

**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 04-405
Application of <i>Computer Inquiry</i> and Title II)	
Common Carrier Requirements)	

REPLY COMMENTS OF THE CALIFORNIA ISP ASSOCIATION, INC.

January 28, 2005

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I. Introduction

The California ISP Association, Inc. (“CISPA”), the nation’s leading association of independent internet service providers (“ISPs”), has more than 100 members operating in California. These companies in turn serve millions of end-user customers. The Petition of BellSouth Telecommunications, Inc. for Forbearance (“Petition”) should be dismissed out-of-hand as a bad joke or a stupendous display of chutzpah. Unfortunately, the Petition has the veneer of a serious proposal, and the FCC is obliged to give it procedural due process.

II. The Comments of FDN Communications, Inc. and Pac-West Telecomm, Inc. (“PacWest Comments”) and the Comments of Earthlink, Inc. (“Earthlink Comments”) Provide More Than Sufficient Grounds to Dismiss the Petition

The PacWest Comments and the Earthlink Comments each provide a thorough and compelling analysis of the three-part statutory standard for forbearance. There is no point to reiterate these arguments; suffice it to say that BellSouth has not come within a

country mile of meeting even one of these requirements, much less all of them, as is required for the FCC to grant the Petition.

III. The FCC Should Focus On The Creation And Buttressing Of Competition And On An Affordable DSL Wholesale Model, Not On ILEC Efforts To Shore Up Their Monopolies

The initial comments filed in this proceeding contain information that should give the FCC pause about the existing state of competition – and the position of independent ISPs - regarding the delivery of broadband services:

- ILECs have an overwhelming market share of DSL¹
- ILECs have made it economically unfeasible for independent ISPs to compete with ILEC affiliated ISPs in the provision of DSL services. ILECs control the facilities necessary to deliver DSL services to end-users, and consequently determine the price independent ISPs must pay to provide these services to their end-use customers. The ILECs have created a price squeeze by setting the wholesale DSL offerings to independent ISPs near the price of the ILECs' DSL retail offerings.²
- Independent ISPs have, in nearly all instances, been denied use of cable infrastructure to provide high-speed Internet access to end-users.

¹ See, Comments of Earthlink, Inc. at p. 21, *citing the FCC Report of High Speed Services for Internet Access: Status as of December 31, 2003* at Tables 1 and 3, released June 8, 2004. A 2002 report commissioned by Telechoice, Inc., found that the ILECs account for 88% of all DSL lines in the United States. (See, <http://www.isp-planet.com/cplanet/news/02feb2002/13northamerican.html>). A 2003 report issued by the California Public Utilities Commission has the California ILEC DSL share at 91%. (See, *The Status of Telecommunications Competition in California, 3rd Report*, issued October 2003, found at <http://www.cpuc.ca.gov/PUBLISHED/REPORT/31223.htm>).

² See, Complaint filed in *linkLine Communications, Inc., et al. v. SBC California, Inc., et al.*, United States District Court, Central District of California, Case No. 03-5265 SVW (SHx), filed July 24, 2003, at Paragraph 19.

- There is, contrary to the assertions made by SBC Communications, Inc. and Quest Corporation in their respective comments³, only limited duopoly competition between cable modem and ILEC DSL services, insufficient to impact rates and terms.⁴
- There is no widely available and/or economic alternative “pipe” to customers (be it wireless, via electric wires or satellite-based), which provides independent ISPs last-mile access to end-users.

In sum, there is limited choice – where there is choice at all – for most residential subscribers – and even less choice for small businesses. Independent ISPs, who historically have connected end-users to the Internet and have the know-how and desire to provide robust broadband competition, have instead been marginalized through ILEC and cable anti-competitive acts and regulatory inattention. These independent ISPs are, in large measure, rooted in their local communities, technologically innovative and highly customer-focused. They have survived, to the extent they have, on the basis of these qualities.

The FCC, rather than devoting any resources to the patently anti-competitive relief sought by a vertically integrated monopolist, should instead undertake to examine the poor state of broadband competition and support measures to improve the range of choices available to American homes and businesses. BellSouth has no interest in broadband competition. If it did, it would provide a wholesale DSL offering at a price that permits independent ISPs to compete in the provision of DSL. If BellSouth really

³ See, Comments of SBC Communications, Inc. at p. 4; Comments of Quest Communications at p. 4.

⁴ See, Comments of FDN Communications et al. at p. 7, citing the FCC’s Echostar Communications Corporation, et al. Merger Order, FCC 02-284, 17 FCC Rcd 20559, 20684.

did support competition, it would immediately stop forcing their customers to buy DSL and telephone service in a bundle⁵

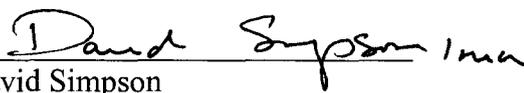
IV. Conclusion

The FCC should not allow broadband deployment goals to be set or shaped by BellSouth's Petition or like attempts to construct a paradigm so obviously out of step with reality and so patently anti-competitive. There is a serious lack of competition in the broadband market, and yet hundreds, if not thousands, of small and mid-sized ISPs are ready and able to make the marketplace highly competitive, with all of the consumer choices and benefits such competition would entail. Now is not the time to consider a Petition that has the single goal of aiding ILEC monopolists. Instead, it is time to develop a clear picture of the marketplace, adopt prudent and simple measures to foster widespread use of existing last-mile infrastructures, and support market-based incentives designed to promote a wide range of competitors.

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Respectfully submitted

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⁵ See, Comments of FDN Communications et al. at p. 38.