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Legal Department

NANCY B. WHITE
General Counsel-Florida

58 NOV 13 PM 4: 19

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

RECORDS AND
REPORTING

November 13, 1998

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

980008-PU

RE: Data Request regarding Advanced Telecommunications Services

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification for its Responses to Staff's Data Requests regarding Advanced Telecommunications Services, which we ask that you file in the above-captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMH _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OP _____
- RC _____
- SEC 1
- WAS _____
- OTH all to Matilda

RECEIVED & FILED
C. B. J.
FPSC BUREAU OF RECORDS

Sincerely,

Nancy B. White

Nancy B. White (BN)

NBW/vf

cc: All parties of record
A. M. Lombardo
William J. Ellenberg II

DOCUMENT NUMBER-DATE

12741 NOV 13 98

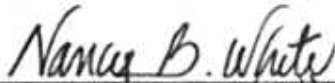
FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Data Requests regarding Advanced Telecommunications Services

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

Hand-delivery this 13th day of November, 1998 to the following:

Walter D'Haeseleer
Director
Division of Communications
Florida Public Service
Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Nancy B. White (172)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Data Request regarding Advanced) Undocketed
 Telecommunications Services)
 _____) Filed: November 13, 1998

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
 REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION**

BellSouth Telecommunications, Inc. ("BellSouth" or "Company"), hereby files, pursuant to Rule 25-22.006, Florida Administrative Code, its Request For Specified Confidential Classification, and states the following:

1. On November 13, 1998, BellSouth filed its Responses to Staff's Data Request regarding Advanced Telecommunications Services. In order to allow Staff to have copies of certain documents, specifically those produced in response to Item No. 5, BellSouth is now filing a Request for Confidential Classification for these documents, which contain information considered to be confidential and proprietary to BellSouth.

2. BellSouth is filing a Request for Confidential Classification for the subject information because the information contained in these documents is proprietary to BellSouth and includes information containing, among other things, marketing strategies and confidential business information.

3. BellSouth has appended to this Request for Confidential Classification as Attachment A a listing of the location of the information designated by BellSouth as confidential.

4. Appended hereto as Attachment B is two copies of the requested documents with the confidential information deleted.

DOCUMENT NUMBER-DATE

12741 NOV 13 88

FPSC-RECORDS/REPORTING

5. Appended hereto as Attachment C is a sealed envelope containing one copy of the documents including the material which is confidential and proprietary.

6. The requested documents contain information considered to be confidential and proprietary to BellSouth, and includes information containing, among other things, marketing strategies and confidential business information. A more specific description of this information is contained in Attachment A. Public disclosure of this information would provide BellSouth's competitors with an unfair advantage. This same information on competitors is not available to BellSouth. This information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, such information should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(e), Florida Statutes. Accordingly, it should be held exempt from the public disclosure requirements of Section 119.07, Florida Statutes.

7. BellSouth has treated and intends to continue to treat the information for which confidential classification is sought as private, and this information has not been generally disclosed.

8. The original of this Notice has been filed with the Division of Records and Reporting, and a copy has been served on the Division requesting the information.

WHEREFORE, based on the foregoing, BellSouth moves the Commission to enter an order declaring the information described above to be confidential,

proprietary business information that is not subject to public disclosure.

Respectfully submitted this 13th day of November, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE

(PA)

c/o Nancy Sims

150 South Monroe Street, Suite 400

Tallahassee, Florida 32301

(305) 347-5558

William J. Ellenberg II

WILLIAM J. ELLENBERG II

(PA)

675 W. Peachtree Street

Suite 4300

Atlanta, Georgia 30375

(404) 335-0711

REQUEST: Please outline your current deployment of advanced, high-speed data services targeted towards the residential and small business market (e.g., cable modems, xDSL services, etc.). Include: both intrastate and interstate services, the exchanges in which the service or services are currently available, exchanges where the services will be available within the next year, the number of subscribers, and recurring and nonrecurring charges for the service(s). If no intrastate services are being offered, please explain why not.

RESPONSE: On September 3, 1998, BellSouth Telecommunications, Inc. ("BellSouth") began deployment of ADSL in 7 cities.

Atlanta
Birmingham
Raleigh
New Orleans
Charlotte
Jacksonville
Ft Lauderdale

BellSouth intends to deploy ADSL in 23 additional metropolitan areas in 1999 including Daytona Beach, Melbourne, Orlando, Miami, Pensacola and West Palm Beach. See Attachment 1 for deployment by wire centers. Also, see Attachment 2 for anticipated roll-out.

BellSouth ADSL service is targeted at Network Service Providers (NSPs) such as Internet Service Providers which will purchase this service and bundle it with their applications (i.e. Internet access) and sell the resulting service as their own.

RESPONSE (CONT'D):

BellSouth is not currently offering ADSL as an intrastate service. Rather, BellSouth tariffed ADSL service in the interstate tariff because the anticipated application is internet access. Internet access is jurisdictionally interstate. In *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, Memorandum Opinion and Order, CC Dkt. 98-79, FCC 98-292 (rel. Oct. 30, 1998), ¶ 16, the FCC recently determined that GTE's ADSL service offering, which is substantially the same as that of BellSouth, "is an interstate service that is properly tariffed at the federal level."

There are three billing components to the BellSouth ADSL Service.

Tariff FCC NO 1, Section 7.2.17

1. ADSL Virtual Circuit (with volume commitment tiers)
2. ATM Port
3. Transport from the serving Central Office to the NSP POP.

For recurring and non-recurring charges, see Attachment 2, pages 6-7.

New Orleans

BellSouth ADSL Deployment (September 1998)

New Orleans													
1	CVTNLAMA	504-867	504-871	504-875	504-892	504-893	504-898						
2	HINDUAMA	504-230	504-345	504-350	504-375	504-419	504-520	504-529	504-548				
3	KNRRLABR	504-441	504-443	504-461	504-463	504-484	504-465	504-466	504-467				
4	KNRRLAHN	504-468	504-469	504-471	504-472	504-712							
5	MINVLAMA	504-729	504-731	504-733	504-734	504-736	504-737	504-738	504-739				
6	NWORLAAR	504-624	504-626	504-674	504-727								
7	NWORLAAY	504-391	504-392	504-393	504-394	504-398	504-433						
8	NWORLABM	504-428	504-431	504-436	504-437								
9	NWORLACA	504-821	504-822	504-824	504-826	504-827							
10	NWORLACM	504-861	504-862	504-864	504-865	504-866							
11	NWORLAFR	504-270	504-271	504-276	504-277	504-278	504-279	504-281					
12	NWORLALK	504-940	504-941	504-942	504-943	504-944	504-945	504-947	504-948				
13	NWORLAMA	504-949											
	LAKE	504-282	504-283	504-284	504-286	504-288	504-280						
	MAIN	504-521	504-522	504-523	504-524	504-527	504-528	504-529	504-558				
		504-571	504-582	504-593	504-595	504-596	504-598	504-671	504-681				
		504-289	504-323	504-412	504-423	504-525	504-533	504-539	504-544				
		504-547	504-552	504-553	504-556	504-561	504-565	504-566	504-568				
		504-569	504-576	504-581	504-582	504-584	504-585	504-586	504-587				
		504-588	504-589	504-597	504-599	504-619	504-623	504-636	504-670				
		504-678	504-679	504-680	504-728	504-988							
14	NWORLAMC	504-280	504-482	504-483	504-484	504-485	504-486	504-488					
15	NWORLAMR	504-260	504-482	504-483	504-484	504-485	504-486	504-488					
16	NWORLAMT	504-432	504-828	504-830	504-831	504-832	504-833	504-834	504-835				
17	NWORLAMU	504-836	504-837	504-838	504-840	504-841	504-842	504-846	504-849				
18	NWORLARI	504-253	504-254	504-255	504-257								
19	NWORLASC	504-227	504-263	504-366	504-362	504-363	504-364	504-365	504-366				
20	NWORLASK	504-269	504-891	504-894	504-895	504-896	504-897	504-899	504-946				
	SEABROOK	504-240	504-241	504-242	504-243	504-244	504-245	504-246	504-248				

BellSouth ADSL Deployment (September 1998)

New Orleans		New Orleans									
City	Area	504-220	504-454	504-455	504-456	504-457	504-459	504-779	504-780		
21	NWORLASW SHREWSBURY	504-883	504-885	504-887	504-888	504-889					
22	SLIDLAMA SLIDELL	504-639	504-841	504-643	504-645	504-646	504-649	504-661	504-690		
		504-699	504-726	504-781	504-847						

Atlanta

BellSouth ADSL Deployment (September 1998)

ATLANTA									
	Wire Center ID	Wire Center Name	Area Code Telephone Exchange						
1	ATLNGABU	BUCKHEAD	404-467	404-649	404-812	404-814	404-816	404-841	404-842
			404-846	404-848	404-869	770-488	404-231	404-233	404-237
			404-238	404-239	404-240	404-261	404-262	404-264	404-266
			404-364	404-365	404-504	404-741			
2	ATLNGACS	COURTLAND ST.	404-224	404-265	404-302	404-330	404-331	404-332	404-335
			404-616	404-727	404-730	404-865	404-893	404-927	404-220
			404-382	404-463	404-515	404-631	404-651	404-652	404-654
			404-656	404-657	404-749	404-818	404-887	404-215	404-221
			404-222	404-223	404-225	404-230	404-420	404-506	404-521
			404-522	404-523	404-524	404-525	404-526	404-527	404-529
			404-562	404-572	404-577	404-581	404-582	404-584	404-586
			404-588	404-589	404-614	404-653	404-658	404-659	404-681
404-688	404-707	404-802	404-827	404-878	404-880	404-954			
3	ATLNGAEL	EAST LAKE	404-341	404-360	404-370	404-371	404-373	404-377	404-378
			404-566	404-687					
4	ATLNGAPP	PEACHTREE PLACE	404-249	404-251	404-347	404-532	404-541	404-542	404-619
			404-685	404-686	404-712	404-810	404-815	404-817	404-853
			404-206	404-228	404-253	404-254	404-287	404-385	404-443
			404-503	404-575	404-598	404-607	404-676	404-704	404-724
			404-733	404-744	404-748	404-836	404-838	404-870	404-872
			404-873	404-874	404-875	404-376	404-877	404-881	404-885
			404-888	404-892	404-894	404-897	404-898	404-914	404-946
404-965	678-538	678-686							
5	ATLNGASS	SANDY SPRINGS	404-250	404-252	404-255	404-256	404-257	404-303	404-459
			404-531	404-705	404-843	404-845	404-847	404-851	
6	ATLNGATH	TOCO HILLS	404-235	404-248	404-315	404-320	404-321	404-325	404-327
			404-329	404-486	404-553	404-633	404-634	404-636	404-638
			404-639	404-679	404-728	404-778	404-828	404-982	
7	CHMBGAMA	CHAMBLEE MAIN	770-488	678-267	678-530	678-781	770-216	770-220	770-225
			770-234	770-451	770-452	770-454	770-455	770-457	770-458
			770-557	770-676	770-936	770-986	770-488		

Atlanta

BellSouth ADSL Deployment (September 1998)

ATLANTA									
	Wire Center ID	Wire Center Name	Area Code - Telephone Exchange (TWP - NJX)						
8	DNWDGAMA	DUNWOODY	404-648	678-443	770-206	770-350	770-351	770-352	770-353
			770-379	770-390	770-391	770-392	770-393	770-394	770-395
			770-396	770-399	770-481	770-512	770-522	770-545	770-551
			770-604	770-668	770-671	770-673	770-677	770-698	770-730
			770-804	770-821	770-828	770-829			
9	LLBNGAMA	LILBURN	770-279	770-381	770-564	770-638	770-717	770-806	770-921
			770-923	770-925	770-931	770-935	770-903		
10	TUKRGAMA	TUCKER	678-987	770-270	770-288	770-414	770-491	770-492	770-493
			770-496	770-821	770-857	770-696	770-723	770-724	770-908
			770-934	770-938	770-939				
11	ALPRGAMA	ALPHARETTA	678-297	678-942	770-343	770-346	770-410	770-442	770-475
			770-521	770-589	770-570	770-619	770-663	770-664	770-667
			770-674	770-708	770-740	770-750	770-751	770-752	770-753
			770-754	770-772	770-777				
12	LRVLGAOS	LAWRENCEVILLE	678-252	678-377	770-237	770-277	770-338	770-339	770-513
			770-609	770-682	770-685	770-822	770-962	770-965	770-995
13	MRTTGAEA	MARIETTA EAST	678-560	678-560	770-321	770-509	770-565	770-578	770-579
			770-971	770-973	770-977				
14	MRTTGAMA	MARIETTA MAIN	678-784	678-784	770-218	770-250	770-419	770-420	770-421
			770-422	770-423	770-424	770-425	770-426	770-427	770-428
			770-429	770-494	770-499	770-514	770-528	770-575	770-590
			770-693	770-792	770-793	770-794	770-795	770-919	
15	NRCRGAMA	NORCROSS	678-328	678-533	770-209	770-236	770-242	770-246	770-248
			770-263	770-300	770-325	770-326	770-368	770-409	770-416
			770-417	770-441	770-446	770-447	770-448	770-449	770-450
			770-453	770-559	770-582	770-613	770-620	770-658	770-662
			770-729	770-734	770-797	770-798	770-840	770-849	770-903
16	RSWLGAMA	ROSWELL	678-323	678-461	770-518	770-552	770-558	770-587	770-594
			770-640	770-641	770-642	770-643	770-645	770-649	770-650
			770-992	770-998					
17	WDSTGACR	WOODSTOCK	678-445	678-486	770-516	770-517	770-591	770-592	770-924

Atlanta

BellSouth ADSL Deployment (September 1998)

ATLANTA	Area Code	Telephone Exchange	Area Code	Telephone Exchange	Area Code	Telephone Exchange	Area Code	Telephone Exchange	Area Code	Telephone Exchange
	770-926	770-928								

B'ham

Bell/South ADSL Deployment (September 1998)

Birmingham													
1	BRHMALCH	BHAM-CAHABA HGTS	205-298	205-967	205-968	205-969	205-970	205-972	205-977				
2	BRHMALHW	BHAM-HOMEWOOD	205-414	205-802	205-803	205-868	205-870	205-871	205-877	205-879			
3	BRHMALRC	BHAM-RIVERCHASE	205-402	205-403	205-444	205-560	205-733	205-982	205-985	205-987			
			205-988	205-989									
4	BRHMALVA	BHAM-VALLEY	205-822	205-823	205-824	205-978	205-979						
5	ALBSALMA	ALABASTER	205-620	205-621	205-663	205-684							
6	BRHMALMT	BIRMINGHAM MAIN&TOLL	205-214	205-226	205-250	205-251	205-252	205-254	205-257	205-297			
			205-307	205-320	205-321	205-322	205-323	205-324	205-325	205-326			
			205-327	205-328	205-458	205-502	205-521	205-581	205-583	205-714			
			205-715	205-716	205-731	205-741	205-801						
7	BRHMALFO	FORESTDALE	205-791	205-792	205-793	205-794	205-795	205-796	205-797	205-798			
8	BRHMALOM	OAK MOUNTAIN	205-408	205-960	205-981	205-991	205-992	205-995					

Charlotte

BellSouth ADSL Deployment (September 1998)

Charlotte										
	Wire Center ID	Wire Center Name	Area Code Telephone Exchange (NPA-NXX)							
1	CHRLNCBO	S BLVD	704-388	704-519	704-521	704-522	704-523	704-525	704-527	704-529
			704-558	704-559	704-561	704-565	704-582	704-672	704-676	704-679
2	CHRLNCCA	CALDWELL	704-316	704-317	704-330	704-331	704-336	704-338	704-339	704-342
			704-343	704-344	704-347	704-350	704-353	704-355	704-358	704-373
			704-374	704-377	704-378	704-382	704-383	704-384	704-386	704-417
			704-446	704-954	704-332	704-333	704-334	704-335	704-337	704-348
			704-370	704-371	704-372	704-375	704-376	704-379	704-570	
3	CHRLNCCE	CENTRAL AVE.	704-531	704-532	704-535	704-536	704-537	704-563	704-566	704-567
			704-568	704-569						
4	CHRLNCCR	CARMEL	704-341	704-541	704-542	704-543	704-544			
5	CHRLNCDE	DERITA	704-509	704-596	704-597	704-598	704-599	704-921		
6	CHRLNCER	ERWIN RD	704-504	704-583	704-587	704-588				
7	CHRLNCRE	REID	704-551	704-552	704-553	704-554	704-556	704-557	704-571	704-643
8	CHRLNCSH	SHARON AMITY	704-362	704-364	704-365	704-366	704-367	704-442		
9	CHRLNCTH	THOMASBORO	704-391	704-392	704-393	704-394	704-395	704-398	704-399	

Raleigh

BellSouth ADSL Deployment (September 1998)

Raleigh										
	Wire Center ID	Wire Center Name	Area Code - Telephone Exchange (NPA-XXX)							
1	CARYNCCE	CARY-CENTRAL	919-319	919-380	919-460	919-461	919-462	919-467	919-468	919-469
			919-481	919-652						
2	CPHLNCRO	CHAPEL HILL-ROSEMARY	919-216	919-914	919-918	919-929	919-932	919-933	919-942	919-962
			919-966	919-967	919-968	919-969				
3	RLGHNCGA	GARNER	919-661	919-662	919-772	919-773	919-779			
4	RLGHNCGL	GLENWOOD	919-420	919-510	919-571	919-781	919-782	919-783	919-784	919-785
			919-786	919-787	919-881					
5	RLGHNCHO	NEW HOPE	919-301	919-501	919-713	919-790	919-850	919-871	919-872	919-873
			919-874	919-875	919-876	919-877	919-878	919-954	919-981	
6	RLGHNCMO	MORGAN	919-755	919-821	919-828	919-829	919-832	919-833	919-834	919-835
			919-836	919-860	919-890	919-899	919-505	919-508	919-512	919-513
			919-515	919-516	919-546	919-664	919-715	919-716	919-733	919-737
			919-743	919-831	919-839	919-856	919-857			
7	RLGHNCSE	SIX FORKS	919-518	919-676	919-844	919-845	919-846	919-847	919-848	919-870

Ft. Lauderdale

BellSouth ADSL Deployment (September 1998)

Ft. Lauderdale		Area Code - Telephone Exchange (NPA NXX)
Wire Center ID	Wire Center Name	
1	PMBHFLCS Coral Springs	954-255 954-340 954-341 954-344 954-345 954-346 954-752 954-753
		954-755 954-757 954-796
2	FTLDCY Cypress	954-202 954-229 954-267 954-351 954-489 954-490 954-491 954-492
		954-493 954-550 954-771 954-772 954-776 954-928 954-938 954-958
3	FTDFLMR Ft. Lauderdale Main	954-225 954-348 954-355 954-356 954-357 954-459 954-462 954-463
		954-467 954-468 954-519 954-522 954-523 954-524 954-525 954-527
		954-595 954-627 954-712 954-713 954-728 954-756 954-760 954-761
		954-762 954-763 954-764 954-765 954-766 954-767 954-768 954-769
		954-779 954-831 954-832 954-847 954-848
4	FTLDFLJA Jacaranda	954-236 954-262 954-370 954-382 954-423 954-424 954-452 954-472
		954-473 954-474 954-475 954-476 954-503 954-723 954-916
5	HLWDFLPE Pembroke Pines	954-252 954-430 954-431 954-432 954-433 954-434 954-435 954-436
		954-437 954-438 954-441 954-442 954-450 954-680 954-704
6	FTLDFLPL Plantation	954-316 954-321 954-327 954-581 954-583 954-584 954-587 954-791
		954-782 954-797
7	PMBHFLFE Pompano Beach-Federal	954-781 954-782 954-783 954-784 954-785 954-786 954-787 954-788
		954-941 954-942 954-943 954-946
8	HLWDFLWH West Hollywood	954-893 954-894 954-961 954-962 954-963 954-964 954-966 954-967
		954-981 954-983 954-985 954-986 954-987 954-988 954-989

Jacksonville

BellSouth ADSL Deployment (September 1998)

Jacksonville										
	Wire Center ID	Wire Center Name	Area Code Telephone Exchange NPA NXX							
1	JCVLFLAR	ARLINGTON	904-720	904-721	904-723	904-724	904-725	904-726	904-727	904-805
			904-855							
2	JCVLFLBW	BEACHWOOD	904-218	904-554	904-565	904-620	904-641	904-642	904-645	904-646
			904-905	904-928	904-996	904-998				
3	JCVLFLCL	CLAY STREET	904-232	904-308	904-340	904-350	904-351	904-353	904-354	904-355
			904-356	904-357	904-358	904-359	904-360	904-366	904-489	904-549
			904-630	904-632	904-633	904-634	904-665	904-790	904-791	904-798
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BELLSOUTH ADSL

BellSouth Telecommunications, Inc.
FPSC Staff's Data Request
Dated: October 19, 1998
Item 1
Attachment 2

ADSL Technology and Applications

- **What Is ADSL?**

ADSL, or Asymmetric Digital Subscriber Line, is a new, high speed transmission technology. ADSL makes possible the transport of multimedia applications over existing twisted pair copper telephone lines at spectacular speeds. ADSL supplies three (3) separate frequency channels over the same phone line.

ADSL supports two-way transmission of analog voice (POTS), a downstream (toward the customer) digital broadband channel of up to 8 Mbps for data and an upstream (toward the CO) digital channel of up to 640 Kbps. The rates of the digital channels depend on the physical and electrical characteristics of the loop (primarily loop length and wire gauge) and on the ADSL technology deployed.

- **What are ADSL uses?**

The service provides faster access to the Internet, and to corporate LANs (local area networks) for teleworkers. ADSL is particularly valuable for applications in which the end user needs to download information from a remote server quickly and efficiently.

- **What is BellSouth's offer?**

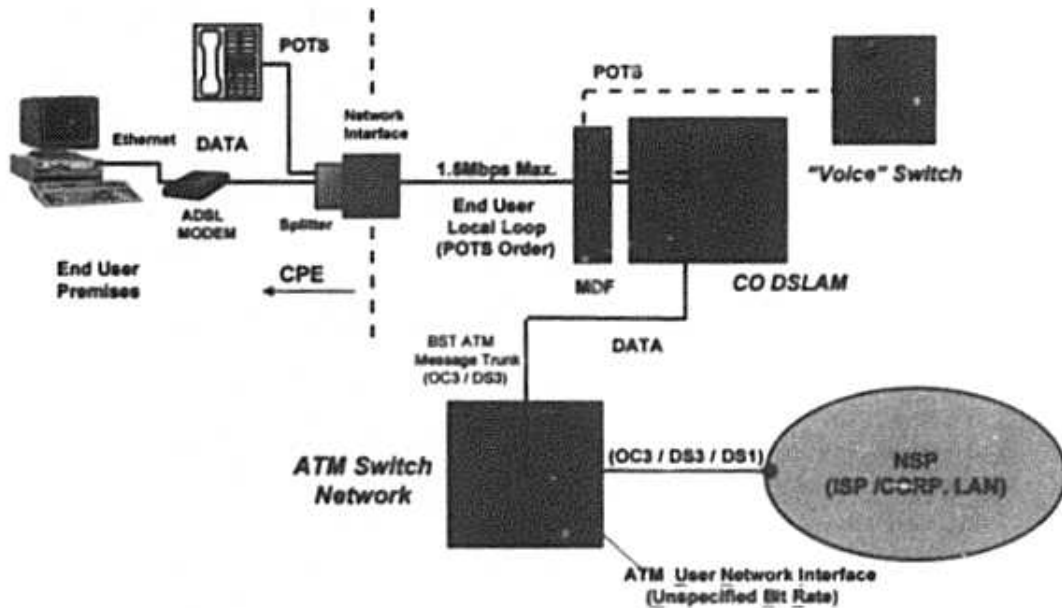
BellSouth's initial ADSL offer is a mass-market product targeted at Internet Service Providers (ISPs), Competitive Local Exchange Companies (CLECs), Interexchange Carriers (IXCs) and large corporate clients who can act as their own network service providers. Hereinafter, this collective group will be referred to as Network Service Providers (NSPs).

These customers will buy directly from BellSouth in volume and resell to their residential and small business end-user customers or to their own employees. BellSouth's clients will brand our ADSL product as their own and assume all sales, marketing, and customer care responsibilities. BellSouth will provide Tier II Support to our clients when they escalate to BellSouth maintenance problems that their service support personnel have identified as network problems.

BellSouth ADSL is a permanent virtual circuit (PVC) connection service operating at up to 1.5Mbps downstream and up to 256Kbps upstream. Service providers will primarily target the Residential and Small Business Markets for Internet access and the telecommuter for remote LAN access. BellSouth will provision ADSL on lines

with BellSouth's local exchange voice telephone service (1FR or 1FB). This service will provide an ADSL physical interface to BellSouth's Asynchronous Transfer Mode (ATM) infrastructure for the purpose of interconnecting an end user customer's single workstation with the customer's selected NSP.

The following is a diagram of BellSouth's 1998 ADSL offer:



The 1998 initial Mass-market offer and corresponding cost structure does *not* support any special actions by BellSouth to either condition an existing loop or to provide a new loop in order to make ADSL work at any given location. Product Marketing will develop enhanced ADSL offers for a 1999 roll-out.

- **How will ADSL be marketed?**

BellSouth ADSL is an industrial product targeted at ISPs, CLECs, Interexchange Carriers and large corporate clients who will buy directly from BellSouth in volume and resell to their residential and small business end-users. These clients will brand BellSouth's ADSL product as their own and all sales, marketing and Tier I customer care will be their responsibility. BellSouth will provide Tier II Support to our clients when they escalate to BellSouth maintenance problems that their service support personnel have identified as network problems.

- **How fast is ADSL?**

BellSouth's ADSL Service being launched on September 3, 1998 is capable of transmitting information at speeds of up to a maximum of 1.5 Mbps downstream and up to a maximum of 256 Kbps upstream. BellSouth does not guarantee a given throughput to the customer.

ADSL will allow users to surf the Web at speeds up to 30 times faster than a conventional 56.Kbps modem. As an illustration, a large Web site that would take 1.15 minutes to download using a 28.8 Kbps modem would take only 1.3 seconds using ADSL. Downloading a movie preview with ADSL – a 5Mb file would take only 30 seconds. The same download with a 28.8K modem would take over 23 minutes! The remarkably increased speed of ADSL allows you to access large amounts of data in significantly less time, making your Internet experience more robust and productive.

- **How does ADSL technology work?**

Conventional modems use the same frequency band (0-4 kHz) as the telephone service voice channel. So if the modem is in use, your telephone line is unavailable.

Since ADSL operates at frequencies of 20 kHz to 1.1 MHz, which are far above the voice channel frequencies, you can have normal telephone service and ADSL data service at the same time. BellSouth's telephone service will always operate, even if the ADSL modem is unplugged or otherwise disabled. ADSL will work on a single, non-loaded copper pair within 18,000 ft. from the central office.

- **What is the difference between an ADSL modem and a standard modem?**

A standard modem will allow data transmission over a normal phone line, but the phone line cannot be used for voice calls or fax while the modem is being used.

ADSL will allow simultaneous use of voice and data. You will be able to make phone calls or send and receive faxes at the same time the line is being used to access data from a service network, including access to the Internet.

Also, once an ADSL modem is installed, it is "always on". You don't have to dial-up every time you want to connect to the Internet or to your home office LAN.

- **What sort of applications will benefit most from ADSL?**

ADSL provides faster access to the Internet and to corporate LANs for teleworkers. There service is particularly valuable for applications that require quick and efficient downloading of information from a remote server.

ADSL allows simultaneous telephone and Internet access, a feature that makes it an excellent solution for home office applications.

The following Applications are driving ADSL demand:

- Internet Access
- Intranet Access
- Extranet Access
- Telecommuting, Distance Learning, Remote LAN Access, Small Office – Home Office (SOHO)
- Video on Demand
- Video Clips / Movie Previews
- Video Catalogs
- Remote Training
- Gaming
- E-Commerce

ADSL allows for advanced applications using the same phone line currently installed at the home or remote working site – high speed interactive entertainment, virtual reality, distance learning and video conferencing will all change the way we use our PCs. ADSL also supports video on demand including real-time broadcast services and interactive video services.

- **How will ADSL affect regular telephone service?**

Since ADSL utilizes existing copper telephone lines, there is no requirement for a second line or a telephone number change. Everyday tasks such as voice communication, faxing and using a standard modem will not be disrupted. ADSL eliminates busy signals, time limits, and unmeasured usage. Additionally, ADSL allows you to surf the Web while sending a fax or talking over the phone simultaneously.

- **Will other features of a standard phone line be affected?**

No. ADSL will have no effect on calling features (such as BellSouth Custom Calling™ services, including Caller ID, Call Answer and Call Waiting) that are currently available on telephone lines.

- **How secure is ADSL?**

ADSL offers secure point to point connectivity over the copper line just like a dial-up modem or T-1 connection. These point to point connections can be mapped securely to a corporate network or an ISP. A hacker must physically tap the line to get access to the data.

ADSL Availability

- **How widespread will ADSL deployment be?**

BellSouth will not deploy ADSL ubiquitously, but will be available in Company-designated areas served by an ATM switch and having high concentrations of copper local channel facilities that are less than 18,000 route feet in length. Initially, BellSouth will not offer ADSL outside these areas.

- **When and where will ADSL service be available?**

In 1998 we will deploy in seven metros covering 80 wire centers. The seven metros are: Atlanta, Birmingham, Charlotte, Ft. Lauderdale, Jacksonville, New Orleans and Raleigh. Go to www.bellsouth.com/bbs/adsl for maps showing coverage in each metro.

Anticipated 1999 Metro Roll-out

Atlanta (expansion)	Augusta	Baton Rouge
Birmingham (expansion)	Boca Raton	Columbia
Charleston	Charlotte (expansion)	Chattanooga
Daytona Beach	Ft. Lauderdale (expansion)	Lafayette
Greensboro	Greenville	Jackson, Ms
Jacksonville (expansion)	Knoxville	Louisville
Melbourne	Memphis	Miami
Biloxi	Montgomery	Nashville
New Orleans (expansion)	Orlando	Pensacola
Raleigh (expansion)	Shreveport	West Palm Beach

At this point we have not determined specific wire centers for 1999. We will contact account teams, ISPs, industry managers and area planners to assist in prioritizing wire centers in each of these metros.

- **What is the ADSL Reach Policy?**

The ADSL product for 1998 is *not* a high cost special service. It is a best effort, low cost, mass market offering and the cost structure does *not* support any special actions by BellSouth to either condition an existing loop or to provide a new loop in order to make ADSL "work" at any given location. A "Business" ADSL offer with high speeds, throughput guarantees and loop conditioning is planned for 1999 roll-out.

- **How will ADSL be ordered?**

First, the account team should order an ATM connection from the NSP Point of Presence to a designated BellSouth ATM switch. This ATM connection is purchased by the NSP from the ATM InterState Access Tariff as Special Access and consists of the appropriate transport and a port on the BellSouth ATM switch. The ATM connection will be an Unspecified Bit Rate (UBR), User-Network Interface (UNI) and can be DS-1, DS-3 or OC3, at the option of the NSP. The transport can be Hicap, LightGate, SmartPath, SmartRing, etc.

Next, the account team should establish a Miscellaneous Billing Account (MBA) for the NSP. The NSP must have an MBA in each metro where they are offering ADSL.

The NSP will actually order ADSL themselves using a BellSouth Online ordering system on the Web. These orders will flow to the DSG. To provide ADSL service, the DSG will issue two (2) service orders:

1. One order issued on the end-user account to provision the service,
2. One order issued on the NSP account to establish billing.

ADSL Pricing

- **What are the tariff price components?**

There are three FCC tariff price components associated with ADSL:

1. An ADSL virtual circuit (VC) which is the line coding from the end user home to a DSLAM in the central office. This charge is billed to the NSP not the end user. Pricing for the ADSL VC is based on a volume commitment from the NSP. The ADSL VC has a 12-month minimum service period.
2. ATM UNI and UBR charges. These charges are based on the customers desired bandwidth and contract term. **PVC charges do not apply.**
3. The transport for a DS1, DS3 OC3 or OC12 based on mileage from BellSouth's ATM switch to the NSP's Point of Presence (POP).

ADSL VC Pricing

Virtual Circuit Minimum	Quantity Maximum	Non-recurring Charge per VC	Monthly Rate per VC	USOC
51	500	\$100.00	\$45.00	ADF11
501	2500	\$100.00	\$42.00	ADF12

2501	5000	\$100.00	\$37.00	ADF13
5001	7500	\$100.00	\$34.00	ADF14
7501	10,000	\$100.00	\$32.00	ADF15
10,001	40,000	\$100.00	\$30.00	ADF16
40,001+		\$100.00	\$29.00	ADF17

ATM Pricing

Per UNI and UBR	Non-Recurring Charges	Month to Month	12 to 24 Months	25 to 48 Months
1.536 Mbps	\$500.00	\$405.00	\$370.00	\$270.00
44.210 Mbps	\$750.00	\$2676.00	\$2170.00	\$1800.00
149.760 Mbps	\$1000.00	\$5000.00	\$4550.00	\$3380.00
599.040 Mbps	\$1500.00	\$10,000	\$9100.00	\$6800.00

The above pricing includes charges for both the UNI and UBR. PVC charges do not apply.

The service provider determines the actual price to an end user. BellSouth.net charges \$49.95 to \$59.95 per month dependent upon whether the end user has Complete Choice Service from BellSouth.

- **Who is the contact for ADSL Billing Inquiries?**

The NSP will direct billing inquiries on the BellSouth ADSL billing account to the DSG for resolution. End-users will direct billing inquiries on ADSL to the NSP for resolution.

Provisioning

- **What is the 1998 Initial ADSL Offer?**

- Up to 1.5 Mbps – Downstream
- Up to 256 Kbps – Upstream
- Sold only to a NSP
- Provisioned on POTS lines for the End-Users
- Incremental BST ADSL charges will be billed to the NSP
- There are no service guarantees
- Customer side of DSLAM must be copper
- Distance limitation of copper loop is 18 Kilofeet. The best grade of service is a shortened copper loop which allows the downstream bit rate to increase
- Cannot use Ringmaster telephone number
- ADSL is not transportable; nor is it switched. Therefore, it is quite different from analog modems and dialing with POTS
- No Service Gateway

The mass-market offering is a non-designed, POTS-type, ATM UBR, and is offered as a reasonable commercial effort service. End-Users will be connected only to the NSP ordering the ADSL service from BST. One PVC per End-User.

- **What is BellSouth's deployment platform?**

The initial deployment is the Digital Subscriber Line Access Multiplexer (DSLAM) made by Alcatel Network Systems. The Alcatel model name is the A1000. Release 3.0 (R3.0) will be the lowest release used for deployment.

The DSL Services Group will use Release 3.0 and subsequent maintenance releases of the Alcatel ADSL workstation (AWS) to manage the DSLAM.

- **What inside wiring is required for ADSL?**

The service provider should install new Category 3 or better inside wire (IW) unless physical conditions prevent said installation. This requirement provides the end-user the maximum possible transmission rate, and significantly reduces the problems caused by defective or impaired existing inside wire.

Product Management will provide the NSP with the Methods and Procedures for IW installation after the customer signs the Letter of Election.

- **What CPE is required for ADSL?**

The end-user CPE necessary for ADSL consists of a splitter (a low pass filter with line, data and voice connections), an ADSL modem, Category 3 inside wire for the data circuit, a termination jack, station wire and any ISP-specific browser software. Currently, there are two types of ADSL modems: 1) an internal integrated network interface card (NIC) and 2) an external modem consisting of a 10BaseT Ethernet cable to connect the ADSL modem to the PC, and an Ethernet NIC in the PC. CPE, its installation and configuration are the responsibility of the NSP.

- **What is a splitter?**

A POTS splitter uses a low pass filter to separate the low-end frequencies of the telephone audio spectrum from the higher frequencies of the ADSL signals. The splitter recommended by BellSouth is a passive device that does not require power so that telephone service is not interrupted if the ADSL equipment goes down. This splitter also allows for use of traditional voice services such as Caller ID, Call Waiting and other customer calling features. A splitter is required at both the customer premises and at the BellSouth central office.

- **What PC equipment or configurations are required for ADSL?**

The following are the PC requirements BellSouth used during the ADSL market trial:

- 100 Megahertz Pentium Processor
- Windows 95 Operating System/MAC
- 24M suggested/16M required RAM
- 50M free hard disk space
- 802.3 IP Stack
- 3D Video Card
- Ethernet T-base 10 Card

The NSPs will ultimately decide which PC configurations they will support.

- **Can Customers use a mix of ISDN, analog modems and ADSL for teleworking or remote access?**

Sure, but they are obviously going to get the best speeds using 1) ADSL; then, 2) ISDN and finally 3) analog modems. The Customers router/switch/hub is a critical element when mixing services.

- **Can I order a new line and ADSL at the same time?**

No, the NSP can only order ADSL on a working telephone number. You must first order the new line using standard procedures. After BellSouth installs the new line, the NSP can order ADSL on that line.

REQUEST: Please describe other services that would constitute "advanced services" under Sec. 706 of the Telecommunications Act of 1996. Include Intrastate and Interstate services both currently offered and planned for deployment within the next year.

RESPONSE: Section 706(c)(1) defines "advanced telecommunications capability", without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

In the 706 Notice of Inquiry (NOI) the FCC sought comment on the meaning of these terms. The FCC asked commenters how to determine whether a particular facility or service fits within the statutory definition of advanced telecommunications capability or is an "advanced service".

The FCC has not yet issued an order in connection with the NOI. It is thus not clear at this time what services will fit within the definition of "advanced services."

Notwithstanding the foregoing, the following services are examples of some of the services BellSouth believes constitute "advanced services": (This list is not intended to be inclusive of all current or planned advanced services.)

BellSouth's Frame Relay Service is currently available from the Florida General Subscriber Service Tariff for local service. Frame Relay Service is also available from the Florida Access Services Tariff for intrastate access use and from the BellSouth FCC #1 Tariff for interstate access use. Frame Relay Service is a connection-oriented packet-switched data transport service allowing for the interconnection of local area networks or other compatible customer equipment; this service allows for the transfer of variable length frames which are relayed by virtual connections through the frame relay network. Connections to

RESPONSE (CONT'D):

Frame Relay Services are primarily available at the following speeds: 56 Kbps, 64 Kbps, 1.536 Mbps, and 44.210 Mbps; various fractional speed connections are also available between the speeds of 64 Kbps and 1.536 Mbps.

BellSouth's ATM Service tariff is to be filed in late November as a new local service in the General Subscriber Service Tariff; ATM Service will also be proposed at the same time as a new service for intrastate access use in the Access Services Tariff. BellSouth ATM Service has been available from the BellSouth FCC#1 Tariff for interstate service since June 6, 1998. ATM Service is a connection-oriented data service based on ATM cell-based switching technology which allows for the interconnection of ATM compatible customer equipment; this service provides the switching of symmetrical duplex transmissions of fixed-length ATM cells which are relayed through the ATM network by virtual connections. Connections to ATM Services are available at the following speeds: 1.536 Mbps, 44.210 Mbps, 149.760 Mbps and 599.040 Mbps.

ISDN - BRI is an intraLATA group of offerings supported by the Integrated Services Digital Network (ISDN) Basic Rate Interface (BRI) architecture. The ISDN - BRI architecture supports simultaneous transmission of voice, data, and packet services on the same exchange access line.

ISDN-BRI provides a new method of access to the telephone network called Basic Rate Access. Basic Rate Access will consist of up to two 64 Kbps (B) channels and one 16 Kbps (D) channel. The B channels can be configured to provide either Circuit Switched transmission of voice and/or data or High Speed Packet switched service. The D channel can provide Low Speed Packet capability.

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RESPONSE (CONT'D):

ISDN – BRI is offered as ISDN Business Service and ISDN Residence Service. Calling/Called Number Delivery and Call Hold are included with these services. Features are available to increase the capability of the B-channels and may be subscribed to on an as-needed basis.

REQUEST: Would these services be marketed directly to end users, or to businesses such as ISPs that would market them to end users?

RESPONSE: BellSouth will market ADSL service as a wholesale service to NSPs, not to end users. BellSouth will also market to end users a high speed version of its BellSouth.net internet access service which high speed service uses ADSL service. As for the other examples of advanced services listed in its response to Item No. 2, BellSouth intends to market as follows:

Frame Relay Service is marketed primarily towards large and medium sized business end users and Interexchange Carriers. ISPs are a part of the business market for Frame Relay Service; ISPs would utilize Frame Relay Service to aid in the provisioning of their ISP network over which they would provide the services to sell to their customers.

ATM Service is marketed primarily towards large and medium sized business end users and Interexchange Carriers. ISP's are a part of the business market for ATM Service; ISPs would utilize ATM Service to aid in the provisioning of their ISP network over which they would provide services to sell to their customers.

ISDN – BRI is offered as ISDN Business Service and ISDN Residence Service to end-users and NSPs.

REQUEST: Do you provision services to ISPs in such a manner that they may provide their customers xDSL service? If yes, please describe how the service is provisioned.

RESPONSE: BellSouth provisions ADSL to the NSP so that it can bundle applications and sell the resulting DSL/Internet Access service to its end-users. BellSouth provisions ADSL over existing twisted pair copper facilities to the end-users' premises and over ATM transport to the NSP Point of Presence.

REQUEST: What would be necessary for all of your local loops to be xDSL-capable?

RESPONSE: First, for all local loops to be ADSL capable, each central office must be equipped with a Digital Subscriber Line Access Multiplexer (DSLAM) and with a connection to BellSouth's Asynchronous Transfer Mode (ATM) switching network.

Second, ADSL is an emerging technology. Currently, loops provided using electronic pair gain equipment such as digital loop carrier are not capable of supporting ADSL services. Since ADSL is a transmission system designed to operate on copper twisted pairs, the digital and possibly optical facility from the digital loop carrier remote electronics location to the serving wire center will not support ADSL transmission. Technology is being developed that will supply the DSLAM functionality at each digital loop carrier site and will enable a connection from that site to the ATM switching network.

Loops with loading coils are not capable of supporting ADSL services. Loading coils are provided for voice services transmission quality reasons on copper loops longer than 18,000 feet. To provide ADSL services using these loaded loops, the same remote DSLAM and ATM connectivity that was provided for digital loop carrier fed loops would need to be provided on the subscriber side of the last loading coil on that subscriber's loop.

Loops provided using fiber distribution systems such as fiber in the loop technologies, FITL or FTTC, are not currently capable of providing ADSL. BellSouth anticipates that a comparable xDSL service may in the future be provided over those types of loops.

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REQUEST: Do you have any central offices in Florida that are presently incapable of accepting xDSL capability (e.g. technical incompatibility with DSLAM or other xDSL equipment, or lack of floor space, etc)? If so, which offices, and what would be required to make them xDSL-capable?

RESPONSE: No. There are no wire centers in Florida that are technically incapable of providing high speed data services.

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Page 1 of 1

REQUEST: (If not included in your response to #1), Have you deployed or do you have plans to deploy xDSL service, or a functional equivalent, in Florida?

RESPONSE: See Response to Item No. 1.

REQUEST: Is your company deploying these services at a rate that is consistent with your optimal business plan? If not, what are the major obstacles to a more rapid deployment of advanced services?

RESPONSE: The major obstacle to a more rapid deployment of BellSouth's advances services is the prohibition on BellSouth's provision of in-region interLATA services.

Apart from that, this Commission must recognize that the market for advanced services already is competitive. BellSouth believes that removal of regulatory barriers to all potential advanced service providers will encourage the deployment of advances services to the broadest range of services. See Attachment No. 3 for BellSouth's Comments filed with the FCC relating to impediments to deployment of advances services.

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

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)
)

COMMENTS OF BELLSOUTH CORPORATION



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September 25, 1998

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

In the Matter of)	
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Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	

COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation, for itself and its affiliated companies (collectively "BellSouth"), submits the following comments in response to the Notice of Proposed Rulemaking ("Notice") released in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

"One of the fundamental goals of the Telecommunications Act of 1996 (the 1996 Act) is to promote innovation and investment by all participants in the telecommunications marketplace, both incumbents and new entrants, in order to stimulate competition for all services, including advanced services."² This goal has been achieved for high-volume business users, who can select among several competing providers to fulfill their broadband telecommunications requirements. For low-volume users – residential consumers, small and rural businesses, schools, libraries and rural health care providers – the deployment of advanced services is occurring at a slower pace. The goal of this proceeding (and of the related *Notice of Inquiry*

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Dkt. No. 98-147, FCC 98-188 (rel. Aug. 7, 1998) ("Order" or "Notice," as applicable), recon. pending.*

² *Id.* at ¶ 1.

("NOI") proceeding)³ should be to adopt a regulatory framework that will accelerate the deployment of advanced services to these users by removing regulatory constraints that impede investment and dampen competition. Speculation about problems that might arise is not a sufficient basis for regulating the development of the advanced services market, where no firm is dominant and innovation is rampant.

In a market that is characterized by numerous entrants offering advanced services using competing technologies, regulation can only retard the deployment of advanced services. Such deployment requires substantial investment and risk-taking. Technology must be developed; networks must be built or upgraded; service personnel must be trained. Incumbent local exchange carriers ("ILECs"), with their expertise in designing and deploying ubiquitous telecommunications networks and services, are well positioned to make the necessary investments that will enable them to bring advanced services to the broadest segments of the American public, including rural areas. An ILEC's incentive to make those investments will be diminished and the deployment of advanced services will be delayed, however, if unnecessary regulations based on speculative harms limit its ability to respond to competitive market conditions. Only by boldly removing regulatory barriers to *all* potential advanced services providers can the Commission fully encourage the deployment of advanced services to the broadest range of consumers. The Commission must resist the tendency to develop prospective regulatory solutions for abuses that exist only in the crystal balls of ILECs' competitors. The

³ *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*, Notice of Inquiry, CC Dkt. 98-146, FCC 98-187 (rel. Aug. 7, 1998) ("NOI").

emerging market for advanced services demands resolve in clearing away regulatory obstacles to investment.

At its core, the removal of regulatory barriers to ILEC provision of advanced services requires the Commission to adopt reasonable interpretations of the Communications Act of 1934 (the "Act") that avoid speculative, prescriptive intrusion in the advanced services marketplace. Although the Commission has declined to interpret Section 706 of the 1996 Act as an independent grant of forbearance authority,⁴ Section 706 nevertheless informs the Commission that it should interpret the Act in a manner that "remove[s] barriers to infrastructure investment."⁵ Moreover, where the Commission retains forbearance authority, Section 706 requires that the Commission exercise that authority to provide ILECs with the freedom to compete fully in the competitive advanced services marketplace. By interpreting the Act in view of the guidance provided by Section 706, the Commission can ensure that the emerging mass market for advanced services is not unduly distorted by artificial impediments imposed to address hypothetical market failures.

Regrettably, the proposals in the *Notice* appear to reflect a preference for heavy, speculative regulation of ILECs that seek to provide advanced services. Rather than formulate a procompetitive, deregulatory approach towards ILEC provision of advanced services, the Commission, without any evidence of market failure in the advanced services market, proposes that ILECs provide such services through "truly" separate affiliates to escape their unique

⁴ See *Order* at ¶ 69.

⁵ Pub. L. No. 104-104, title VIII, § 706(b), Feb. 8, 1996, 110 Stat. 153, reproduced at 47 U.S.C. § 157 note.

regulatory burdens.⁶ However, the Commission's proposal to import a strict separate affiliate framework into the advanced services setting is unwarranted and counterproductive. The Commission's experience with separate affiliates clearly shows that structural separation generally is detrimental to investment, innovation, and competition, and results in lost efficiencies, increased costs, and reduced services for consumers.⁷ In contrast, when separate affiliates are not required, competition has flourished and new and innovative services have been made available to an increasing number of consumers. Accordingly, in this proceeding, the Commission should eschew structural regulation in favor of a straightforward exercise of its authority to interpret the Act in a manner that facilitates ILEC provision of advanced services on an integrated basis. The Commission should refrain from regulation in the absence of compelling evidence of actual market failure.

Specifically, the Commission should not adopt prescriptive unbundling rules for ILECs' advanced services networks. Nothing in the Act requires the Commission to establish a national standard for advanced services unbundling; to the contrary, by enacting Sections 251 and 252, Congress indicated that negotiation and arbitration should be the preferred method by which competitors would obtain access to network elements. Preserving the Section 251-252

⁶ Notice at ¶¶ 86, 92.

⁷ The need for Commission action in this proceeding to avoid these effects are not diminished or undercut by the enactment of structural safeguards in Section 272 for BOC provision of interLATA services. See 47 U.S.C. § 272. By its terms, Section 272 is merely a transition mechanism, which will expire three years after a BOC obtains interLATA relief under Section 271. Had Congress intended that structural safeguards apply to advanced services, it would have expressly included such services within the carefully crafted list of services that are subject to Section 272. Indeed, rather than rely on Section 272 as a model for an advanced services affiliate, the Commission should expeditiously grant petitions for Section 271 relief so that the Section 272 transition period can commence, as Congress intended.

process is especially important in the advanced services market, where technology is constantly evolving and where standards have not yet developed. The Commission already has established the minimum national standards for unbundling that will guarantee competitors' access to the local loop and other elements of the underlying circuit-switched network. There is no evidence that state commissions are incapable of or are failing to address these issues in arbitration proceedings. Therefore, there is no reason to conclude that the Commission should attempt to prescribe national standards specifically for unbundling advanced services equipment.

The Commission should also reaffirm that an ILEC is not required to provide its advanced services to competitors at a resale discount if the ILEC predominantly markets its advanced services on a wholesale basis. The Section 251(c) resale obligation is expressly limited to telecommunications services offered at retail. Advanced services offered on a wholesale basis thus are excluded from the Section 251(c) resale requirement. Even where an ILEC markets its advanced service to Internet service providers ("ISPs"), the ILEC is offering a wholesale service to the ISP, which the ISP then includes in its retail offer to its customers. The Commission should clarify that in those circumstances, the ILEC is not required to provide its advanced services at an even greater resale discount to other carriers.

This proceeding is also an appropriate one for the Commission to express its commitment to the aggressive exercise of its forbearance authority under Section 10 of the Act.⁸ As Commissioner Powell recently stated, "it is deregulation that yields competition," and the Commission must "lead[] by example" through forbearance.⁹ To that end, the Commission

⁸ 47 U.S.C. § 160(d).

⁹ Commission Michael K. Powell, Remarks Before PCS '98 (Sept. 23, 1998) ("Powell Remarks").

should declare that it will aggressively grant relief from any dominant carrier pricing or tariffing restrictions or requirements applicable to ILEC provision of advanced services whenever Section 10's conditions are satisfied, and *without* arbitrarily imposing a separate affiliate condition. Regardless of the business structure that the ILEC adopts, the Commission has the authority to forbear from pricing and tariffing requirements, as these requirements do not implicate Sections 251(c) or 271.¹⁰ Formation of an advanced services affiliate should not be a precondition to obtaining pricing flexibility in the competitive advanced services market.

Beyond this proceeding, the Commission should be vigilant in identifying and bold in removing other regulatory barriers to competition in advanced services. In particular, this requires prompt approval of Section 271 applications to permit BOCs to offer advanced services on an interLATA basis, as their competitors are already free to do. LATA boundaries were devised over a decade ago to implement divestiture, and they have no logical application to modern-day data networks.

In the *Notice*, the Commission also requested comment on the level of separation that would be required between an ILEC and its affiliate to ensure that the affiliate is not deemed an ILEC. As mentioned, it is neither necessary nor beneficial from a public interest standpoint to impose structural separation regulation on ILECs. Moreover, any decision regarding the level of separation will likely have implications beyond the advanced services context.

Simply put, the Commission should not proceed down that path. Instead, the Commission should remain focused in this proceeding on identifying steps that it can take to facilitate ILEC deployment of advanced services on an *integrated* basis. For the record,

¹⁰ See 47 U.S.C. § 160(d).

however, BellSouth would point out that the separate affiliate framework proposed in the *Notice* is unduly restrictive and, in BellSouth's view, flatly unworkable for the deployment of mass market advanced services. The proposed separation requirements appear to be based on the separation requirements found in Section 272 of the Act.¹¹ Section 272, however, concerns the unique circumstances of BOC entry into interLATA services. Rather than import Section 272 into a context for which it was not intended, to the extent the Commission creates a separate affiliate framework as an option for carriers who wish to adopt it, the Commission should follow its recent precedents and apply a version of the *Competitive Carrier* separation framework to advanced services affiliates.¹² The *Competitive Carrier* framework would ensure that affiliates enjoy non-ILEC status while providing ILECs and their affiliates with the flexibility to achieve at least some of the efficiencies of integrated operation. Again, however, BellSouth emphasizes that a separate affiliate option cannot and should not be made a surrogate in this proceeding for the efficiencies of integrated operation that can be achieved only through a reasonable, procompetitive interpretation of the Act.

Finally, the Commission should stay focused on the central purpose of this proceeding — "to promote the deployment of advanced services in a competitive manner."¹³ The Commission should not allow this proceeding to become a rehash of the already-completed local competition proceeding that fully and exhaustively addressed local competition concerns. Except for specific issues that directly relate to the provision of advanced services, the

¹¹ *Id.* § 272.

¹² *See infra* note 60.

¹³ *Notice* at ¶ 4.

collocation and loop unbundling proposals raised in the *Notice* have no place in this proceeding. Current Commission and state commission local competition rules, and the negotiation and arbitration process of Section 252, already provide competitors with access to network elements for the provision of advanced services, consistent with congressional intent in passing the 1996 Act. The Commission should reject proposals to add to those rules in the absence of evidence that state commissions cannot or will not perform their duty under the 1996 Act.

II. OVERVIEW OF THE ADVANCED SERVICES MARKET

A. COMPETITION IN THE ADVANCED SERVICES MARKET

In its comments to the *NOI*, BellSouth explained that advanced services must include all services – regardless of technology or transmission media and regardless of preexisting regulation classification– which offer consumers a high level of bandwidth for efficient, interactive voice and data communications.¹⁴ An expansive definition of advanced services is vital because, as the Commission noted, the concept of what constitutes advanced services will evolve as technology evolves.¹⁵ In particular, the Commission should not entertain any preconceived notions that advanced services are limited to “wireline” services.¹⁶ Advanced services provided via satellites or terrestrial wireless systems (or via non-traditional wireline systems such as cable) may well become the norm as the market continues to develop. Accordingly, the framework adopted in this proceeding regarding ILEC provision of advanced

¹⁴ Comments of BellSouth Corporation to the *NOI* (“BellSouth *NOI* Comments”) at 8 (filed Sept. 14, 1998), *correction filed*, Sept. 18, 1998.

¹⁵ *Notice* at ¶ 3 n.4.

¹⁶ *Id.* at ¶ 3.

services should acknowledge and reflect not only the vast array of existing technologies, but also developing technologies.

As BellSouth explained in its *NOI* comments, a high level of competition permeates the advanced services market.¹⁷ Indeed, competition among advanced services providers catering to high-volume business users has fully developed. Large businesses requiring Internet access and data networking capabilities can obtain high-speed dedicated capacity from a variety of telecommunications providers – including ILECs, competitive local exchange carriers (“CLECs”) and interexchange carriers (“IXCs”) – or from Very Small Aperture Terminal (“VSAT”) or other satellite service providers. Although most residential and small business consumers have not yet received the full benefit of advanced services technology (*i.e.*, they continue to rely on the traditional telephone network), increasing consumer demand fueled by the explosive growth of the Internet has attracted advanced services providers from across industry lines. All of these providers of advanced services possess unique strengths and weaknesses, and attempting to apply a rigid regulatory framework to one type of provider can only dampen the competitive dynamic that is currently driving the deployment of advanced services to the mass market.

The effect that this competitive dynamic is having on innovation and investment in the mass market for advanced services can be readily observed. Cable operators are dedicating substantial resources to transform their one-way video delivery systems into interactive high-speed broadband Internet access networks, capable of downstream transmission rates of 10 to 30 Mbps. And to assure that their customers (both subscribers and information providers) get the

¹⁷ BellSouth *NOI* Comments at 17-36.

full benefit of that capability, cable operators are investing in nationwide Internet backbone and caching facilities. Cable data services have a headstart in the advanced services market and consequently have many more subscribers than digital subscriber line ("DSL") services. With embedded cable plant passing 97.1 percent of U.S. homes, cable providers are strategically positioned to be powerful competitors in the advanced services market.¹⁸

Satellite service providers also are responding to the growing demand for Internet access by creating new technologies that provide broadband services directly to residential and small business consumers. Hughes Network Systems, a subsidiary of Hughes Electronics, currently offers Internet access to subscribers in the 48 contiguous states at speeds of up to 400 kbps. Last year, the Commission granted licenses to over a dozen Ka-band satellite systems, most of which have proposed to offer global broadband interactive services. In addition, more than 15 applications are pending for satellite systems proposing to use the 36-51.4 GHz band, which may also be used to provide broadband data services. Once deployed, these satellite service networks have the advantage of instant national ubiquity, which results in their ability to enlist additional subscribers at relatively low marginal costs.¹⁹

Terrestrial wireless and digital broadcast television systems also figure prominently in the advanced services marketplace. Wireless cable operators have recently obtained regulatory authority to offer two-way services, including high-speed Internet service.²⁰

¹⁸ *Id.* at 18-22.

¹⁹ *See id.* at 26-28.

²⁰ *Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, Report and Order, MM Docket 97-217, FCC 98-231 (1998).*

Local multipoint distribution service ("LMDS") operators, with over one gigahertz of bandwidth, are also poised to become significant providers of "wireless local loop" services, including broadband access to the Internet. In addition, the flexibility provided to digital television broadcasting stations to use their allotted 6 MHz channels for non-broadcast services promises to create yet another "pipeline" for high-bandwidth connectivity to the home.²¹

These are just some of the industries responding to consumer demand for broadband services. Significantly, each of the competing advanced services providers described above provides service to residential and small business customers by bypassing in whole or in part the conventional "local loop." Indeed, conventional telephone service is a poor substitute for these alternative high-bandwidth networks, as it currently offers consumers no more than 56 kbps of transmission capacity. Not surprisingly, this consumer demand has also caused telecommunications carriers to develop innovative solutions to conventional local loop limitations. The immediate result is the development of DSL technology, which does not now and is not likely ever to dominate the market. In sum, it is time for the Commission to acknowledge that no firm monopolizes or is likely to be able to dominate the last mile in the provision of advanced services.

B. OVERVIEW OF DSL SERVICE

BellSouth's asymmetrical DSL ("ADSL") technology allows, in addition to the traditional circuit-switched voice channel, continuous upstream data channel at up to 256 kbps and a continuous downstream data channel at up to 1.5 Mbps. Thus, voice signals from a

²¹ See 47 C.F.R. § 73.624(b), (c); *Advanced Television Services and their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809 (1997), on reconsideration, 13 FCC Rcd 6860 (1998).

subscriber's phone and data signals from the subscriber's computer travel over the same facility between the subscriber's premises and the central office. At the central office, the voice and data channels are separated by a digital subscriber line access multiplexer ("DSLAM") for transmission onto separate circuit-switched and packet-switched networks.

DSL technology allows local telecommunications carriers to compete in the mass market for advanced services.²² BellSouth conducted a market trial of ADSL service in Birmingham, Alabama in October 1997, and on September 3, 1998, initiated commercial ADSL service in New Orleans. BellSouth plans to roll-out ADSL service in the following major markets this month:

Birmingham
Atlanta
Charlotte
Raleigh
Jacksonville
Fort Lauderdale

BellSouth expects to follow with service deployment in over twenty additional metropolitan areas in its nine-state region in 1999.²³ BellSouth will face competition not only from cable operators, satellite service providers, and wireless cable providers, but also from CLECs that can purchase unbundled local loops and attach their own DSL equipment.

Given the level of competition in the market, the question is not whether ILECs such as BellSouth will deploy this advanced service, but how quickly. ILECs are prepared to

²² As BellSouth explained in its *NOI* comments, ADSL is not the only type of advanced services offering that ILECs offer. BellSouth, for example, also offers Integrated Services Digital Network ("ISDN"), fiber, frame relay, and ATM services, all of which provide advanced services capabilities. See BellSouth *NOI* Comments at 15-17.

²³ BellSouth *NOI* Comments at 13-14.

make the necessary investments to deploy advanced services to all Americans, including those in rural areas. If ILECs must form separate affiliates as a precondition to regulatory relief, then ILECs must divert resources from deployment to form an advanced services affiliate. The result of this diversion will be to delay substantially and to curtail further ILEC deployment of advanced services.

The Commission should not underestimate the substantial costs involved in artificially separating advanced services from the underlying circuit-switched network, as the Commission's proposed separate affiliate framework would require. The greatest costs of separation arise from disentangling advanced services from their integration with the systems and other infrastructure of ILECs' operations. Even new services like DSL service are integrated with the existing operational infrastructure. BellSouth already has begun to adapt its existing operational support systems to handle the ordering, provisioning, maintenance, and billing for DSL services and has long had packet services integrated into its operational infrastructure. Besides the cost of having to undo existing integration of each of these systems, the personnel, hardware, software, and floor space required to operate them would have to be duplicated if the DSL service were artificially separated from the existing network. Indeed, an ILEC also would incur substantial legal and transactional costs simply to establish a separate affiliate. In a region as large as BellSouth's, fully implementing an advanced services affiliate could take twelve to twenty-four months and cost hundreds of millions of dollars.

The wasted costs of a separate affiliate are not counterbalanced by a procompetitive benefit. Whether an ILEC provides DSL service through a separate affiliate or on an integrated basis, the Section 251(c) obligations would still apply to the ILEC's underlying local loop elements that competitors would need to provide a competing DSL service. The cost

of purchasing unbundled network elements will be established by negotiation or through arbitration at the state commission and will not vary based on the type of services that the competitor seeks to provide using the element. Thus, competitors' access to local loop elements for the provision of advanced services will continue to exist regardless of whether the ILEC provides advanced service on an integrated or separate basis, or not at all. And as set forth below, mechanisms short of rigid structural separation have proven reliable to protect against potential cost misallocation and discriminatory treatment.

The time and resources that ILECs would waste by creating a separate advanced services affiliate would be better spent maximizing the deployment of advanced services to residential and small business consumers. Accordingly, as explained more fully below, BellSouth urges the Commission to abandon attempts to impose a separate affiliate framework on the competitive advanced services market and focus instead on adopting a procompetitive policy that does not penalize ILECs for providing advanced services on an integrated basis.

III. THE COMMISSION SHOULD NOT RELY ON A SEPARATE AFFILIATE FRAMEWORK AS A METHOD OF FACILITATING ILEC PROVISION OF ADVANCED SERVICES

Much of the *Notice* is dedicated to a discussion of the separate affiliate framework that the Commission proposes as a means for ILECs that seek to provide advanced services to release themselves from their unique regulatory constraints. Without any evidence or analysis suggesting a need for such a framework, the *Notice* manifests such a bias in favor of that framework that it ignores less regulatory solutions. Indeed, the *Notice* clearly signals that ILECs that do not opt for a separate affiliate can expect their integrated provision of advanced services to be subject to "truly" onerous regulatory burdens.

The separate affiliate framework proposed in the *Notice* is neither legally required nor justifiable as sound public policy given the state and nature of the advanced services market. History has shown that separate affiliates result in increased costs, lost efficiencies, and less innovation, and place ILECs at a competitive disadvantage vis-à-vis their competitors. The Commission need only look to the tortured history of the FCC's efforts to create a separate affiliate framework for BOC provision of enhanced services to understand how detrimental such a framework can be to the deployment of competitive new services to consumers. Rather than introduce this failed model into the competitive advanced services market, the Commission should explore alternative methods through which it can use its authority to interpret the Act and its forbearance authority to facilitate ILEC provision of advanced services on an integrated basis. Separate affiliates are no substitute for market forces when the market -- as here -- is competitive, and they are not preferable to less burdensome regulatory approaches where markets are not fully competitive.

A. THE COMMISSION'S *COMPUTER II* AND *III* PROCEEDINGS ESTABLISH THE IMPORTANCE OF ENABLING THE PROVISION OF COMPETITIVE SERVICES ON AN INTEGRATED BASIS

The Commission's *Computer II*²⁴ and *III*²⁵ proceedings provide the paradigmatic example of how an inflexible regulatory framework, though well-intentioned, can discourage the

²⁴ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) ("*Computer II Order*"), recon., 84 FCC 2d 50 (1980) ("*Computer II Recon. Order*"), further recon., 88 FCC 2d 512 (1981), affirmed sub nom. *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

²⁵ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) ("*Computer III Order*"), recon., 2 FCC Rcd 3035 (1987) ("*Phase I Recon. Order*"), further recon., 3

development of innovative services. In *Computer II*, the Commission established a rigid framework that required AT&T (and after divestiture, the BOCs) to provide enhanced services through a separate affiliate. This framework, as the Commission learned, "hinder[ed] the introduction of enhanced services that could benefit the public by being widely and efficiently available through the BOCs' local exchanges."²⁶ Accordingly, the Commission properly eliminated the separate affiliate requirement for AT&T and the BOCs in favor of a regulatory framework that facilitated integrated service offerings. The results are apparent: consumers now have greater access to an increasing variety of innovative enhanced services.

1. The *Computer II* Proceeding

In the *Computer II* proceeding, the Commission attempted to address new issues "raised by the confluence of communications and data processing."²⁷ That "confluence" enabled a carrier to provide both "plain old telephone service" ("POTS") and enhanced services using the same underlying phone network. The *Computer II* proceeding was initiated to develop a framework that would permit regulated carriers to provide enhanced services while deterring

FCC Rcd 1135 (1988), *second further recon.*, 4 FCC Rcd 5927 (1989), *Computer III Order and Phase I Recon. Order, vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) ("*California I*"); Phase II, 2 FCC Rcd 3072 (1987) ("*Phase II Order*"), *recon.*, 3 FCC Rcd 1150 (1988), *further recon.*, 4 FCC Rcd 5927 (1989), *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) ("*BOC Safeguards Order*"), *recon. dismissed in part, Order*, CC Docket Nos. 90-623 and 92-256, 11 FCC Rcd 12513 (1996); *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1427 (1995) (collectively, "the *Computer III* proceeding").

²⁶ *Computer III Order*, 104 FCC 2d at 1007, ¶ 89.

²⁷ *Computer II Order*, 77 FCC 2d at 386, ¶ 2.

such carriers from misallocating the costs of the competitive enhanced service to its captive ratepayers or from discriminating against its enhanced services competitors that relied on access to the underlying network services.

In the *Computer II Order*, the Commission attempted to address its cost allocation and discrimination concerns by requiring AT&T (and later the BOCs) to provide enhanced services through a separate affiliate. At the time, the Commission thought that a separate affiliate would "preserve as many of the putative advantages of integration as possible and [would] limit the disadvantages."²⁸

Accordingly, the Commission imposed a rigid separate affiliate requirement on the provision of enhanced services by AT&T and the BOCs. The Commission required that the separate affiliate maintain its own books of account.²⁹ An enhanced services affiliate was also required to "have its own operating, marketing, installation and maintenance personnel for the services and equipment it offers"³⁰ and was prohibited "from using in common any leased or owned physical space or property" on which facilities used for basic telecommunications services were located.³¹ In addition, the Commission also required AT&T and the BOCs to obtain approval of capitalization plans for their enhanced services affiliates.³² In adopting these

²⁸ *Id.* at 461, ¶ 202.

²⁹ *Computer II Order*, 77 FCC 2d at 476, ¶ 236.

³⁰ *Id.* at 477, ¶ 239.

³¹ *Id.* at 477, ¶ 240.

³² *Id.* at 485, ¶ 258.

and other separation requirements, the Commission believed that it had adopted only the "minimum necessary" to address its regulatory concerns.³³

2. The *Computer III* Proceeding

In the *Computer III* proceeding, the Commission concluded that it had not, in fact, imposed the "minimum necessary" to address its regulatory concerns. Rather, the Commission learned that the separate affiliate requirement substantially increased the costs of providing enhanced services, diminished inherent efficiencies, and ultimately discouraged innovation and deployment of enhanced service capabilities. Specifically, the Commission found that by deterring the BOC provision of enhanced services, the Commission's rules had the unintended effect of diminishing innovation and competitive investment throughout the industry. Regarding costs, the Commission observed that separation required the wasteful duplication of facilities, personnel and resources. Separation also resulted in substantial inefficiencies, as "BOCs [were] unable to organize their operations in the manner best suited to the markets and the customers they serve" and were unable to offer "system solutions" to their customers' service needs.³⁴

Moreover, the Commission recognized that its separate affiliate framework had effectively denied consumers the benefits of innovative new services.³⁵ The Commission pointed to the proposed Custom Calling II VMS service, a voice mail type service, as an example of a service that had been "completely foreclosed to the public" because of the *Computer II* separate affiliate rules.³⁶ Pre-divestiture AT&T had requested a waiver of the *Computer II*

³³ *Id.* at 476, ¶ 235.

³⁴ *Computer III Order*, 104 FCC 2d at 1008, ¶ 91.

³⁵ *Id.* at 1007, ¶ 89.

³⁶ *Id.* at 1008, ¶ 90.

separate affiliate requirement to allow the BOCs to provide Custom Calling II on an integrated basis.³⁷ The Commission denied the waiver, finding, among other things, that AT&T could provide Custom Calling II through a separate subsidiary "economically" and that AT&T had not shown that "others will not be able to provide the service ubiquitously."³⁸ In fact, as of the date of the *Computer III Order*, "no such network-based services ha[d] been offered."³⁹ The Commission particularly noted that, while services similar to Custom Calling II were on the market, "the *Computer II* regulatory regime . . . prevented consumers, and particularly small-business and residential consumers, from having yet another choice . . . in the VMS marketplace."⁴⁰

As a result of the Commission's experience with Custom Calling II and the *Computer II* framework in general, the Commission concluded that "there is at least a substantial likelihood that [the Commission's] regulations in this area have been part of the problem, not part of the solution."⁴¹ Accordingly, the Commission eliminated the separate affiliate requirement for the provision of enhanced services by AT&T and the BOCs and replaced them with a more reasonable framework of non-structural safeguards. These non-structural safeguards included the development of Comparably Efficient Interconnection and Open Network

³⁷ See *American Telephone & Telegraph Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations*, Memorandum Opinion and Order, 88 FCC 2d 1 (1981).

³⁸ *Id.* at 26-27, ¶¶ 85, 87.

³⁹ *Computer III Order*, 104 FCC 2d at 1008, ¶ 90.

⁴⁰ *Id.* (emphasis added).

⁴¹ *Id.* at 1003, ¶ 79.

Architecture to ensure that competitors were afforded an equal opportunity to compete, and cost allocation rules to protect ratepayers against cost misallocation.

The effect of eliminating *Computer II*'s separate affiliate requirement on the deployment of enhanced services has been unmistakable. As early as 1991, the Commission observed that "BOCs have provided voice mail service, E-Mail, gateways, electronic data interchange, data processing, voice store-and-forward, and fax store-and-forward services."⁴² The Commission was particularly impressed with the deployment of voice mail services, noting that "[i]n the relatively brief time that the BOCs have been permitted to provide that service, voice mail has been provided to rapidly increasing numbers of customers in their regions at reasonable prices."⁴³ Moreover, as the Commission noted in 1995, structural separation proved to be unnecessary to prevent discriminatory treatment by the BOCs against their competitors.⁴⁴ In short, replacing structural separation with a framework that permitted the BOCs to offer enhanced services on an integrated basis achieved the results that the Commission is seeking to achieve here: the deployment of innovative new services on an efficient and timely basis and the development of a robustly competitive market.

⁴² *BOC Safeguards Order*, 6 FCC Rcd at 7575, at ¶ 7.

⁴³ *Id.* Indeed, voice-mail services are now available to approximately 90% of BellSouth customers from multiple service providers.

⁴⁴ See *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Notice of Proposed Rulemaking, 10 FCC Rcd 8360, 8379, ¶ 29 (1995).

B. THE COMMISSION SHOULD ADOPT A FRAMEWORK THAT WILL ENCOURAGE ILEC PROVISION OF ADVANCED SERVICES ON AN INTEGRATED BASIS

Given the proven success of using a non-structural safeguards framework in promoting the deployment of enhanced services, the Commission should adopt a framework in this proceeding that will similarly encourage ILEC provision of advanced services on an integrated basis. As in the enhanced services context, integrated operation will allow ILECs to enjoy economies of scope and realize efficiencies of operation, which will lead to broader deployment and lower cost for consumers. Moreover, non-structural safeguards here can effectively assure that competitors have access to the facilities and capabilities they require to provide advanced services. Indeed, these safeguards are already in place. For example, existing rules granting competitors nondiscriminatory access to unbundled network elements of the circuit-switched network ensure that competitive advanced services providers will have sufficient capabilities to provide a competing service to consumers. Price caps and resale requirements, not to mention competition in capital markets, effectively eliminate any incentives for anticompetitive cost misallocation.

Moreover, facilitating ILEC provision of advanced services on an integrated basis will promote competition by reducing regulatory distinctions among competing providers. ILECs face competition in the advanced services market from cable operators, satellite service providers, and other telcos. These competitors may freely structure their businesses in any manner that they believe best responds to market conditions. An asymmetrical regulatory policy that fails to provide ILECs with similar flexibility would only distort this competitive market by raising ILECs' costs and diminishing their ability to respond to consumer demand.

The Commission should not entertain the mistaken notion that Section 272 of the Act⁴⁵ in any way diminishes the detrimental effect that a separate affiliate framework could have on the deployment of advanced services. Congress enacted Section 272 as the transition mechanism through which BOCs would be able to enter the interLATA market, from which they had been previously excluded. To that end, Congress imposed exceedingly stringent separation requirements, but limited Section 272's application to BOC affiliates providing interLATA services and, even in that instance, limited the application of Section 272 to three years from the date of grant of Section 271 relief.⁴⁶

Advanced services such as DSL service, however, are distinctly different in kind and regulatory consequence. They function as access services connecting consumers to information located on the Internet or on other data networks via ISP platforms. As Congress did not include access services within the scope of Section 272, the Commission should not now circumvent Congress' framework by relying on a Section 272-type framework in this proceeding. To the contrary, the Commission should fulfill Congress' intentions by expeditiously granting Section 271 relief so that BOCs can provide interLATA data services on par with its competitors and thereby be given the ability to compete fully in the entire advanced services market.⁴⁷

⁴⁵ 47 U.S.C. § 272.

⁴⁶ *Id.* § 272(A)(2), (f)(1).

⁴⁷ See Section V *infra*.

IV. IN PLACE OF THE SEPARATE AFFILIATE APPROACH, THE COMMISSION SHOULD INTERPRET THE COMMUNICATIONS ACT TO REMOVE REGULATORY IMPEDIMENTS TO ILEC INVESTMENT IN ADVANCED SERVICES

As explained above, a regulatory approach that facilitates ILEC provision of advanced services on an integrated basis will most effectively promote competition in the mass market for advanced services. Even if the Commission correctly has decided that it cannot forbear from Section 251(c) for ILEC's advanced services, the Commission still retains ample authority to interpret the Act in a manner that does not diminish ILECs' incentives to invest in the provision of advanced services.

Such an interpretation requires, at a minimum, that the Commission refrain from adopting burdensome new unbundling and resale rules for advanced services that fail to reflect the evolving nature of the advanced services market. Equally important, the Commission must aggressively exercise its forbearance authority to grant relief in appropriate cases from dominant carrier pricing and tariffing requirements applicable to ILECs' advanced services offerings. Finally, the Commission must be vigilant in identifying and eliminating other existing or potential barriers that inhibit ILEC investment in advanced services, especially those barriers that restrict the ability of ILECs to provide interLATA advanced services on the same basis as their competitors.

Adopting this framework will help ensure that competition, not regulation, remains the driving force behind the deployment of advanced services. Competition cannot develop without distortion as long as certain players are excluded from significant portions of the market or are otherwise handicapped.

A. THE COMMISSION SHOULD ADOPT UNBUNDLING AND RESALE RULES THAT REFLECT THE EQUAL OPPORTUNITY THAT ALL COMPETITORS HAVE TO INVEST IN THE DEPLOYMENT OF ADVANCED SERVICES

In the *Notice*, the Commission appears to be proceeding under the incorrect assumption that it may not treat advanced services differently from POTS under Section 251(c) of the Act unless the advanced services are not provided by an ILEC (i.e., are structurally separate from the local exchange business of the ILEC). Structural separation, however, is unnecessary and ill-advised. The Commission instead can and should use its discretion to avoid prescribing unbundling and resale rules that discourage investment in advanced services by both ILECs and new entrants.

1. The Commission Should Not Adopt Prescriptive Unbundling Rules For Advanced Services Equipment

The mass market for advanced services is an emerging market. While many firms are vying to become the leading provider of broadband access to the Internet and other data services, advanced services are not yet available to most Americans. A firm's success or failure in the advanced services market will depend upon many factors, including consumer demand, the quality and price of service, and the development of increasingly sophisticated technologies. Ideally, the Commission's regulatory framework should not also be one of these factors.

Because the mass market for advanced services is still developing, the Commission should avoid the temptation to micromanage it through burdensome, prescriptive national rules that are based on speculative harms and that easily could delay the deployment of advanced services. In particular, the Commission should not assume that it *must* impose specific unbundling requirements on network elements used by ILECs to provide advanced services simply because it interpreted Section 251(c) to *apply* to network elements used to provide such

services. As the Commission has noted, it has the authority "to refrain from requiring incumbent LECs to provide all network elements for which it is technically feasible to provide access."⁴⁸ The Commission must also refrain from requiring unbundling where the ILEC's failure to provide requested network elements will not impair the ability of the requesting carrier to provide its services.⁴⁹ Similarly, the Commission has the authority to refrain from adopting any specific unbundling proposals and to allow negotiation and arbitration to decide whether unbundling of advanced services network elements is appropriate.

Declining to prescribe national rules does *not* mean that competitive advanced services providers will be denied access to the elements they need to provide service. The rules adopted in the *Local Competition Order* guarantee that competitors will be able to provide their own advanced services by purchasing elements of the underlying circuit-switched network on an unbundled basis. Indeed, BellSouth already has made available unbundled network elements that support the deployment of DSL services, enabling competitors to deploy the equipment of their choice. Competitors may then attach their own DSLAM or other advanced services equipment

⁴⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15640, ¶ 278 (1996) ("*Local Competition Order*"), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *writ of mandamus issued sub nom. Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. J'n. 22, 1998), *petition for cert. granted*, 118 S. Ct. 879 (1998) ("*Local Competition Order*"), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *aff'd sub nom. Southwestern Bell Telephone Company v. FCC*, Case Nos. 97-3389, 97-357, 97-3663, and 97-4106, (8th Cir., August 10, 1998), *further reconsideration pending*.

⁴⁹ 47 U.S.C. § 271(d)(2).

to these elements.⁵⁰ In this sense, ILECs do not enjoy any competitive advantage, as they too must make the same new investments to deploy their own advanced services networks.

Moreover, the Commission must not view ADSL as the only advanced services product that will be offered by the ILECs, but should recognize ADSL technology as a transitional method of providing additional bandwidth for advanced services over the local loop. Not only will ADSL technology evolve, BellSouth and other ILECs continue to place fiber deeper into their networks. These placements include fiber-to-the curb. As these fiber deployments expand, it is inevitable that advanced services will transition likewise to the fiber networks. Thus, any broad determinations that the Commission might make now relative to unbundling requirements for ADSL are unlikely to transition to fiber-based local loop technologies.

If the Commission refuses to find that unbundling of advanced services equipment is not required under the standards of Section 251, and competitors correspondingly are granted some type of access to an ILEC's advanced services equipment, the negotiation and arbitration process established in Sections 251 and 252 of the Act provides sufficient opportunity for the competitor to obtain such access without Commission intervention and better fits the fluid nature of the market and the technologies. Congress specifically permitted parties to negotiate and enter into binding agreements for unbundling of network elements "without regard to the standards set

⁵⁰ As Commissioner Ness has observed, "[t]he evolving DSL equipment necessary to carry high-speed digital signals on properly conditioned loops is available to both the ILECs and CLECs. So is the associated multiplexing and routing/switching equipment necessary to create advanced high-speed data communications services." Commissioner Susan Ness, "To Have and Have Not: Advanced Telecommunications Technologies," Remarks Before the Computer and Communications Industry Association's 1998 Washington Caucus (June 9, 1998).

forth in" Section 251(b) and (c).⁵¹ Congress also granted state commissions the authority to arbitrate disputes arising out of such negotiations.⁵² As the Commission noted in the *Local Competition Order*, state commissions have full authority to require ILECs to unbundle elements that the Commission does not specify.⁵³ The Commission should not assume that advanced services equipment (if actually needed for competitive entry) will not be available on an unbundled basis unless the Commission requires it on a national level. Rather, the Commission should first rely on voluntary negotiations and, if they fail, trust the state commissions to fulfill their statutory responsibility to make advanced services equipment available to competitors where appropriate under Sections 251 and 252.

2. The Commission Should Retain Resale Rules That Grant ILECs The Flexibility To Offer DSL Service On A Wholesale Basis

In the *Notice*, the Commission proposes to apply Section 251(c)(4) resale obligations to ILEC provision of advanced services, regardless of whether such services are local exchange or exchange access services.⁵⁴ This proposal is founded upon the Commission's assumption that advanced services are generally marketed to residential or business users or to Internet service providers ("ISPs"). Under the Commission's assumption, because these users are not telecommunications carriers, advanced services must be subject to Section 251(c)(4) resale requirements.

⁵¹ 47 U.S.C. § 252(a)(1).

⁵² *Id.* § 252(b)(1).

⁵³ See *Local Competition Order*, 11 FCC Rcd at 15625, ¶ 244.

⁵⁴ *Notice* at ¶ 189.

The Commission's analysis fundamentally misreads the requirements of Section 251(c)(4). Under Section 251(c)(4), an ILEC must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."⁵⁵ Thus, by its express terms, the Section 251(c)(4) resale obligations only apply if (1) a service is offered at retail and (2) the service is offered to subscribers who are not telecommunications carriers. The Commission's proposal ignores the first part of this two-part test.

Under the Commission's proposal, advanced services are subject to Section 251(c)(4) resale obligations because, in the Commission's view, advanced services customers are generally residential and business customers or ISPs, and not other telecommunications carriers. Even if this were an accurate description of the market, it alone would not subject an ILEC's advanced services offering to Section 251(c)(4). As the Commission has recognized, Section 251(c)(4) "does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers."⁵⁶ There clearly are scenarios where ILEC advanced services offerings will not be sold at retail, but will be sold in bulk to ISPs or carriers for incorporation into the service they provide to their customers. In such cases, the actual costs of providing the advanced services will be the same regardless of whether the customer is an ISP or a carrier.

⁵⁵ 47 U.S.C. § 251(c)(4).

⁵⁶ *Local Competition Order*, 11 FCC Rcd at 15934, ¶ 872.

In the *Local Competition Order*, the Commission noted that, even though "end users do occasionally purchase some access services,"⁵⁷ exchange access services are not subject to Section 251(c)(4) resale requirements because they are "predominantly offered to, and taken by, DXCs, not end users."⁵⁸ Similarly, the Commission should not impose Section 251(c)(4) resale obligations on an ILEC that chooses to market its advanced services on a predominantly wholesale basis, regardless of whether end users occasionally purchase such services.

B. THE COMMISSION MUST AGGRESSIVELY IMPLEMENT ITS SECTION 10 FORBEARANCE MANDATE TO REMOVE PRICING AND TARIFFING RESTRICTIONS THAT IMPEDE ILECS' ABILITY TO RESPOND TO MARKET CONDITIONS

Although this proceeding is intended to facilitate the deployment of advanced services, conspicuously absent from the *Notice* is any discussion of providing ILECs that offer advanced services on an integrated basis relief from dominant carrier pricing and tariffing restrictions.⁵⁹ Since the *Competitive Carrier* proceeding in the early 1980s,⁶⁰ the Commission has recognized that stringent pricing and tariffing restrictions for carriers without market power

⁵⁷ *Id.* at 15934, ¶ 873.

⁵⁸ *Id.* at 15935, ¶ 874.

⁵⁹ Dominant carrier regulation includes (1) any applicable price cap or rate of return regulation for ILEC provision of advanced services, (2) the requirement that ILECs file tariffs on more than one day's notice with cost support, (3) restrictions on contract carriage, and (4) any dominant carrier Section 214 requirements that may apply.

⁶⁰ *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefore*, CC Dkt. 79-252, First Report and Order, 85 FCC 2d 1 (1980); Second Report and Order, 91 FCC 2d 59 (1982); Fourth Report and Order, 95 FCC 2d 554 (1983), *vacated sub nom. American Tel. and Tel. Co. v. FCC*, 978 F.2d 727 (D.C. Cir. 1992); Fifth Report and Order, 98 FCC 2d 1191 ("*Competitive Carrier Fifth Report and Order*"); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated sub nom. MCI Tel. Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively, the "*Competitive Carrier proceeding*").

are unnecessary and, indeed, unwise. As explained in BellSouth's *NOI* comments, ILECs that provide DSL services do not possess market power in the advanced services market.⁶¹ Removal of dominant carrier regulation on ILEC provision of DSL service is accordingly an important step in creating incentives for the deployment of advanced services.

The Commission should aggressively exercise its forbearance authority and grant relief from dominant carrier pricing and tariffing requirements. Even if the Commission is correct in its determination that it cannot forbear from the unbundling and resale obligations of Section 251(c),⁶² the Commission retains full authority to forbear from pricing and tariffing regulations, as such regulations do not implicate the ILEC obligations of Section 251(c) or the interLATA restrictions on BOCs contained in Section 271.⁶³ Indeed, under Section 10, the Commission is *required* to forbear from any regulatory requirement or statutory provision for which (1) enforcement is not necessary to ensure that rates and practices of a telecommunications carrier or service are just, reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.⁶⁴ In making its public interest determination, Congress has instructed the Commission to consider whether forbearance will promote competitive market conditions,

⁶¹ See BellSouth *NOI* Comments at 31-36.

⁶² *Order* at ¶ 79.

⁶³ 47 U.S.C. § 160(d).

⁶⁴ *Id.* § 160(a); see also Powell Remarks ("Congress . . . made a number of changes itself directly [in the 1996 Act] . . . [p]erhaps non more important than regulatory forbearance, which commands us not to apply any regulation if we determine certain things.").

including whether forbearance will enhance competition among telecommunications service providers.⁶⁵

Where a carrier is non-dominant in a particular service, the Commission has effectively determined that the elements for Section 10 forbearance are present.⁶⁶ In the *Competitive Carrier* proceeding, the Commission determined that it was in the public interest to streamline regulation of non-dominant carriers and provide such carriers with flexibility to establish their prices and service offerings in response to market demand. The Commission found that regulation was unnecessary to protect against unjust, unreasonable, and discriminatory rates because market forces would amply provide such protection.⁶⁷ Moreover, even without stringent dominant carrier pricing and tariffing regulations, consumers would be protected because they "could always turn to competitors."⁶⁸ In light of the Commission's long-standing policy on streamlining regulation of non-dominant carriers, the Commission should freely grant forbearance from dominant carrier pricing and tariffing requirements for advanced services offerings in any case in which the requesting carrier demonstrates its lack of market power in the advanced services market.

⁶⁵ *Id.* § 160(b).

⁶⁶ *See, e.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995) ("*AT&T Reclassification Order*"), Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration in CC Docket No. 96-61, 12 FCC Rcd 20787 (1997).

⁶⁷ *See Powell Remarks* ("it is plain to see that the market is a replacement for regulators making decisions about what services will be offered, what technology will be deployed, by whom, to whom, and at what price.").

⁶⁸ *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 12 FCC Rcd 1111, 1131 n.75; *see also Comsat Corporation*, Order and Notice of Proposed Rulemaking, File No. 60-SAT-ISP-97, FCC 98-78, at ¶ 9 (rel. April 28, 1998).

V. THE COMMISSION SHOULD ACT QUICKLY TO REMOVE THE PRINCIPAL REGULATORY BARRIER TO ROBUST COMPETITION AND INVESTMENT IN THE ADVANCED SERVICES MARKET: THE INTERLATA PROHIBITION

The procompetitive proposals outlined in these comments are only initial measures that the Commission should take in this proceeding to foster competition in and deployment of advanced services. If the Commission goes no further, however, its actions will have a relatively small impact on BOCs' investment in advanced services. Without interLATA relief, BOCs will be hamstrung in their ability to satisfy customers' demand for end-to-end high-speed data services and will have severely limited access to the revenues available to support advanced services initiatives. Customers demand that high-speed access services, like ADSL and cable modems, not be impeded by bottlenecks within the Internet itself, as is evident from the major cable operators' initiatives to construct nationwide backbones and caching servers. BOCs must similarly be permitted to ensure that their customers get the full benefit of end-to-end high-speed access service.

Every other actual or potential provider of advanced services capabilities -- including GTE, other non-BOC ILECs, CLECs, and cable operators -- may provide their customers with end-to-end networking services regardless of geography, while the BOCs are required to hand off their high-bandwidth signals to other carriers at LATA borders.⁶⁹ This regulatory restriction operates as a substantial competitive disadvantage to the BOCs vis-à-vis their many broadband competitors. BOCs alone cannot provide their advanced services customers assurance of end-to-end service quality and security, as they demand. Nor do BOCs have full access to the advanced services market's growing revenues to support their investment.

⁶⁹ See BellSouth *NOI* Comments at 44-46.

If the Commission truly seeks to promote the deployment of advanced services on a timely basis, it is imperative that it promptly grant Section 271 petitions and remove this high hurdle to full-fledged competition.⁷⁰ Without this relief, BOCs' opportunity to invest profitably in broad-scale deployment of advanced services throughout their regions will be severely constrained.

While BellSouth does not object to the Commission's liberally granting petitions for LATA boundary modifications for advanced services, and encourages the Commission to do so, the Commission must not be deluded: such modifications will have little, if any, impact on competition or on BellSouth's investment incentives. LATA boundaries are legal constructs that arose out of divestiture more than a decade ago and do not represent an efficient geographic division for advanced services networks. Modifying LATA boundaries to permit BOCs to deploy advanced services, while a procompetitive gesture, would not address the fundamental incompatibility of the LATA construct with the provision of advanced services and would leave BOCs at a substantial competitive disadvantage and with limited investment incentives. It is access to the interLATA market that will drive increased investment and rapid, broad-scale deployment of services such as ADSL.

VI. AN ILEC AFFILIATE THAT COMPLIES WITH THE SEPARATION REQUIREMENTS ADOPTED IN THE *COMPETITIVE CARRIER* PROCEEDING SHOULD NOT BE DEEMED AN ILEC

The unbundling and resale obligations of Section 251(c) apply only to firms who were ILECs when the 1996 Act was enacted and to their "successor and assigns."⁷¹ In the *Notice*, the Commission proposes to allow ILECs to create a "truly" separate advanced services

⁷⁰ At a minimum, the Commission should not attempt to use this proceeding to impose additional roadblocks or conditions on the ability of BOCs to obtain Section 271 relief.

⁷¹ 47 U.S.C. § 251(h).

affiliate that would not be deemed a successor or assign of an ILEC and, thus, would not be subject to Section 251(c) requirements.⁷²

As explained above, the separate affiliate concept proposed in the *Notice* is simply the wrong approach to adopt for ILEC provision of advanced services. If the Commission seeks to promote the deployment of advanced services, then it should adopt reasonable interpretations of the Act that permit ILECs to provide services on an integrated basis. Without this ability, the "option" of forming a separate affiliate effectively operates as a Commission mandate directing ILECs to provide advanced services using a prescribed business structure. Rather than proceed down that path, BellSouth urges the Commission to abandon the separate affiliate approach altogether and concentrate instead on facilitating ILEC deployment of advanced services on an integrated basis.

The Commission should not misconstrue the discussion in the remainder of this section. BellSouth strongly believes that the recent imposition of the *Competitive Carrier* separation requirements with respect to in-region CMRS services and non-BOC provision of in-region, interexchange services are unwarranted and excessive. Nonetheless, the precedent of those cases precludes the Commission from imposing a greater degree of separation in order for advanced services affiliates to avoid the obligations of their affiliated ILECs. Indeed, a significantly lesser degree of separation is sufficient to achieve that end.

If the Commission persists in formulating a separate affiliate option for the provision of advanced services, BellSouth opposes the current proposed framework because it far exceeds what is legally and practically necessary to form a non-ILEC affiliate. Rather than

⁷² *Notice* at ¶ 92.

impose the rigid separation requirements of Section 272, which were designed merely as a transitional framework for BOC entry into interLATA services, the Commission should follow its more recent decisions and base any separation requirements upon the framework developed in the *Competitive Carrier* proceeding. This framework provides greater flexibility to achieve some of the efficiencies of integrated operation while adequately insulating the affiliate from ILEC status.

A. THE COMMISSION SHOULD NOT RELY ON SECTION 272 IN DEVELOPING THE SEPARATION REQUIREMENTS FOR ADVANCED SERVICES AFFILIATES.

In the *Notice*, the Commission proposes a variety of structural separation and nondiscrimination requirements with which ILECs' advanced services affiliates would be required to comply to escape ILEC status.⁷³ These requirements are derived from the separation requirements contained in Section 272 of the Act⁷⁴ and from the Commission decisions implementing that section.⁷⁵ Section 272, however, is concerned with the unique situation of BOC entry into the interLATA market, a market from which BOCs have been excluded since

⁷³ *Id.* at ¶ 96.

⁷⁴ 47 U.S.C. § 272.

⁷⁵ *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*"), Order on Reconsideration, 17 FCC Rcd 2297 (1997), recon. pending, petition for summary review in part denied and motion for voluntary remand granted sub nom., *Bell Atlantic v. FCC*, No. 97-1067 (D.C. Cir. filed Mar. 31, 1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff'd sub nom.* *Bell Atlantic Telephone Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Second Report and Order, 12 FCC Rcd 15756 (1997); *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996).

1984. The Section 272 framework far exceeds what is required for intraLATA advanced services affiliates to avoid ILEC obligations and should not be adopted in this proceeding.

In enacting the 1996 Act, Congress sought to create a procompetitive, deregulatory framework that would, among other things, increase competition in interLATA services by removing the bar on BOC entry into that market. To that end, Congress enacted Section 272 to serve as a transition mechanism between complete prohibition and full-fledged BOC participation in the interLATA market. By its terms, the Section 272 separate affiliate requirement for interLATA services must end "3 years after the date [a BOC or BOC affiliate] is authorized to provide interLATA telecommunication services under Section 271(d)," unless extended by the Commission.⁷⁶ Nothing in this transition framework suggests that Congress believed that Section 272 separation requirements represented a preferred method of encouraging the deployment of new and innovative services or that compliance with Section 272 would be required to avoid ILEC status. Given the unique regulatory setting that Section 272 was intended to address, the Commission should not rely on the Section 272 framework to determine whether an ILEC affiliate will be deemed to be an ILEC for purposes of Section 251(c).

⁷⁶ 47 U.S.C. § 272(f)(1). In addition, the Commission may forbear from applying Section 272 in appropriate circumstances prior to the expiration of the three-year term. *Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, Memorandum Opinion and Order, CC Dkt. No. 96-149, DA 98-220 (CCB Feb. 6, 1998), *errata*, Mar. 3, 1998.

B. THE SEPARATE AFFILIATE FRAMEWORK DEVELOPED IN THE *COMPETITIVE CARRIER* PROCEEDING IS MORE THAN SUFFICIENT TO INSULATE ADVANCED SERVICES AFFILIATES FROM ILEC STATUS

The central purpose of a separate affiliate option is to establish "separation requirements for advanced services affiliates [that would be] sufficient for those affiliates to be deemed non-incumbent LECs."⁷⁷ A separation framework based on the *Competitive Carrier* model would more than satisfy this objective. Under a modified version of this framework, an advanced services affiliate would not be deemed an ILEC if the affiliate (1) maintains separate books of account, (2) does not jointly own transmission or switching facilities with its affiliated LEC that the LEC uses for the provision of local exchange services in the same in-region market, (3) acquires telecommunications facilities, services, or network elements from the affiliated LEC pursuant to tariff or a negotiated agreement under Sections 251 and 252 of the Act, and (4) acquires non-telecommunications services from affiliated LEC on an arm's length basis pursuant to the Commission's affiliate transaction rules.⁷⁸ As explained below, the *Competitive Carrier* framework fulfills all of the goals behind forming a separate affiliate while providing ILECs with greater flexibility to structure their business operations in a manner that better comports to market demands.

⁷⁷ Notice at ¶ 96.

⁷⁸ See, e.g., *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198, ¶ 9; *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service*, Report and Order, 12 FCC Rcd 15668, 15673, ¶ 5 (1997) ("*LEC-CMRS Order*"), clarification, 12 FCC Rcd 17983 (1997).

1. **The *Competitive Carrier Framework* Ensures That Advanced Services Affiliates Are Not Deemed ILECs**

In the 1996 Act, Congress adopted a precise and limited definition of which entities would be considered ILECs and would be subject to the obligations of Section 251(c). ILECs are only those entities that were members of the National Exchange Carriers Association ("NECA") on the date of enactment of the 1996 Act, or their successors and assigns.⁷⁹ As no advanced services affiliate would have been a member of NECA in 1996, such affiliates could only be deemed ILECs if they are "successors or assigns" of an ILEC.

In adopting a limited definition of an ILEC, Congress intended that ILEC status, and the obligations tied to that status, should only apply to entities that controlled the embedded phone network and not to entities that were merely affiliated with ILECs.⁸⁰ The Commission recognized the limited meaning of a "successor or assign" in the *Non-Accounting Safeguards Order*. There, the Commission expressed concern that a BOC would be able to circumvent the requirements of Section 272 by transferring "key local exchange and exchange access services and facilities to the 272 affiliate."⁸¹ The Commission concluded, however, that such a transfer could not circumvent Section 272 because "if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3)," the transferee would be an "assign" of the BOC and thus, would also be subject to

⁷⁹ 47 U.S.C. § 251(h). The Commission also may treat a carrier as an ILEC if the carrier occupies a market position comparable to that of an ILEC, the carrier has substantially replaced the ILEC, and such treatment is in the public interest. *Id.* There can be no reasonable argument that an advanced services affiliate would fall within these criteria.

⁸⁰ Compare *id.* § 271(a) (restricting interLATA services provided by BOCs or "any affiliate" of a BOC).

⁸¹ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22054, ¶ 309.

Section 272.⁸² Similarly, only where the advanced services affiliate becomes a "successor" of the LEC (e.g., through a merger) or becomes an "assign" of the LEC by obtaining ownership over "key local exchange and exchange access services and facilities" should such affiliate be deemed an ILEC subject to the obligations of Section 251(c).

A separate affiliate that complies with the *Competitive Carrier* framework sufficiently insulates the affiliate from ILEC status. Such an affiliate is not a successor of the ILEC, as the ILEC will continue to provide local exchange and exchange access services in its region. Nor is an advanced services affiliate an assign of the ILEC. The ILEC would retain ownership over all of the network elements of the underlying circuit-switched network. Only facilities and services that are used to provide DSL service or other advanced services would be transferred to the affiliate.⁸³ Accordingly, adopting the *Competitive Carrier* separation approach, rather than the more onerous Section 272 model, for advanced services affiliates fulfills the primary objective of the separate affiliate option: to allow an ILEC to provide advanced services without being subject to Section 251(c) obligations.

2. **The *Competitive Carrier* Framework Protects Against Cost Misallocation And Discriminatory Treatment**

As explained above, a separate affiliate framework is unnecessary to protect against cost misallocation and discriminatory practices. The Commission has long recognized that price cap regulation and resale requirements greatly diminish the incentive that a carrier may

⁸² *Id.*

⁸³ See Section VI.C *infra* for a discussion of transfers to the advanced services affiliates.

have to misallocate costs.⁸⁴ Other non-structural safeguards, such as the ability of competitors to obtain unbundled network elements to provide their own advanced services, also protect against discrimination. However, to the extent an ILEC chooses to offer advanced services using a separate affiliate, the *Competitive Carrier* framework addresses any lingering concerns about cost misallocation and discriminatory practices. The Commission has used the *Competitive Carrier* separation model to address concerns regarding cost misallocation and discrimination since it issued the *Competitive Carrier Fifth Report and Order* in 1984. In the *Competitive Carrier Fifth Report and Order*, the Commission determined that independent LECs providing domestic, interstate, interexchange services through a separate affiliate that complied with certain separation safeguards would not be regulated as dominant in those services. The Commission required that the affiliate (1) have separate books of account, (2) must not jointly own transmission or switching facilities with the LEC, and (3) must acquire services from the LEC pursuant to tariff.⁸⁵ The Commission has recently reasserted the adequacy of the *Competitive Carrier* framework to protect against cost misallocation and discrimination for non-BOC provision of in-region interstate, domestic, interexchange services in the *Dom/Nondom Order*.⁸⁶

⁸⁴ See, e.g., *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Dkt. No. 95-20, FCC 98-8, at ¶¶ 44, 58 (rel. Jan. 30, 1998); *Price Cap Performance Review for AT&T*, 8 FCC Rcd 6968, 6968, ¶ 3 (1993).

⁸⁵ *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198, ¶ 9.

⁸⁶ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15854, ¶ 170 (1997), Reconsideration Order, FCC 97-229 (rel. June 27, 1997) ("*Dom/Nondom Order*").

Similarly, the Commission relied on a modified version of the *Competitive Carrier* framework to alleviate concerns of cost misallocation and discriminatory interconnection in the *LEC-CMRS Order*. In that order, the Commission concluded that a *Competitive Carrier* level of separation between an ILEC and its in-region CMRS affiliate "provides an adequate measure of transparency between an incumbent LEC's wireline and in-region CMRS operations so as to prevent improper cost allocations and to ensure that competing CMRS providers are receiving nondiscriminatory treatment."⁸⁷ The Commission specifically rejected arguments that more stringent separation requirements, such as those previously required between BOCs and their cellular operations, were necessary to address the Commission's concerns about cost misallocation and discrimination.⁸⁸

In light of these precedents, applying a *Competitive Carrier* framework to ILECs who choose to provide advanced services through a separate affiliate would address any lingering concerns that the Commission may have regarding cost misallocation and discrimination.⁸⁹

3. **The *Competitive Carrier* Framework Would Grant ILECs Greater Flexibility And Is More Efficient Than The Proposed "Truly" Separate Affiliate**

Adopting a *Competitive Carrier* framework for advanced services affiliates would also allow a greater level of efficiency than would be available under the Commission's proposed "truly" separate affiliate framework. In the *Competitive Carrier Fifth Report and Order*, the Commission declined to require the domestic, interstate, interexchange affiliates of independent

⁸⁷ *LEC-CMRS Order*, 12 FCC Rcd at 15703, ¶ 57.

⁸⁸ *Id.*

⁸⁹ *See Notice* at ¶ 97.

LECs to employ fully-separated personnel and marketing functions.⁹⁰ Similarly, in the *LEC-CMRS Order*, the Commission stated that requiring the CMRS affiliate to have separate officers and employees is not "necessary to prevent anticompetitive discrimination and cost misallocation," especially in light of the Commission's affiliate transaction rules.⁹¹ The Commission specifically noted that "a flat ban on common employees will unnecessarily impose an efficiency cost upon incumbent LECs, and that eschewing these efficiencies is not outweighed by a competitive benefit from such a ban."⁹²

Similarly, the Commission should reject the "truly" separate affiliate model proposed in the *Notice* because it would impose enormous efficiency costs on ILECs and their advanced services affiliates. As noted above, a prohibition on common officers, directors, and employees will require unnecessary and wasteful duplication of resources.⁹³ Similarly, the Commission has recognized that "[m]arketing plays an important role, and represents a significant cost, in bringing new services to the public."⁹⁴ The Commission should not "handicap" ILECs by limiting their ability to jointly market advanced services with their affiliates, "particularly when significant competitors in the markets for [advanced] and integrated

⁹⁰ *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198, ¶ 9.

⁹¹ *LEC-CMRS Order*, 12 FCC Rcd at 15706, ¶ 64.

⁹² *Id.*

⁹³ See also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 24012, ¶ 269 (1997) ("Requiring separate officers, employees, and directors would preclude a foreign-affiliated carrier from taking advantage of economies of scale and scope that could allow it to provide better service at lower cost to consumers."), *recon. pending*.

⁹⁴ *Computer III Order*, 104 FCC 2d at 1012, ¶ 99.

systems are not so limited."⁹⁵ For this reason, and the other reasons described above, the Commission not adopt a separate affiliate framework that is any more restrictive than the *Competitive Carrier* framework for ILECs that choose to provide advanced services through a separate affiliate.

C. THE COMMISSION SHOULD ALLOW A ONE-TIME TRANSFER OF ADVANCED SERVICES OPERATIONS TO AN AFFILIATE WITHOUT DEEMING THE AFFILIATE AN ILEC

In the *Notice*, the Commission proposes to permit an ILEC to make certain transfers to its advanced services affiliate without rendering the affiliate a successor or assign of the ILEC.⁹⁶ A liberal transfer policy must exist for a separate affiliate alternative to be meaningfully available to ILECs. ILECs such as BellSouth have already begun deploying advanced services in a number of areas. Such ILECs should have an opportunity to centralize their advanced services offering in a single company. Accordingly, BellSouth urges the Commission to allow ILECs choosing a separate affiliate option to make a one-time transfer of its operations into a separate affiliate without rendering the affiliate an ILEC. Any such transfer should be exempt from any nondiscrimination requirement as the Commission proposed.⁹⁷

In particular, any separate affiliate regime adopted by the Commission should allow the transfer of all facilities used specifically to provide advanced services, including the DSLAM, packet switches, and transport facilities.⁹⁸ Network elements of the underlying circuit-switched networks, such as loops, would remain within the ILEC and would continue to be

⁹⁵ *Id.*

⁹⁶ *Notice* at ¶¶ 104-115.

⁹⁷ *Id.* at ¶ 111.

⁹⁸ *Id.* at ¶ 108.

available to competitors on an unbundled basis. Similarly, the Commission should freely allow the transfer of items other than facilities, such as customer accounts, employees, and brand names, to the advanced services affiliate. These items are necessary parts of an advanced services offering, and they are not elements that competitors require to provide a competitive voice or DSL service.

VII. THE COMMISSION SHOULD NOT TRANSFORM THIS PROCEEDING INTO ANOTHER LOCAL COMPETITION PROCEEDING

The Commission initiated this proceeding to find ways to encourage the deployment of advanced services. It is unfortunate that the Commission has become sidetracked from that objective by proposing to revisit the collocation and loop unbundling rules that it adopted only two years ago. Since the adoption of those rules, states have been diligently fulfilling their responsibility to provide competitors access to local network elements. The Commission should not now preempt the states in the name of promoting the deployment of advanced services. On the contrary, the states, with their greater knowledge of local conditions and their ability to arbitrate on a case-by-case basis, should continue to be at the forefront of implementing the collocation and unbundling rules to promote the development of advanced services. The Commission should maintain the focus of this proceeding on developing a framework that would allow ILECs to deploy advanced services on an integrated basis, and leave to the states the responsibility of implementing the collocation and unbundling requirements in particular cases.

A. THE COMMISSION SHOULD NOT ADOPT ADDITIONAL COLLOCATION AND LOOP UNBUNDLING RULES THAT INCREASE REGULATORY BURDENS ON ILECS AND PREEMPT THE STATE COMMISSIONS

Section 251(c) requires ILECs to provide physical collocation or virtual collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.⁹⁹

Section 251(c) also requires ILECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."¹⁰⁰ Congress specified that "[w]ithin 6 months after the date of enactment of the [1996 Act], the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section."¹⁰¹

In the *Local Competition Order*, the Commission adopted collocation and unbundling rules that purported to implement the requirements of Section 251(c). In adopting those rules, the Commission properly chose to rely "heavily on states to apply these rules and to exercise their own discretion in implementing a pro-competitive regime in their local telephone markets."¹⁰² With respect to collocation, the Commission established "minimum requirements for nondiscriminatory collocation arrangements" and granted the states the "flexibility to apply additional collocation requirements."¹⁰³ Similarly, the Commission established a "minimum list of unbundled network elements" that ILECs must make available, and specifically requested "the states to evaluate, on a case-by-case basis, whether to require access to sub-loop elements, which

⁹⁹ 47 U.S.C. § 251(c)(4).

¹⁰⁰ *Id.* § 251(c)(3).

¹⁰¹ *Id.* § 251(d)(1) (emphasis added).

¹⁰² *Local Competition Order*, 11 FCC Rcd at 15512, ¶ 21.

¹⁰³ *Id.* at 15784, ¶ 558.

can be facilities or capabilities within the local loop."¹⁰⁴ In accordance with the Commission's decision, state commissions have been diligently implementing the Commission's collocation and unbundling rules. The Commission should not now preempt the work of the state commissions by adopting additional and unnecessary national standards for collocation and loop unbundling.

B. RESPONSES TO SPECIFIC COLLOCATION AND LOOP UNBUNDLING PROPOSALS

1. Allocation And Exhaustion Of Space

BellSouth opposes proposals in the *Notice* that would effectively micromanage the collocation arrangements that ILECs enter into with their competitors. Of particular concern are the Commission's proposals to adopt additional regulations governing the allocation and exhaustion of collocation space at the central office. Availability of collocation space depends on unique local conditions, such as building code requirements, that cannot be effectively regulated at the national level. Accordingly, the Commission should not require ILECs to offer a particular collocation arrangement and should not presume that a certain arrangement is technically feasible at one location simply because it is available at another location.¹⁰⁵ Similarly, the Commission should not adopt presumptive intervals for implementation of collocation arrangements or provision of unbundled network elements. Such a presumption steps over state-established guidelines regarding provisioning timeframes for these elements. Further, to require such intervals would not adequately account for roadblocks, often unforeseen, that may arise in the implementation of collocation or unbundling arrangements. State commissions have

¹⁰⁴ *Id.* at 15624, ¶ 241; 15632, ¶ 259.

¹⁰⁵ *Notice* at ¶¶ 137-39.

ample authority to investigate and determine whether an ILEC is delaying collocation or unbundling for improper reasons, and they are in a better position to evaluate on a case-by-case basis whether a delay is justified. The Commission should not use this proceeding to create unnecessary presumptions against ILEC provision of collocation space or unbundled elements.

BellSouth also opposes the Commission's proposals to increase the informational burdens on ILECs. The Commission proposes that ILECs that deny collocation because of space limitations must allow as a matter of right the requesting carrier to tour the premises and that ILECs must collect data and prepare reports on available collocation space, which must include the "measures that the incumbent LEC is taking to make collocation space available."¹⁰⁶ These proposed requirements would only increase the paperwork and personnel burden on ILECs without providing any measurable benefit for facilitating collocation.

The Commission also suggests that allowing a requesting carrier to tour the central office would benefit state commissions. However, the Commission should allow the state commissions to determine what is necessary to help them resolve any collocation disputes. Finally, the proposed reporting requirement would force ILECs to periodically gather information and prepare a report on their collocation space at each of their central offices, regardless of whether any carriers have requested collocation space at those offices. Instead of prescribing inflexible national rules, the Commission should allow the parties to discuss and resolve any issues they may have on a case-by-case basis.

¹⁰⁶ *Id.* at ¶ 147.

2. Provisioning Of The Local Loop

At the outset, the Commission should clarify that, while ILECs are required to provide unbundled local loops to competitive carriers, ILECs are not required to provide assurances that such carriers will be able to provide DSL service to consumers over those loops. Loop characteristics vary greatly, and the quality of a provider's DSL service may be adversely affected by a number of factors, including interaction of loop characteristics (length, gauge, insulation, etc.) with a particular vendor's equipment. For DSL service, a primary factor may be distance. DSL service is generally not feasible when the length of the local loop exceeds 18,000 feet.¹⁰⁷ Depending on the type of DSL technology employed, that figure may be considerably less.¹⁰⁸ Similarly, even if an ILEC can provide DSL service over a particular loop, a competitor may not be able to provide another DSL service because of the differences in technology. Thus, the Commission should not presume that the inability of a competitor to provide DSL service over a loop is the result of discriminatory access on the part of the ILEC.

Similarly, the Commission should not require ILECs to compile comprehensive information about local loop conditions or the ability of a particular loop to handle DSL service.¹⁰⁹ Large ILECs such as BellSouth have literally millions of loops across their regions. Compiling information about loop conditions could take years and the expenditure of an enormous amount of resources. Moreover, such information would almost never be reliable. Changes to loop conditions occur constantly, and attempting to keep track of loop information

¹⁰⁷ BellSouth's ADSL service is designed to operate at distances of less than 18,000 feet.

¹⁰⁸ For example, high-rate DSL service generally is limited to distances of less than 12,000 feet.

¹⁰⁹ *Id.* at ¶ 157.

that competitors might desire would be an administrative nightmare. Of course, to the extent BellSouth has compiled such information, it will be made available to competitors upon request. The Commission should not, however, force ILECs to gather information about the local loop that they would not otherwise gather and that another carrier may never request.

3. Sub-Loop Unbundling And Collocation At The Remote Terminal

In the *Notice*, the Commission proposes to require ILECs to provide competitive DSL service providers with access to sub-loop elements and access to collocation in remote terminals.¹¹⁰ While a DLC-delivered loop can transport the DSL's voice channel to the central office, currently installed DLC systems themselves cannot transport the DSL packet data channels.¹¹¹ Sub-loop unbundling might enable CLECs to provide DSL services utilizing their own high speed digital facilities to the remote terminal or, alternately, using unbundled high speed facilities where ILEC remote terminal access to high speed digital facilities is available or could be built for transport between the sub-loop and the central office. The Commission should not attempt to prescribe a rule to address this situation, but should continue to leave the issue of sub-loop unbundling to negotiation and, if necessary, arbitration by state commissions. This statutorily prescribed process is uniquely capable of addressing the specific facts of a competitive carrier's unbundling request, while national rulemaking is not.

BellSouth vigorously opposes the Commission's proposal to require ILECs to allow collocation in remote terminals. In the *Notice*, the Commission proposes that ILECs allow

¹¹⁰ *Id.* at ¶¶ 167-176

¹¹¹ Although the Commission stated in the *Local Competition Order* that it would be technically feasible to unbundle loops that passed through a DLC system or other remote terminal, that statement is correct only for voice channels. *See id.* at ¶¶ 54, 153 (citing *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 383).

remote terminal collocation unless the ILEC can prove that "with respect to a particular remote terminal . . . there is insufficient space . . . to accommodate the requesting carrier."¹¹² In most remote terminals, space is quite limited, and ILECs often will be required to deny requests for remote terminal collocation. Additionally, DLC cabinets have severe power and heat dissipation limitations, which could require denial of collocation requests even if space were available. Requiring ILECs to prove in each case that denial of collocation in remote terminals was proper would impose an enormous burden on ILECs without increasing significantly the level of access that competitors obtain.

Moreover, collocation in remote terminals is unnecessary. BellSouth has been able to successfully negotiate agreements that provide competitors access to sub-loop elements without providing collocation at the remote terminals. Instead of collocation, a cross-box to cross-box interconnection arrangement is the established method of providing competitors with full access to all necessary sub-loop elements. Not only is this solution technically feasible, but it has the additional advantage of allowing the competitor to access the unbundled network elements that it has obtained without compromising the security or integrity of its (or the ILEC's) network. Moreover, because the competitor would be utilizing its own DSL equipment within its own housing, the competitor would have greater control over the technical characteristics of the DSL service it offers.

BellSouth opposes the Commission's proposal to require ILECs to provide alternatives to sub-loop unbundling and remote terminal collocation at no extra cost to the

¹¹² *Id.* at ¶ 174.

requesting carrier.¹¹³ Section 252(d) specifically requires that ILECs receive compensation from requesting carriers based on the cost of providing an unbundled network element. Requiring ILECs to provide carriers with additional alternatives at no extra cost expressly violates Section 252(d) because it would require ILECs to grant carriers additional elements without compensation. In effect, this proposal requires ILECs to subsidize their competitor's entry into the local market. Not only would this proposal distort the competitive advanced services market, it would constitute an attempt to regulate the pricing of unbundled network elements, which is not within the Commission's jurisdiction.¹¹⁴ The Commission's proposal is neither necessary to promote competition in advanced services nor valid under the Act, and it should be rejected.

4. Spectrum Unbundling And Management Issues

In the *Notice*, the Commission proposes to address spectrum interference issues related to the transmission of voice and DSL data signals over the same local loop.¹¹⁵ The *Notice* does not properly distinguish between two separate issues: spectrum management and spectrum unbundling. On the one hand, spectrum management is concerned with limiting noise (*i.e.*, crosstalk) between different loops within a cable sheath. This noise is typically caused by multiple systems, which transmit on different frequencies, being connected to different loops. For example, spectrum management is employed to ensure that data being carried over one loop does not interfere with voice that is being carried over a different loop within the same cable sheath. Spectrum unbundling, on the other hand, refers to the idea of two or more service

¹¹³ *Notice* at ¶ 173.

¹¹⁴ *See Iowa Utils. Bd.*, 120 F.3d at 793-800.

¹¹⁵ *Id.* at ¶ 159.

providers using the same loop to transport different services. Thus, spectrum management and spectrum unbundling are completely separate concepts.

Spectrum management is critical as new systems are deployed using advanced technologies. Fortunately, spectrum management is not new to the industry and efforts have been made to develop proper standards to address this issue. The Commission accordingly should rely on standard-setting bodies, such as ATIS Committee T1, to set guidelines for loop spectrum management.

Spectrum unbundling, however, is a new concept, and one of great concern to BellSouth. As discussed previously, advanced services, such as ADSL, are in their infancy. Providers, including BellSouth, are just beginning to offer such services. While BellSouth's deployment has been very successful from an engineering standpoint, there has been no time to develop universal standards to govern provision and maintenance of such services. In such situations, it is extremely important that the services provided over the loop, both voice and data, are engineered and controlled by the same provider to ensure proper quality to the end user. If the Commission permits a competitor to obtain loop elements for the purpose of providing advanced services only, the underlying voice carrier may be adversely affected by interference caused by incompatible technology. The cause of the interference would be transparent to the subscriber, who would erroneously attribute the reduction in quality to inferior service by the voice carrier. Only by maintaining the requirement that a competitor purchase the loop element as a facility and not as a function can the Commission ensure that accountability over loop quality is adequately maintained.

Moreover, BellSouth does not have any point on its network at which the loop can be unbundled to allow the data portion of the spectrum to go to another carrier while allowing

BellSouth to keep only the voice portion. Accordingly, the Commission cannot, and should not, attempt to force BellSouth, or any other ILEC that has a similar network configuration, to reconstruct its network to allow the loop spectrum to be unbundled.

Finally, and most importantly, the Commission has recognized spectrum unbundling as being completely inappropriate. Indeed, in the *Local Competition Order*, the Commission considered and expressly rejected the concept of spectrum unbundling. The Commission explicitly stated:

We decline to define a loop element in functional terms rather than in terms of the facility itself. Some parties advocate defining a loop element as merely a functional piece of shared facility, similar to capacity purchased on a shared transport trunk [(i.e. spectrum unbundling)] While such a definition, based on the types of traffic provided over a facility, may allow for the separation of costs for a facility dedicated to one end user, we conclude that such treatment is inappropriate. *Giving competing providers exclusive control over network facilities dedicated to particular end users provides such carriers maximum flexibility to offer new services to such end users.* In contrast, a definition of a loop element that allows simultaneous access to the loop facility would preclude the provision of certain services in favor of others.¹¹⁶

Advanced services are exactly the types of "new services" the Commission referred to in making its decision in the *Local Competition Order* above. The Commission cannot now arbitrarily pick and choose the types of new services for which it will and will not require spectrum unbundling. Nothing has changed since the issuance of *Local Competition Order*. Accordingly, the Commission should follow its own clear precedent and not require ILECs to engage in spectrum unbundling for advanced services.

¹¹⁶ See *Local Competition Order*, 111 FCC Rcd at 15693, ¶ 385.

5. Attachment Of Equipment

In the *Notice*, the Commission proposes to allow competitors to attach equipment that does not satisfy Bellcore Network Equipment and Building Specifications ("NEBS") requirements if the ILEC uses non-NEBS-compliant equipment.¹¹⁷ Under this proposal, a competitor would not only be able to attach the "same" equipment that the ILEC uses, but also "equivalent" equipment.¹¹⁸ BellSouth urges the Commission to modify this proposed rule to allow ILECs to reject the attachment of any equipment on grounds of technical incompatibility if such equipment is either not NEBS compliant or not exactly the same as equipment that the ILEC uses. Protection of the network is vital to ensuring that ILECs and their competitors are able to provide uninterrupted service to consumers. ILECs must retain the ability to reject the attachment of any equipment that they determine may cause harm to the network without becoming entrenched in a dispute about whether a particular variation from equipment that an ILEC uses is significant enough to render such equipment "non-equivalent."

BellSouth supports attempts to create a standard that would facilitate the attachment of equipment at the central office end of the loop. Such uniform standards would facilitate the interconnection of equipment belonging to various competitors and thereby promote competition in advanced services. The Commission must exercise caution, however, to ensure that it does not inadvertently discourage innovation in equipment design. Rather than establish the standard itself, the Commission should allow public standard setting bodies, such as

¹¹⁷ *Notice* at ¶ 134.

¹¹⁸ *Id.*

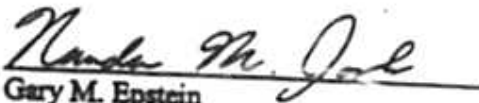
Committee T1 to develop the necessary standards for connection of equipment in the central office

VIII. CONCLUSION

The emerging mass market for advanced services is a shining example of the innovation that can occur when the Commission permits competition to flourish. Explosive consumer demand for advanced telecommunications capabilities has caused firms from across traditional industry lines to develop innovative technologies to bring those capabilities to an ever greater number of people. The question in this proceeding is not whether advanced services will be deployed, but how quickly will they be deployed to "all Americans," as Congress intended. Congress believed that such deployment would occur most rapidly if the Commission used its authority to remove regulatory "barriers to infrastructure investment." The Commission has an opportunity to further the process of removing those barriers in this proceeding, by adopting a regulatory policy that allows ILECs to compete freely and equally with its advanced services competitors. Just as competition drove the investment in technology that helped create the advanced services market, competition will ensure that it continues to flourish. More intense regulation, as proposed in the *Notice*, will stifle competition and investment. The losers will be consumers and the American economy.

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September 25, 1998

BellSouth Telecommunications, Inc.
FPSC Staff's Data Requests
Dated: October 19, 1998
Item No. 10
Page 1 of 1

REQUEST: Some parties argue that access to high-speed data services for connection to the Internet or for connection to other data-retrieval services should be included under the definition of basic local telecommunication service. Do you agree or disagree with this position. Please explain your answer in detail.

RESPONSE: BellSouth supports the language adopted in the Telecommunications Act at 47 U.S.C. § 254(c)(1)(B), wherein Congress stated that advanced services or any other service should not be added into the definition of universal service until such a time that the service has "been subscribed to by a substantial majority of residential customers." High speed data services and other data retrieval services do not meet this criterion at this time.

ATTACHMENT A

**UNDOCKETED
ADVANCED TELECOMMUNICATIONS DATA REQUEST**

The requested information contains proprietary confidential business information which is being produced subject to BellSouth's Request for Confidential Classification. The information listed below is commercially sensitive information which is proprietary and should not be disclosed to the public. Disclosure of such confidential information could substantially harm the competitive position of BellSouth by assisting competitors in analyzing market opportunities, and in preparing marketing strategies to use in direct competition with BellSouth. In addition, this information is valuable, it is used by BellSouth in conducting its business, and BellSouth strives to keep it secret. Therefore, it is a trade secret which should be classified as proprietary, confidential business information exempt from the Open Records Act pursuant to Section 364.183 Florida statutes.

ITEM NO.

5

COLUMN

% Lines ADSL Capable