13.

discriminatory practices, and to protect consumers.[14] Section 10(a) requires the Commission to focus on whether the statutory provision or regulation to be eliminated is necessary to prevent a carrier from exercising market power by, for example, charging excessive rates or engaging in unlawful discrimination. The Commission is instructed to consider whether forbearance "will promote competitive market conditions."[15] Not once in the Petition does BellSouth allege specific facts that demonstrate that its forbearance request satisfies any of the three prongs of section 10(a).

MCI agrees with BellSouth that competition is the most effective means of ensuring that the charges and practices associated with telecommunications services are just, reasonable and nondiscriminatory.[16] As explained above, however, BellSouth and other incumbent LECs continue to exercise market power over last-mile facilities that ISPs use to connect consumers to the Internet and to provide IP-based content and applications. Despite the introduction of competitive LEC competition and the growth of services that permit end users to obtain broadband Internet access services from cable providers, incumbent LECs retain the ability and incentive to use their market power in the provision of wholesale mass market broadband transport services, such as DSL, to harm competition in the information services market.

Where a carrier possesses market power over bottleneck facilities or services, the Commission has either declined to grant forbearance, or conditioned forbearance on continued non-discriminatory access to those critical inputs. For example, in the context of a request for forbearance from the separate affiliate requirements for nonlocal

---

[14] 47 U.S.C. § 160(a).
[15] 47 U.S.C. § 160(b).
[16] Petition at 19.

directory assistance, the FCC concluded that the BOCs continued to benefit from competitive advantages stemming from their position as the dominant providers in the local exchange and exchange access markets. [17] As a result, the Commission conditioned its grant of forbearance on continued compliance "with the nondiscrimination requirements set forth in section 272 with respect to the in-region telephone numbers "that the BOCs] use[] in the provision of nonlocal directory assistance service."[18] Absent non-discriminatory access to those listings, the FCC found that none of the requirements of section 10(a) could be met.[19]

BellSouth seeks to compensate for its failure to adequately address the requirements of section 10(a) by relying on section 706 of the Act.[20] However, while the Commission can consider the costs versus the benefits of regulation (including promotion of section 706's goals) as part of its public interest inquiry under section 10(a)(3), the results of such a cost-benefit analysis are relevant only to the Commission's analysis of

---

[17] *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order, 14 FCC Rcd 16252, ¶ 35 (1999) ("*USWC NDA Order*") (finding that because of their market power, the BOCs had "access to a more complete, accurate, and reliable [directory assistance] database than [their] competitors."); *BellSouth Petition for Forbearance for Nonlocal Directory Assistance Service; Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services; Petition of Bell Atlantic for Further Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, Memorandum Opinion and Order, 15 FCC Rcd 6053, ¶ 15 n.42 (2000) ("*BOC NDA Order*").

[18] *BOC NDA Order* ¶ 15 n.42; *USWC NDA Order* ¶¶ 35-37; *see also Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934*, Memorandum Opinion and Order, 13 FCC Rcd 2627 (Com. Car. Bur. 1998) (conditioning forbearance on continued access by unaffiliated entities to listings used to provide E911 and reverse directory services).

[19] *See USWC NDA Order* ¶¶ 35-37, 46-47, 53 (relying on continued non-discriminatory access to in-region directory listings to find that enforcement of the separate affiliate safeguards of section 272 was not necessary).

[20] Petition at 16.

section 10(a)(3). Since "the three prongs of § 10(a) are conjunctive,"[21] public interest considerations pursuant to section 10(a)(3) cannot obviate the need for the findings required by sections 10(a)(1) and (a)(2). In other words, even if section 706 somehow supported BellSouth's public interest claim under section 10(a)(3), BellSouth's Petition would still have to be rejected because it fails to satisfy the requirements of sections 10(a)(1) and 10(a)(2).

C. Absent *Computer II* and Title II Requirements, ISPs Would Have No Alternatives for Underlying Transmission Services

BellSouth claims that it faces sufficient intermodal competition to prevent it from using its control over DSL transmission services to discriminate against ISPs.[22] BellSouth is wrong.

It is by virtue of *Computer II* that incumbent LECs are required to provide basic telecommunications connections to ISPs on a nondiscriminatory basis. The incumbent LECs' repeated attempts to eliminate this obligation should speak volumes to the Commission. Eliminating the requirement that incumbent LECs unbundle the telecommunications transport functionality that they use to provide information services, and offer it as a tariffed service, would be unwise policy because it would harm competition in the information services market. The Commission should prevent potential abuses of market power by continuing to require dominant firms to provide nondiscriminatory access to bottleneck facilities. It is imperative that these facilities remain subject to economic regulation, including nondiscrimination requirements, until sufficient competition exists to ensure that market discipline can adequately replace

[21] *CTIA v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003).
[22] Petition at 19.

government regulation. Therefore, the FCC should continue to enforce the *Computer II* and Title II rules for access to incumbent LEC broadband transmission facilities.

Forbearance would mean that the incumbent LECs would have both the incentive and the ability to withhold DSL services from non-affiliated ISPs or to provide DSL services to non-affiliated ISPs on unreasonable and discriminatory prices, terms and conditions. In the absence of Title II's tariffing requirements, BellSouth could charge significantly above-cost prices for wholesale DSL service in order to subject non-affiliated ISPs to a price squeeze. BellSouth's affiliated ISP could absorb the increased cost and continue to offer a competitively priced Internet access product. Non-affiliated ISPs, however, would little choice but to pass the higher DSL costs on to their end users. This would of course, result in a loss of customers to the lower-priced services of BellSouth's affiliated ISPs. Ultimately, BellSouth and other LECs could substantially reduce, or eliminate completely, non-affiliated ISPs in the Internet access market.

D. The Requirements of Sections 251(c) and 271 Have Not Been Fully Met

Even if BellSouth had shown that it has satisfied section 10(a) (which it has not), section 10(d) of the Act bars the requested relief. Section 10(d) provides that the Commission may not forbear from applying the requirements of section 251(c) or 271 until it determines that those requirements have been "fully implemented." The most reasonable construction of this requirement is that it is satisfied "when markets are deemed competitive."[23] Specifically, the Commission should not consider section 10(d) satisfied until it can conclude that in a relevant geographic area, a robust wholesale market exists that enables competing providers to obtain access to the

[23] 141 Cong. Rec. S. 7942, 7956 (June 8, 1995) (statement of Senator McCain) (quoting from Heritage Foundation letter).

telecommunications services and facilities they require to enter the market without the need for continued enforcement of section 251(c) or 271.

BellSouth's Petition, however, does not attempt to satisfy the requirement of section 10(d). Nor could BellSouth make such a showing at this time, since dominant carriers such as BellSouth continue to exercise market power over the last-mile facilities that ISPs use to connect consumers to the Internet and to provide IP-based content and applications. Absent such a showing, the Commission must reject BellSouth's Petition regarding forbearance from the requirements of sections 251(c) and 271.

III. FORBEARANCE OF *COMPUTER II* AND TITLE II IS CONTRARY TO THE PUBLIC INTEREST

As demonstrated above, grant of BellSouth's Petition will harm not only non-affiliated ISPs, which will in the end harm consumers by depriving them the range of choice of ISPs that they have available today. Consumers will suffer harm in other ways as well.

A. Part 64 Remains Necessary to Protect Consumers

MCI strongly disagrees with BellSouth that the Part 64 allocation rules are "simply not needed" and should not apply to facilities used to provide broadband information services.[24] The Part 64 cost allocation rules play an important role in preventing BOCs from improperly using their non-competitive services to subsidize the prices of their competitive services. Part 64 is perhaps the Commission's single most important regulatory safeguard to prevent the BOCs from using their non-competitive services to subsidize their competitive services. The operation of the Commission's cost

[24] Petition at 23-24.

allocation rules remain necessary to prevent improper cross-subsidization as barred by section 254(k) and ensure compliance with the just and reasonable requirements of section 201.

The fact that incumbent LECs are no longer under rate-of-return regulation is irrelevant.[25] Even under price caps, the interstate access rates of the BOCs continue to be linked to costs. For example, all exogenous costs prescribed in section 61.45(d) of the Commission's Rules involve changes in the underlying regulated interstate costs of the price cap carrier, and require the carrier to adjust its price cap indices to reflect such cost changes.[26] These adjustments include routine exogenous cost changes that the BOCs file each year to account for changes in regulatory fees, excess deferred taxes, amortization of investment tax credit, Telecommunications Relay service contributions and North American Numbering Plan Administration expense. Other exogenous cost changes are permitted on an occasional basis or to take account of a one-time development, such as thousands block number pooling costs.

The impact of these changes over time has been substantial. Since the initiation of price cap regulation for incumbent LECs in 1991, the BOCs have been required to make exogenous rate adjustments to their price indices every single year, totaling hundreds of millions, if not billions, of dollars. These repeated adjustments to carriers' price cap indices directly refute BellSouth's cursory claim that price cap regulations sever any links between changes in a carrier's cost of providing interstate regulated services and the prices it may charge for those services.

---

[25] Petition at 24.
[26] 47 C.F.R. § 61.45(d).

Rather than focus on the purpose behind the Commission's cost allocation rules, BellSouth instead argues that the "extraordinary burden" of the regulatory costs of compliance with Part 64 also justifies forbearance.[27] The existing rules, however, serve an important purpose and are far from "unnecessary." If the Commission does grant forbearance to BellSouth's broadband telecommunications services, including DSL, it would create a substantial risk of discrimination and cross-subsidization. The Commission's obligation under section 254(k) remains. The Commission must ensure that non-competitive services do not subsidize competitive services. As a matter of law as well as sound public policy, the Commission should have effective cost allocation rules in place before it considers deregulation of the BOCs' broadband telecommunications services.

B. BellSouth Would Be Exempt From Universal Service Contributions

Noticeably absent from BellSouth's Petition is a discussion of how universal service would be affected if BellSouth's Petition were to be granted.

In the *Broadband Framework NPRM*,[28] proceeding regarding the regulatory status of broadband services, the Commission declared that it was not changing the mandatory obligations of telecommunications carriers to continue contributing to universal service based on their provision of broadband services to affiliated or unaffiliated ISPs or end users. The Commission declared that, in order to avoid disruption to universal service funding while the proceeding was pending, it required all

[27] Petition at 24.

[28] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Review – Review of Computer III and ONA Safeguards and Requirements*, 17 FCC Rcd 3019, ¶ 73. (2002).

carriers to make universal service contributions in the same manner as currently required. The Commission found that it was consistent with the public interest to maintain the status quo regarding universal service contributions.[29] BellSouth's request for forbearance is an effort to force the Commission's hand to exempt BellSouth from paying into the universal service fund before the Commission has fully vetted the issues surrounding the appropriate universal service contribution obligations for wireline broadband services. Among other things, grant of BellSouth's Petition would apparently further reduce the already-declining universal service contribution base and would shift contribution obligations for other services.

CONCLUSION

For the foregoing reasons, the Commission should deny BellSouth's Petition.

Respectfully submitted,

MCI, INC.

_____

Kecia Boney Lewis
Alan Buzacott
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 736-6270

Dated: December 20, 2004

[29] *Id.*