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

In the Matter of	)	
	)	
Jurisdictional Separations and Referral to Federal-State Joint Board	)	CC Docket No. 80-286
	)	

COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation ("BellSouth"), on behalf of itself and its wholly-owned subsidiaries, herby submits the following comments on the *Further Notice of Proposed Rulemaking* ("*Further Notice*") released in the above-referenced proceeding.

On May 16, 2006, the Commission released an order in this proceeding extending, on an interim basis, the current freeze on Part 36 relationships and jurisdictional separations factors. The Commission also instituted the current proceeding, which is aimed at addressing a variety of issues that relate to comprehensive separations reform.[1]

The issue of separations reform has been before the Commission for nearly 10 years. BellSouth has consistently requested that the Commission make jurisdictional separations compatible with the deregulatory goals of the Telecommunications Act of 1996. Because incumbent local exchange carriers ("ILECs") are the only telecommunications market participants that are required to produce separated jurisdictional costs, the jurisdictional separations rules and their application only to ILECs create a competitive imbalance.

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[1] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Order and Further Notice of Proposed Rulemaking*, FCC 06-70 (rel. May 16, 2006).

Separations reform should lead and contribute to the same outcome to which all regulatory reform is aimed—establishing the appropriate conditions to foster competition and to permit the market to operate unencumbered by unnecessary regulatory interference. Reform, thus, should embrace relief that not only stabilizes and simplifies the jurisdictional separations process but also eliminates the process under the appropriate circumstances.

When first proposed and adopted, the separations freeze represented an initial step in the reform process. As such, it was a pragmatic approach to reforming jurisdictional separations that resulted in a reasonable allocation of costs between the state and federal jurisdictions. Most certainly, it changed jurisdictional separations from an extraordinarily cumbersome, complex and costly process to a more simplified and stable regime. Nevertheless, BellSouth has long advocated that the ultimate conclusion of separations reform should be the elimination of a formal jurisdictional separations process.[2]

The question confronting the Commission is how to continue to reform jurisdictional separations. At a minimum, the Commission should not take any steps that would reintroduce complex processes. Expending large sums to generate jurisdictional separations results makes no sense and such an approach cannot be harmonized with the competitive objectives that underlie the 1996 Act.

Doing nothing more than maintaining the jurisdictional separations freeze for all ILECs, however, is not the proper course. Regulatory and competitive developments call into question the need and purpose for jurisdictional separations. Historically, the jurisdictional separations process was used to prevent common carriers from recovering the same costs in both interstate

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[2] *See, e.g.*, BellSouth's Comments in response to the Joint Board's Recommended Decision in CC Docket No. 80-286, filed Sept. 25, 2000.

and intrastate rates. Jurisdictional separations were relevant, thus, to rate-of-return regulated carriers, and the related cost allocations were the starting point for calculating earned rates of return.

The conditions that led to the adoption of detailed jurisdictional separations rules have changed dramatically. Significantly, the market structure predicated on sole source supply of telecommunications services has been displaced by competition. Competition has spawned new developments in the telecommunications infrastructure including broadband deployment, the increased use of packet switching technologies and Internet usage, none of which, as the Commission recognized, was ever contemplated by the jurisdictional separations rules.[3] Further, the rigid regulatory paradigm of rate-of-return based rate regulation is no longer absolute.[4] To the extent rate regulation has continued, regulators have adopted regulatory approaches that are more effective and compatible with the competitive telecommunications landscape. Thus, both state and federal commissions have made available to regulated carriers various forms of price cap regulation.

The advent of price regulation at both the state and federal levels has made jurisdictional separations one of a number of "outdated regulatory mechanisms that are out of step with today's rapidly-evolving telecommunications marketplace."[5] Price regulation breaks the connection between regulatory revenue requirements and costs that are determined through the application

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[3] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Report and Order*, 16 FCC Rcd 11382 (2001) ("*Freeze Order*").

[4] Indeed, in BellSouth's nine-state local operating territory, rate-of-return regulation is entirely a thing of the past.

[5] *Freeze Order*, 16 FCC Rcd at 11383, ¶ 1.

of regulatory accounting and jurisdictional separations processes and the rates actually charged to customers. Thus, the role for jurisdictional separations ceases to exist.

BellSouth is subject to price regulation at the federal level and in all nine states in which it is an ILEC. Nevertheless, BellSouth recognizes that the set of market and regulatory conditions it faces are not uniformly applicable to all other ILECs. As the Commission proceeds, it must be prepared to adopt an approach that can accommodate the variety of circumstances in which ILECs operate. Flexibility has become an essential characteristic of regulation, and it must be incorporated into jurisdictional separations reform.

Tools are available that will enable the Commission to craft an approach that accommodates market and regulatory differences among ILECs. In particular, forbearance is an important step for the Commission to take to relieve price cap ILECs of unnecessary regulatory burden and to correct competitive imbalances that unequal application of regulation among competitors creates.

In this regard, BellSouth has pending before the Commission a request that it forbear from applying its cost assignment rules, including, but not limited to, jurisdictional separations, to BellSouth.[6] In its *Further Notice*, the Commission requests comment on the effect of denying or granting BellSouth's forbearance request on comprehensive separations reform. BellSouth believes that the answer is clear. Granting BellSouth's cost assignment petition, including forbearing from jurisdictional separations for BellSouth, is the natural first step toward fulfillment of comprehensive separations reform. By granting BellSouth's petition, and

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[6] *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 05-342, BellSouth Telecommunications, Inc.'s Petition for Forbearance (filed Dec. 6, 2005).

extending the same relief to all other similarly situated ILECs, the Commission will (1) clear out a large swatch of out-dated rules that do nothing but hinder carrier efficiency and competitiveness;[7] and (2) narrow the separations reform exercise to only those carriers for whom it continues to be relevant.

Forbearance enables the Commission to recognize and accommodate differences that exist in the marketplace. The manner in which competitive and regulatory changes have evolved has created circumstances that compel the Commission to adapt its regulatory approaches in recognition of different conditions. With regard to the cost assignment rules, BellSouth has shown in its forbearance petition that these legacies from decades old rate-of-return regulation are part of a rate-of-return regulatory regime that premised rate-setting on carriers' costs. This Commission and the nine state commissions that regulate BellSouth, however, have abandoned rate-of-return regulation and adopted price cap regulation instead. Thus, the cost assignment rules, including, but not limited to, jurisdictional separations, have no bearing on BellSouth's interstate or intrastate prices. Fundamentally, these rules have been divorced from their regulatory purpose in the case of BellSouth.

It follows, as BellSouth has also shown, that the cost assignment rules are no longer related to the consumer protection goals for which they were designed. Where costs derived from these allocation rules are no longer relevant to the ratemaking equation, as is the case for

[7] As the Commission is aware, the forbearance BellSouth seeks in its petition is much broader than the separations process alone. Rather, separations is merely the third step in a four-step cost assignment process from which BellSouth seeks specific, comprehensive relief as a price cap carrier. Thus, separations reform, whenever it occurs and whatever form it takes, would not and cannot moot, obviate or satisfy BellSouth's petition.

BellSouth, costs cannot be inflated, manipulated, or misallocated in any way that affects prices. In these circumstances, the rules are not necessary to protect consumers from such conduct.

Further, maintaining these rules is inconsistent with the public interest. While the rules serve no valid regulatory purpose, they nonetheless demand that BellSouth commit resources and time to comply. As BellSouth explained in its forbearance petition, the result is that product and service development and market entry are delayed, investment in new technology is hindered and innovation is dampened. None of these consequences should be condoned by the Commission.

The first action the Commission should take to reform separations is to grant BellSouth's cost assignment forbearance petition in its entirety and thus reduce the number of ILECs to whom the separations rules apply. For the ILECs still subject to rate-of-return regulation, the Commission should simply maintain the jurisdictional separations freeze as it exists today. These two actions continue the FCC along the path it started in 2001 when it initiated the freeze, a path that must lead to the ultimate goal of eliminating jurisdictional separations for all carriers.

Respectfully submitted,

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Date: August 22, 2006

CERTIFICATE OF SERVICE

I do hereby certify that I have this 22nd day of August 2006 served the parties of record to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH CORPORATION** by electronic filing and electronic mail addressed to the parties listed below.

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