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

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In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-199
Comprehensive Review of the	)	
Accounting Requirements and	)	
ARMIS Reporting Requirements for	)	
Incumbent Local Exchange Carriers:	)	
Phase 2 and Phase 3	)	

COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation, for itself and its wholly owned affiliates (collectively "BellSouth"), submits the following comments in response to the *Notice of Proposed Rulemaking* released in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

In this Phase 3 part of the *Notice*, the Commission seeks "to undertake a broader examination of Part 32 and ARMIS requirements with the goal of determining what additional changes can be made as competition develops, and assessing ultimately what, if any, specific accounting and reporting requirements are necessary when local exchange markets become

[1] *In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, CC Docket No. 00-199, *Notice of Proposed Rulemaking*, FCC 00-364, released October 18, 2000 ("*Notice*"). This is the second notice of proposed rulemaking ("*NPRM*") on this matter. The first *NPRM* split the issue of accounting deregulation into two phases. This *Notice* then divided the second phase into a Phase 2, proposed changes that can take place presently, and a Phase 3, changes for the future. These comments address the Commission's Phase 3 section of the *Notice*.

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sufficiently competitive."[2] The *Notice* seeks a roadmap that the Commission can use for accounting and reporting deregulation in a competitive environment. The *Notice* states that the accounting and reporting rules now in place were implemented to prevent large carriers from taking advantage of their positions of dominance while in a non-competitive environment. The *Notice* then proposes to loosen the rules once competition increases. The *Notice* only cites market share numbers to support a lack of competition. The Commission, however, has a long standing policy, as the courts have acknowledged, that market share is not the sole indicator of competition.[3] Accordingly, the Commission should not rely on market share loss for making decisions on forbearance and biennial review deregulation. Instead, the Commission should recognize the presence of competition and its continued growth. Regardless of the amount of competition that now exists, the marketplace changes that have occurred are sufficient to eliminate past concerns that have retarded meaningful accounting and regulatory reform.

The current regulatory environment has changed significantly since the time that the accounting and reporting rules were implemented. While, competition is certainly the goal – and significant amounts of competition have clearly proliferated the local market – some undefined loss of market share as the only judge of accounting and reporting deregulation completely ignores the past 14 years of regulatory reform. As BellSouth discussed in its comments in Phase 2, regulatory structures of the past have been completely remodeled. For example, determination of rates has shifted from rate of return to price cap regulation. Moreover, as the *Notice* specifically points out, there has been a significant restructuring of access rates for the

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2 *Notice* ¶ 87.

3 *See AT&T v. FCC*, No. 99-1535, 2001 WL 50466 (D.C. Cir. Jan. 23, 2001); *see also WorldCom v. FCC*, No. 99-1395, 2001 WL 85685 (D.C. Cir. Feb. 2, 2001).

next five years pursuant to the *CALLS Report and Order*.[4] The United States Telecom Association's ("USTA") comments in this proceeding provide a comprehensive history of accounting and reporting rules.[5] This evolution of regulation of subscriber rates over the years is important because it demonstrates that many of the rules do not remain necessary to suit the purpose and benefit of their origination but are simply a relic of past regulatory models -- specifically rate of return regulation. Significantly, the regulatory changes have eliminated the need for the cumbersome accounting and reporting requirements established by the Commission years ago. BellSouth supports USTA's Phase 3 Comments. They provide the basis for future deregulation and suggest one roadmap that the Commission could use toward deregulation.

II. TRIGGER FOR ELIMINATION OF ACCOUNTING AND REPORTING REQUIREMENTS

BellSouth strongly believes that the Commission should adopt a trigger, as proposed in the *Notice*, which would begin the elimination of current accounting and reporting requirements. BellSouth proposes that the trigger should be the acceptance by the Commission of a carrier's pricing flexibility petition. The granting of a pricing flexibility petition will completely detach any link between costs and prices. Accordingly, the Commission should use the granting of a carrier's pricing flexibility petition as the trigger for eliminating the accounting and reporting requirements for that carrier.[6]

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[4] *See In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, *Sixth Report and Order Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket 96-45*, 15 FCC Rcd 12962 (2000) ("*CALLS Report and Order*").

[5] USTA Comments, filed February 13, 2001 ("USTA's Phase 3 Comments").

[6] *See Pricing Flexibility Order* at 14307 ¶ 166 ("elimination of the low-end adjustment mechanism for an incumbent LEC might enable the Commission to relax, for that LEC, any accounting rules necessitated only by the rate-of-return low-end adjustment mechanism").

As discussed in detail in USTA's Phase 3 Comments, the implementation of price cap regulation cuts the relationship between costs and prices. In implementing price cap regulation, however, two mechanisms were established that could potentially "blunt" the efficiency incentives that price cap regulation sought to achieve. Those mechanisms were sharing and the lower formula adjustment mechanism ("LFAM").

Sharing essentially required a price cap local exchange carrier ("LEC") that earned more than certain rates of return to share half or all of those earnings with its customers. Thus, a price cap LEC's incentive to achieve all cost cutting efficiencies was stifled because any extra profits earned from such measures were returned to subscribers. The Commission later recognized this disincentive and eliminated sharing from price regulation.[7]

An LFAM allows price cap LECs "earning rates of return of less than 10.25 percent in a given year to increase their price cap indexes ("PCI") to a level that would enable them to earn 10.25 percent." Thus, an LFAM was introduced into price regulation in order to avoid confiscatory rates in any given tariff year. In implementing the *Pricing Flexibility Order*, however, the Commission "eliminated the low-end adjustment mechanism for price cap LECs that qualify for and elect to exercise either the Phase I or Phase II flexibility" granted in the order.[8] Accordingly, once a price cap LEC applies for and is granted either Phase I or Phase II

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[7] *In the Matter of Price Cap Performance Review for Local Exchange Carriers and Access Charge Reform*, CC Docket Nos. 94-1 and 96-262, *Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262*, 12 FCC Rcd 16642, at 16700, ¶148 (1997) ("*1997 Price Cap Review Order*"), *aff'd in part, rev'd in part, USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999).

[8] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, and Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, 98-157 and CCB/CPD File No. 98-63, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14304 ¶ 162 ("*Pricing Flexibility Order*").

pricing flexibility it will be precluded from making a low-end adjustment throughout its entire service area.[9] The elimination of the LFAM for such a price cap LEC truly severs any link to rate of return regulation. Thus, any link between prices and costs is completely eliminated.[10]

Accordingly, once all vestiges of rate of return regulation are eliminated, the Commission should move to full deregulation of accounting and reporting requirements. BellSouth contends that this Phase 3 process should occur on a carrier by carrier basis with the trigger for any carrier being the approval by the Commission of the carrier's pricing flexibility petition. This trigger, under BellSouth's proposal, would not initiate an immediate flash cut from all regulation. Instead, BellSouth proposes that the accounting and reporting requirements for the carrier achieving the trigger should be phased out over a two-year period ("BellSouth Phase 3 Plan").[11]

To implement BellSouth's Phase 3 Plan, BellSouth proposes that the Commission should adopt USTA's Phase 2 proposals, including allowing all carriers to move to Class B accounts and the streamlining of Part 64 and Part 32 requirements, immediately. BellSouth believes that the adoption of the USTA proposals would set the stage for implementation of BellSouth's Phase 3 Plan. Under BellSouth's Phase 3 Plan, during the first full calendar year after the release of the

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9 *Pricing Flexibility Order* at 14307, ¶ 167.

10 The United States Supreme Court has recently accepted Writ of Certiorari in *Iowa Utilities Board* in which one of the issues addresses whether historical costs should be used for pricing unbundled network elements ("UNE") instead of using only long run incremental costs, which could also affect universal service funding. *Iowa Utilities Board, et al., v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom., Verizon Communications, Inc. v. FCC*, 69 U.S.L.W. 3269 (U.S. Jan. 22, 2001) (No. 00-511). While there is no way of predicting how the Court will rule, even if it found that historical costs should be used for such calculations, the current accounting regulations would not be needed. Most of the accounting regulations were designed long before UNE and universal service cost studies and therefore were not established for that purpose. Moreover, UNE and universal service cost studies would be highly scrutinized independent of the accounting requirements; and the information that could best support the cost studies could be provided in the format requested by the Commission and state commissions.

11 For any carrier that has already obtained pricing flexibility relief, the two-year phase out period should begin upon the date the Commission's order becomes effective in this docket.

order in this docket or the date that a carrier achieves pricing flexibility relief, whichever comes later, the Commission would eliminate the requirement to file the Price Cap Regulation Rate of Return Monitoring Report, FCC Form 492A. Also during that year, the Commission would eliminate the affiliate transaction rules, 47 C.F.R. § 32.27, for that carrier. Affiliate transaction rules were implemented to guard against cross-subsidization between regulated and non-regulated services. As discussed previously, upon achieving the trigger, *i.e.*, Commission approval of an ILEC pricing flexibility petition and the elimination of the LFAM for that ILEC, the last remaining vestige of rate of return regulation is broken, thus, eliminating any link between prices and costs. Therefore, the affiliate transaction rules are no longer necessary. BellSouth believes these rules should be the first rules eliminated because they are extremely burdensome and increase substantially the cost of doing business not only for the ILEC but also for all of the ILEC's affiliates.

During the second full calendar year of the BellSouth Phase 3 Plan, the Commission would eliminate Part 64 requirements,[12] all ARMIS reporting requirements, and allow the carrier to move from the prescribed, detail, methods and rules of Part 32 to sole reliance on Generally Accepted Accounting Principles ("GAAP") to accommodate business needs. As BellSouth discussed in its reply comments in Phase 2, moving to GAAP will allow carriers flexibility that is not currently allowed under Part 32 accounts. An excellent example of this inflexibility is

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[12] Retention of Part 64 is not necessary for the Commission to satisfy any requirements under Section 254(k) of the Telecommunications Act of 1996. Section 254(k) was written to safeguard against universal service funding ("USF") subsidizing competitive services. USF uses forward-looking cost estimates, not historical accounting costs. Therefore, because Part 64 deals with historical accounting costs, not forward-looking costs, there is no link between the historical accounting costs apportioned via Part 64 and USF. The Commission staff originally placed Section 254(k) requirements into Part 64 due to the "joint and common costs" apportionment issue and a desire to include this requirement in the annual Part 64 audit. Because the tie between

demonstrated in USTA's comments regarding time reporting. Part 32 requires that certain construction costs must be allocated to permanent asset accounts based on direct labor hours. This process is outdated because third party vendors now perform many construction projects. GAAP does not prescribe such specific allocation rules but would allow the costs to be applied on a reasonable and rational basis.

III. CONCLUSION

The evolution of regulation of subscriber rates over the years has eliminated the need for the cumbersome accounting and reporting requirements established by the Commission years ago. This evolution coupled with the development and growth of competition makes these accounting and reporting requirements especially unfair to the few carriers that must endure them. The Commission must recognize that these rules are an unnecessary hindrance to the carriers. BellSouth has set forth a plan in these comments that will systematically and timely lift

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USF and historical costs is broken, it is unnecessary and inappropriate to maintain Part 64 simply for Section 254(k) compliance.

these burdensome rules from the carriers. The Commission has been far too conservative in reducing accounting and reporting rules. The Commission should finally recognize the deregulatory intent of the 1996 Act and adopt BellSouth's plan for future accounting and reporting deregulation.

Respectfully submitted,

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Date: February 13, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 13th day of February 2001 served the parties of record to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH CORPORATION** by hand delivery and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.

Lynn Barclay

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