

**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
From Enforcement of Certain of the
Commission's Accounting Rules

WC Docket No. 05-342

BELLSOUTH REPLY COMMENTS

BellSouth Telecommunications, Inc. ("BST") hereby submits its reply comments in the above-captioned proceeding.

I. INTRODUCTION

Three parties filed comments opposing BellSouth's Petition for Forbearance ("Petition").¹ Although their comments address a variety of issues (with some convergence), it is noteworthy that each, to some degree, labors under the misimpression that, if the Petition is granted, BellSouth will no longer record or report its costs. In fact, as BellSouth made clear in its Petition, BellSouth will continue to report its costs pursuant to Part 32's Chart of Accounts after the Petition is granted. What the Petition seeks is relief from unnecessary downstream separations, allocations and assignments of those costs, which is a critical distinction that the three opposing parties fail to grasp. Thus, the Commission should rest assured that BellSouth's

¹ Ad Hoc Telecommunications Users Committee ("Ad Hoc"), the New Jersey Division of the Ratepayer Advocate ("N.J. Ratepayer Advocate"), and Time Warner Telecom ("Time Warner") are the only parties that filed oppositions to BellSouth's Petition. To the extent that there is overlap among the commenters on material issues, BellSouth will treat those issues as though jointly stated throughout this reply, in the interest of efficiency, and respond to the most detailed explication of the argument presented.

costs will remain visible to the Commission for valid regulatory purposes, notwithstanding commenters' claims to the contrary.

Moreover, the arguments of the three dissenters do nothing to undermine BellSouth's case for forbearance under Section 10. To the contrary, their scattered opposition demonstrates their desire, in the face of all countervailing evidence and logic, to cling to archaic rate-of-return legacy cost assignment rules. Although these three dissenters seem to view the cost assignment rules as an entitlement, BellSouth has demonstrated that these rules, as applied to BellSouth, enforce barriers that technological convergence and consumer needs have utterly overrun.

Unnecessary rules warrant forbearance, particularly when those rules put sand in the gears of innovation, efficiency and competitiveness, as is the case with the cost assignment rules that are the subject of BellSouth's Petition. As BellSouth has demonstrated, the public interest favors swift and decisive forbearance from these rules, and none of the arguments advanced by the dissenters establishes otherwise. Since application of the cost assignment rules to BellSouth's operations is unnecessary at the federal and state levels, the time for "further deregulation"² -- forbearance -- has arrived.

II. BELLSOUTH DOES NOT SEEK FORBEARANCE FROM PART 32'S CHART OF ACCOUNTS OR RELATED PART 43 ARMIS REQUIREMENTS.

Time Warner Telecom ("Time Warner") argues that relieving BellSouth of the Commission's cost reporting and related ARMIS requirements would directly contravene the

² See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting, CC Docket Nos. 00-199, 97-212, 80-286 & 99-301, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301 and 80-286, 16 FCC Rcd 19,911, 19,985, ¶ 206 (2001) ("Phase II Order").

Commission's 2001 *Phase II Order*. In classic "straw man" fashion, Time Warner erects an entirely false premise – *i.e.*, that BellSouth *is* seeking relief from Part 32's cost recording requirements -- and then proceeds to knock it down over fourteen misspelt pages of comments. The Commission should not be misled by Time Warner's elaborate exercise.³

BellSouth's Petition *does not* seek relief from the Part 32 Uniform System of Accounts ("USOA" or "Chart of Accounts"), or the related ARMIS requirements, to which the *Phase II Order* was addressed. Indeed, one need only read the first page of BellSouth's Petition to ascertain that very fact:

The rules that are the subject of this Petition are Parts 32.23, 32.27, and 64 Subpart I (referred to as the 'cost allocation rules'); Part 36 (referred to as 'jurisdictional separations rules'); Part 69, Subparts D and E (referred to as 'cost apportionment rules'); and other related rules that are completely derivative of or dependent on the foregoing rules. Appendix 1 contains a detailed listing of each specific rule from which BST seeks forbearance, which are referred to collectively in this Petition as the Commission's 'rate-of-return rules' or 'cost assignment rules.' The Petition also seeks limited forbearance from 47 U.S.C. § 220 (a) (2) to the extent this provision contemplates separate accounting of nonregulated costs. *However, BST is not seeking forbearance from the Part 32, Uniform System of Accounts ('USOA' or 'Chart of Accounts'), or relevant ARMIS reporting requirements in Part 43 of the Commission's rules.*⁴

As the Commission (and BellSouth in its Petition) has explained, an ILEC's costs "enter the system" via the USOA (Part 32). They are then separated into regulated and nonregulated components under Part 64. Next, the regulated costs are jurisdictionalized into interstate and intrastate components pursuant to Part 36. And, lastly, ILECs' interstate regulated costs are apportioned among various access elements under Part 69.⁵ Thus, an ILEC's costs form the

³ Time Warner's Comments at 1-2, 4-9.

⁴ BellSouth's Petition at 1, n.1 (emphasis added).

⁵ *See In re: Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, *Second Report and Order*, 5 FCC Rcd 6,786, ¶ 24 (1990); BellSouth's Petition at 2, n.5.

starting point of the cost assignment system architecture, not the end results that the system produces.

As the Petition makes abundantly clear, BellSouth seeks relief from the *downstream* requirements of regulated/non-regulated allocation of those costs, interstate/intrastate separation of those costs, and apportionment of the interstate costs. BellSouth's Petition, however, *does not* seek forbearance from the *upstream* cost recording requirements of Part 32 and related ARMIS reporting requirements under Part 43.⁶

If its Petition is granted, BellSouth will continue to record and report its costs consistent with the USOA and ARMIS, as detailed in its Petition.⁷ Thus, there is no basis whatsoever⁸ for Time Warner's *Phase II Order*-derived challenge to the Petition. Resting as it does on a misreading -- or misapprehension -- of the relief sought in BellSouth's Petition, Time Warner's opposition lacks any basis for denying the Petition.

It follows, then, that the *Phase II Order* does not present the "analytical framework" that, as Time Warner suggested, the Commission "must follow" in assessing the merits of BellSouth's

⁶ See BellSouth's Petition at Appendixes 1 and 9.

⁷ See *id.*

⁸ For example, Time Warner argues that "cost subsidiary records" are needed for "pole attachment" rate formulas. Time Warner Comments at 12-13. Time Warner labors under the misimpression (as it does throughout its comments), that such data would disappear if the Petition is granted. To the contrary, the Class A accounts at issue *would not be eliminated*, and BellSouth *would continue to report* the data (ARMIS 43-01, Table III, specifically) in those accounts, if the Petition is granted. This also negates Time Warner's concerns (Time Warner's Comments at 11-12) regarding the Class A accounting data and ARMIS reporting that it argues may support TELRIC rate-setting, or that may be germane to "advancing the goal of keeping non-rural subsidies at reasonable levels" for universal service policy purposes (*id.* at 10-11). In addition, Time Warner's position that TELRIC rate-setting relies upon embedded cost data inflates the role such costs play in TELRIC rate-setting, which principally relies upon forward-looking costs, not embedded costs.

Petition.⁹ Indeed, to the extent that the *Phase II Order* does establish an applicable “analytical framework,” it is to be found in the Commission’s “recogni[tion] that any unnecessary regulation places a corresponding, unnecessary burden on the carriers that are subject to it,” and further conclusion that it should not “retain a particular regulation unless it advances a valid regulatory interest.”¹⁰

III. THE COMMISSION MUST APPLY SECTION 10’S STANDARDS, NOT SECTION 11’S.

In its rush to judge BellSouth’s Petition, Time Warner proposes an inapplicable – and improper – legal standard for the disposition of the Petition. Specifically, Time Warner appears to equate the Section 10 standards governing forbearance (47 U.S.C. § 160 (a) and (c)) with the Section 11 standards (47 U.S.C. § 161) applicable to biennial regulatory reviews (*e.g.*, the *Phase II* proceedings) conducted by the Commission.¹¹ Time Warner suggests that the two provisions “closely resemble” each other. In Time Warner’s jurisprudential shorthand, the *Phase II Order* provides a controlling decisional matrix for BellSouth’s Petition. The standards for the two statutory provisions could not be more distinguishable, however, and what passes as “close” enough for Time Warner should not suffice for the Commission. Time Warner’s imprecision, if followed by the Commission, will result in the unacceptable erosion and blurring of the legal standards of both Section 10 and Section 11.

The accounting regulatory review mandated by Section 11 facilitates the Commission’s deregulatory and streamlining initiatives by identifying and culling “those regulations ‘that are no longer necessary in the public interest as the result of meaningful economic competition

⁹ Time Warner’s Comments at 4.

¹⁰ *Phase II Order*, 16 FCC Rcd at 19,913, ¶¶ 2, 3.

¹¹ Time Warner’s Comments at 5-6 (“The Section 11 standard closely resembles the Section 10 standard applicable here.”).

between providers of telecommunications service.”¹² The review is fundamentally *national* and sweeping in scope, and part of an effort to “achiev[e] Congress’s goal, in the 1996 Act, of a truly ‘pro-competitive, deregulatory’ *national* policy framework for the telecommunications industry.”¹³

Thus, in its biennial review proceedings, the Commission, by statutory mandate: (1) focuses broadly on the national policy picture and objectives into which its accounting regulations applicable to providers and services fit; (2) conducts a comprehensive, *industry-level* review of the application of its accounting rules and their impact on these broad policy objectives; and (3) makes the ultimate public interest determination to keep, modify or eliminate regulations *solely on the state of competition* between and among providers of the telecommunications services under review (*i.e.*, the “national marketplace in which the regulated LECs operate”).¹⁴ By design, the biennial review process does not involve the kind of granular, carrier-specific analysis of specific accounting rules in specific situations that is occasioned, as here, by BellSouth’s forbearance petition.

Section 10 (47 U.S.C. § 160) obliges carriers to make out a *particular* case – which may or may not reflect national or industry-wide conditions – under *different* standards, for forbearance of *particular* rules. Under Section 10’s standards, a petitioner may not rely solely on national, regional, or even state-specific competitive marketplace developments to warrant relief (although analysis of the competitive context in which the petition fits properly forms part of the public interest analysis that Section 10 requires). Rather, Section 10 petitions involve

¹² *Phase II Order*, 16 FCC Rcd at 19,913, ¶ 1 (quoting 47 U.S.C. § 161).

¹³ *Id.* ¶ 2 (quoting Joint Statement of Committee of Conference, S. Conf. Rep. No. 230, 104th Cong. 2d Sess. 113 (1996)) (emphasis added).

¹⁴ *Id.*

three separate but related considerations: (1) whether enforcement of the regulations or standards at issue is not necessary to ensure just, reasonable, non-discriminatory rates, practices, *etc.*; (2) whether continued enforcement is not necessary for the protection of consumers; and (3) whether forbearance is consistent with the public interest.¹⁵

Further, Section 11's sole focus on the competitive landscape for purposes of determining the continued "necessity" of its accounting rules is not the same as, nor does it "closely resemble," the necessity standard in Section 10, which is tied to consumer protection and the maintenance of just, reasonable and non-discriminatory charges, practices, *etc.* And, although the state of competition, generally, may be relevant to the Section 10 analysis, that issue frames only part of the Section 10 discussion; in a Section 11 case, it frames *all of the discussion*. Section 11's standards, thus, do not correlate with Section 10's, and the conclusions drawn in the *Phase II Order*, to the extent used to oppose BellSouth's Petition, do not result from analysis remotely similar to that which is required *in this case*.

IV. THE PENDING SPECIAL ACCESS PROCEEDING PROVIDES NO BASIS FOR DENYING BELL SOUTH'S PETITION.

The three opponents to BellSouth's Petition, in varying degrees, challenge the Petition on the grounds that granting it would negate or compromise the Commission's ability to police BellSouth's special access rates.¹⁶ Indeed, Ad Hoc, the most vocal opponent in this regard, contends that granting the Petition "would render the ongoing special access rulemaking meaningless."¹⁷ These concerns are misplaced. Continued application of the cost assignment

¹⁵ 47 U.S.C. § 160 (a).

¹⁶ See Ad Hoc's Comments at 4 - 10; Time Warner's Comments at 9 - 10; N.J. Ratepayer Advocate's Comments at 8-9.

¹⁷ Ad Hoc's Comments at 4 (citing *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulations of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25; RM-

rules at issue to BellSouth's operations is not needed for the Commission to complete its work in the *Special Access Proceeding*, or to execute its regulatory authority over special access.

Ad Hoc bases its argument on a mistaken (and discredited) belief that ARMIS¹⁸ data can be accurately used to calculate the profitability of BellSouth's special access services. But, as BellSouth already has shown in the *Special Access Proceeding*, the cost assignment rules do not produce any meaningful economic results upon which to determine profitability.

First and foremost, the ARMIS cost data-driven "profitability" measurements that Ad Hoc desires to ensure are calculations that bear no resemblance to a firm's real economic profitability. An accounting rate-of-return, based on the type of fully distributed, embedded cost data that ARMIS reflects, cannot responsibly be characterized as "profit" for economic purposes.

Second, there is no merit to Ad Hoc's argument that, even if ARMIS data are inaccurate for some purposes, those inaccuracies reflect only "minor misallocations at the margins [and] do not affect the overall integrity of trends in the data since those alleged misallocations do not change from period to period."¹⁹ Drs. Taylor and Banerjee debunked this argument in the *Special Access Proceeding*, noting that "almost universally, economists reject allocated (or distributed) costs as the basis for efficient pricing, regardless of whether the misallocations are

10593, *Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 1994 (2005) ("*Special Access Proceeding*" or "*NPRM*").

¹⁸ BellSouth has provided a detailed explanation of how Automated Reporting Management Information System or ARMIS reporting would be affected if its Petition is granted. As demonstrated, much of the ARMIS reporting will remain in tact. *In fact, no Part 32, Class A account will be eliminated by the granting of this Petition.* While the ARMIS data will remain available for most of the Commission's purposes, the Commission has recognized that returns on specific services calculated from ARMIS data do not serve a ratemaking purpose. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, *Order on Reconsideration*, 6 FCC Rcd 2637, 2730 ¶199 (1991).

¹⁹ Ad Hoc's Comments at 8.

small, ‘at the margin,’ or invariant over time.”²⁰ Thus, arguing that misallocations in a formulation are “minor” will not save the formulation from its fundamentally untrue premise, *i.e., that it provides* an economically efficient basis for pricing.

In sum, the thrust of the commentary in this regard -- that assignment of embedded cost data is necessary to determine whether special access rates are just and reasonable -- is simply inaccurate.²¹ The ARMIS data, moreover, bring nothing to bear upon the just and reasonableness of special access service rates. BellSouth is not a rate-of-return regulated carrier. It is subject to price cap regulation in both the interstate (with pricing flexibility, where granted) and state jurisdictions. The commenters choose to ignore the fact that price cap regulation encourages innovation and creativity by rewarding carriers that are successful in the marketplace with the opportunity to increase their profitability and earnings. What Ad Hoc, and apparently

²⁰ Declaration of Alfred E. Kahn and William E. Taylor, On Behalf of BellSouth Corporation, Qwest Corporation, SBC Communications, Inc., and Verizon, Exhibit 1 to Comments of BellSouth, RM No. 10593, at 13, n. 49 (filed December 2, 2002) (“Kahn/Taylor Declaration”). Ad Hoc has advanced its theories at length in the *Special Access Proceeding*, and has chosen to re-assert them here, even though the issues are squarely before the Commission already, and are purely collateral to the present matter. For an exhaustive refutation of Ad Hoc’s theories, however, BellSouth would refer the Commission to expert (and substantially uncontested) declarations submitted in the *Special Access Proceeding*. See, e.g., Kahn/Taylor Declaration at 6-7 (“use of accounting profit rates ... based on fully distributed costs to demonstrate that individual services are overpriced is economic nonsense” [and the cost allocations necessary to derive a special access rate of return] “render . . . the calculations meaningless”); Declaration of William E. Taylor, Ph.D., and Aniruddha Banerjee, Ph.D., NERA Economic Consulting, On Behalf of BellSouth Corporation, RM No. 10593, at 13 (filed Nov. 8, 2004) (Ad Hoc’s effort to analyze BellSouth’s special access rates based on rate-of-return calculations using ARMIS data is “economically irrational,” and cannot provide a basis for determining the profitability of special access services); Reply Declaration of Harold Furchtgott-Roth and Jerry Hausman, filed as Attachment 1 to BellSouth’s Reply Comments, RM 10593, at 17-18 (filed July 29, 2005), in which the declarants observed that rate-of-return calculations using accounting allocations “make no economic sense,” and that both the Federal Trade Commission and the Department of Justice have abandoned the practice in assessing market power.

²¹ See *Competitive Telecommunications Ass’n v. FCC*, 87 F.3d 522 (D.C. Cir. 1996) (just and reasonable standard under section 201(b) does not require the establishment of “purely cost-based rates”).

the N.J. Ratepayer Advocate, want is for the Commission to abandon the benefits of price regulation and to return to a rate-of-return standard overlay to limit, arbitrarily, carrier profitability. Clearly, this “economically irrational” approach has no merit and, therefore, maintaining a cost accounting system to support the standard is pointless.

V. THE NEW JERSEY RATEPAYER ADVOCATE’S OPPOSITION TO BELL SOUTH’S PETITION IS ILL-FOUNDED.

In opposing BellSouth’s Petition, the N.J. Ratepayer Advocate purports to speak for “all [New Jersey] utility consumers, including residential, business, commercial, and industrial entities.”²² The N.J. Ratepayer Advocate acknowledges that its ratepayers “do not reside or work in BellSouth’s territory,”²³ but opposes the Petition anyway because of the prospect that Verizon, which does serve New Jersey, may one day follow suit with its own forbearance petition. Rather than wait for that to happen, the N.J. Ratepayer Advocate chooses to stake out its position for New Jersey’s consumers in these proceedings.

BellSouth’s Petition is not a suitable proxy for the N.J. Ratepayer Advocate’s anticipated fight with Verizon. Without commenting on hypothetical specifics of a Verizon petition for forbearance from the cost assignment rules, it should suffice to say that Verizon and BellSouth bring different operative facts to the table, and that each petition will have to stand on its own merits for success, should Verizon ever file one.

²² New Jersey Ratepayer Advocate’s Comments at 1. Presumably, the N.J. Ratepayer Advocate did not literally mean “all” consumers but, rather, “all *New Jersey*” consumers. In any event, the N.J. Ratepayer Advocate has no standing of which BellSouth is aware to represent the interests of consumers beyond the borders of New Jersey. It certainly has no constituency in BellSouth’s territory. The Commission can be assured that there are several consumer advocacy entities capable of articulating the needs and concerns of consumers in the nine states impacted directly by this Petition.

²³ *Id.* at 2.

Also, the N.J. Ratepayer Advocate's "recommend[ation]" that the Commission should defer the matter before it to the Joint Board is ill-conceived.²⁴ BellSouth's Petition, despite the N.J. Ratepayer Advocate's efforts, does not raise the kinds of national issues that properly should be addressed to the Joint Board. The national *status quo* will not be "up-ended," as the N.J. Ratepayer Advocate suggests,²⁵ and to the extent that granting the Petition will actually have an impact inside BellSouth's territory (which, BellSouth would argue, it essentially will not), that impact will produce no shock waves outside of that territory, and clearly not in New Jersey. And, in any event, the suggestion, if followed, would run afoul of the Commission's obligations under Section 10. As required by Section 10, the Commission must decide BellSouth's Petition on the merits.²⁶

VI. THE COST ASSIGNMENT RULES ARE NOT NECESSARY FOR THE FULFILLMENT OF THE COMMISSION'S UNIVERSAL SERVICE OBLIGATIONS.

Time Warner (and, to a lesser degree, the N.J. Ratepayer's Advocate) contends that the cost assignment rules are necessary for "setting subsidies for non-rural carriers" pursuant to cost models used in universal service,²⁷ and that "[a] regulated, uniform accounting scheme is . . . important to advancing the goal of keeping non-rural subsidies at reasonable levels."²⁸

²⁴ *Id.* at 3.

²⁵ *Id.* at 4.

²⁶ Moreover, the N.J. Ratepayer Advocate's insistence that state ratemaking authorities' interests are paramount in this matter rests on an unjustified concept of the Commission's jurisdiction to rebuff challenges to *its* rules. *See Phase II Order*, 16 FCC Rcd 19, 911 at ¶ 207 (" . . . if we cannot identify a *federal need* for a regulation, we are not justified in maintaining such a requirement at the federal level") (emphasis added).

²⁷ Time Warner's Comments at 10-11.

²⁸ Time Warner's Comments at 11.

BellSouth anticipated -- and addressed -- this position in its Petition.²⁹ Time Warner has done nothing to counter BellSouth's argument.

First, the Class A Part 32 accounts that Time Warner argues should be maintained in support of universal service, as shown, are not being eliminated in this Petition. Those costs will be recorded and reported entirely as before. And, even though some disaggregation of cost data will no longer be available if the Petition is granted, that fact should not diminish the merits of the Petition because such data (*e.g.*, regulated from nonregulated), are not the "costs" employed in the USF cost model.

The ILEC network costs used in the USF cost model are forward looking efficient economic costs, not historical embedded accounting costs derived from the cost assignment rules. Moreover, to the extent that disaggregated historical accounting costs are used, they are merely an input to determine certain ratios in the cost model. These ratios, however, are limited and do not significantly impact results from the cost model.

Only three ratios to update the USF cost model are determined using disaggregated accounting data provided by BellSouth, and they provide a relationship of general support facilities ("GSF") investment as a percentage of total plant in service ("TPIS").³⁰ GSF investment includes three accounts: buildings (Part 32 account # 2121), motor vehicles (Part 32 account # 2112), and general purpose computers (Part 32 account # 2124). The ratios for the cost model are determined by "dividing the ARMIS investment for the account by the ARMIS

²⁹ Petition at 55-60.

³⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, DA 01-2928, ¶¶ 16, 17 (2001); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, DA 03-4070, ¶ 24 (2003).

total plant in service (TPIS) less the GSF investment.”³¹ For example, the ratio for motor vehicles would be calculated by dividing the regulated motor vehicle investment (“RMVI”) by the regulated TPIS investment (“RTPIS”) less RMVI less regulated building investment (“RBI”) less regulated general purpose computer investment (“RGPCI”), *i.e.*, Ratio = $RMVI / (RTPIS - RMVI - RBI - RGPCI)$. The limited use of regulated costs in the USF cost model demonstrates that the continued application of the cost assignment rules is unnecessary.

Additionally, the USF high-cost model is updated on a very infrequent basis and, as further discussed below, may be utterly replaced in the aftermath of the Tenth Circuit’s *Qwest II* decision.³² It is unreasonable to continue applying the cost assignment rules to BellSouth for updates to the USF high-cost model when such updates occur so infrequently. This is especially true considering that the data obtained from the rules are insignificant to the cost model inputs and, as discussed next, other means could be used for calculating the ratios.

Second, a number of the costs resulting from the use of these ratios (*e.g.*, general support investments and related expenses) are a relatively minor component of the high-cost model. To the extent that costs are needed to update the model in the future, the Commission could use total costs within the accounts as opposed to using the regulated amounts. BellSouth calculated the ratios, on a state by state basis, using total costs for 2004 and compared the results to calculations

³¹ *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45 & 97-160, *Tenth Report and Order*, 14 FCC Rcd 20,156, 20,335, ¶ 409 (1999).

³² See *Qwest v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest IP*”) (“In that the non-rural, high-cost support mechanism . . . rests on the application of the definition of ‘reasonably comparable’ rates invalidated above, it too must be deemed invalid”). See also *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, *Notice of Proposed Rulemaking*, FCC 05-205 (rel. Dec. 9, 2005) (“*Tenth Circuit Remand NPRM*”).

using regulated costs for the same period. In each instance, the difference was negligible. A copy of the comparisons by state and ratio is attached as Exhibit A.³³

Third, the update to the USF model that has had the highest impact is the reporting of line counts. BellSouth, of course, is not seeking forbearance from line count reporting.

Finally, the USF is currently in a state of transition. As competition in the industry continues to increase, the Commission must come to grips with an ever-changing suite of services and technologies. Responding to a remand from the Tenth Circuit in *Qwest II*, the Commission recently issued its *Tenth Circuit Remand NPRM*,³⁴ in which it is seeking a broad range of comment on definitions set forth in the 1996 Act as well as various potential high-cost funding mechanisms. It is unclear what methodology the Commission may implement for high-cost support related to the *Tenth Circuit Remand NPRM*, but it is clear that the Commission should not deny BellSouth's Petition on the basis of the current limited use of data in a USF high-cost model that, in due course, is likely to be discarded or significantly re-tooled.

Accordingly, Time Warner's claims that the cost assignment rules remain relevant because of the USF high-cost model are without factual basis and otherwise rest on a support mechanism *status quo* that is substantially in flux. The Commission cannot deny BellSouth's Petition on such grounds.

³³ If the Commission was uncomfortable using total costs it could also use past years' data to obtain a regulated portion factor for each account. The factor then could be applied to the accounts to obtain estimated regulated amounts to use in calculating the ratios.

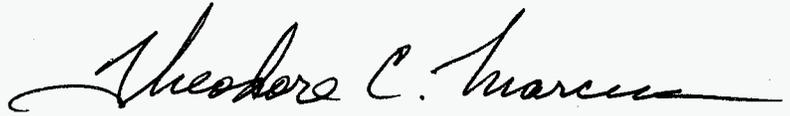
³⁴ Pursuant to a remand from a previous order, the Tenth Circuit directed the Commission "to articulate a definition of 'sufficient' that appropriately considers the range of principles in section 254 of the Act and to define 'reasonably comparable' in a manner that comports with its duty to preserve *and* advance universal service." *Tenth Circuit Remand NPRM*, ¶ 1 (emphasis in original).

VII. CONCLUSION

For the foregoing reasons, and for the reasons provided in BellSouth's Petition, the Commission should grant the Petition seeking forbearance from the Commission's cost assignment rules.

Respectfully submitted,

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<i>Motor Vehicles</i>		
<u>Study Area</u>	<u>Ratio – Total Costs</u>	<u>Ratio – Regulated Costs</u>
Alabama	0.01278	0.01160
Florida	0.01176	0.01036
Georgia	0.01175	0.01069
Kentucky	0.01435	0.01313
Louisiana	0.01294	0.01169
Mississippi	0.01442	0.01297
North Carolina	0.01088	0.00979
South Carolina	0.01037	0.00929
Tennessee	0.01299	0.01182
<i>Total</i>	0.01219	0.01098

<i>Buildings</i>		
<u>Study Area</u>	<u>Ratio – Total Costs</u>	<u>Ratio – Regulated Costs</u>
Alabama	0.10032	0.09380
Florida	0.06234	0.05914
Georgia	0.11136	0.10368
Kentucky	0.07068	0.06738
Louisiana	0.05871	0.05586
Mississippi	0.05527	0.05175
North Carolina	0.06950	0.06609
South Carolina	0.04622	0.04395
Tennessee	0.05417	0.05181
<i>Total</i>	0.07374	0.06938

<i>General Purposes Computers</i>		
<u>Study Area</u>	<u>Ratio – Total Costs</u>	<u>Ratio – Regulated Costs</u>
Alabama	0.08232	0.06999
Florida	0.01384	0.01193
Georgia	0.03616	0.02703
Kentucky	0.01252	0.01062
Louisiana	0.00883	0.00744
Mississippi	0.04725	0.04017
North Carolina	0.04054	0.03429
South Carolina	0.01100	0.00925
Tennessee	0.01761	0.01477
<i>Total</i>	0.02843	0.02343

Exhibit A
Comparison of Ratios Using Total Costs and Regulated Costs