

CASE

NUMBER:

99-484

Index for Case: 1999-00484

AS OF : 05/23/02

BellSouth Telecommunications, Inc.

Complaints - Service

Regular

OF IGLOU INTERNET SERVICE, INC.

IN THE MATTER OF IGLOU INTERNET SERVICES, INC. VS. BELL SOUTH TELECOMMUNICATIONS, INC.

SEQ NBR	Date	Remarks
1	11/12/99	Application.
2	12/01/99	Acknowledgement letter.
3	(M) 12/08/99	NOTICE OF ADDRESS CHANGE (JONATHON AMLUNG ATT FOR COMPLAINANT)
4	12/10/99	Order to Satisfy or Answer, response due 12/20/1999.
5	(M) 12/20/99	ANSWER OF BELLSOUTH TO COMPLAINT (DOROTHY CHAMBERS BELLSOUTH)
6	01/26/00	Order scheduling 2/11 informal conference
7	02/17/00	Informal Conference Memorandum
8	(M) 02/21/00	COMPLAINANTS FIRST SET OF DATA REQ (IGLOU JOHNATHON AMLUNG)
9	(M) 02/21/00	INFORMATION PER VERBAL REQ MADE TO BELLSOUTH DURING INFORMAL CONFEREN (DOROTHY CLARK BELLSOUTH)
10	(M) 02/25/00	RESPONSE TO MEMEO OF FEB 18,00Y (BELLSOUTH CREIGHTON MERSHON)
11	(M) 03/01/00	DATA REQ OMITTED AS ATTACHMENT TO LETTER OF FEB 18,00 (DOROTHY CHAMBERS BELLSOUTH)
12	(M) 03/13/00	RESPONSE TO FIRST SET OF DATA REQ OF IGLOU PARTIAL CONFIDENTIAL (CREIGHTON MERSHON BELLSOUTH)
13	(M) 03/15/00	CORRECTION TO RESPONSE TO IGLOU DATA REQ TAB 1.19 (BELLSOUTH CREIGHTON MERSHON)
14	03/20/00	Petition for Confidentiality filed on 3/13/2000 is granted.
15	03/24/00	Petition for Confidentiality received on 3/15/2000 is granted.
16	(M) 03/27/00	ANSWERS TO BELLSOUTH FIRST SET OF DATA REQ (JONATHON AMLUNG IGLOU)
17	04/06/00	Order scheduling 5/26 hearing
18	(M) 04/19/00	JOINT MOTION TO RESCHEDULE HEARING (DOROTHY J. CHAMBERS)
19	04/24/00	Order ent.,hearing shall be held as ordered;prefiled direct testimony due 5/11.
20	(M) 04/27/00	SUPPLEMENTAL RESPONSE TO ITEM NO. 1.26 OF IGLOU'S FIRST DATA REQUEST (DOROTHY CHAMBERS/BELLSOUTH)
21	(M) 04/27/00	FIRST SET OF DATA REQUESTS (JONATHON AMLUNG IGLOU)
22	05/01/00	Letter to Jonathan Amlung; edited copy & pet. for conf. due 5/16/2000.
23	(M) 05/04/00	RESPONSE TO BELLSOUTH'S FIRST SET OF DATA REQUESTS. (JONATHON AMLUNG/IGLOU)
24	05/11/00	Letter granting petition for conf. filed 5/5 by IgLou Internet Service.
25	(M) 05/15/00	DIRECT TESTIMONY (JONATHON AMLUNG)
26	(M) 05/19/00	REBUTTAL TESTIMONY (DOROTHY CHAMBERS/BELLSOUTH)
27	(M) 05/19/00	SUPPLEMENTAL REBUTTAL TESTIMONY (CREIGHTON MERSHON/BELLSOUTH)
28	(M) 05/22/00	MOTION FOR EXTENSION OF TIME. (ELIZABETH BLACKFORD/AG)
29	(M) 05/22/00	TESTIMONY OF BROOKS,KINNEY,CURTIS,ASHDOWN,GREGOIRE (IGLOU JOHNATHON AMLUNG)
30	(M) 05/23/00	TRANSCRIPTS OF RADIO COMMERCIALS (DOROTHY CHAMBERS BELLSOUTH)
31	(M) 05/26/00	SUPPLEMENTAL RESPONSES TO BELLSOUTH'S FIRST SET OF DATA REQUESTS (JONATHON AMLUNG/IGLOU)
32	(M) 06/16/00	POST HEARING BRIEF CONTAINING CONFIDENTIAL (DOROTHY CHAMBERS BELLSOUTH)
33	(M) 06/19/00	MOTION TO TEMPORARILY EXCLUDE BELLSOUTH POST HEARING BRIEF FROM REC (LANGLEY KITCHINGS BELLSOUTH COMMUNIC)
34	(M) 06/19/00	MOTION FOR EXTENSION OF TIME (JONATHON AMLUNG IGLOU)
35	(M) 06/22/00	POST HEARING BRIEF (JONATHON AMLUNG IGLOU)
36	06/23/00	Letter granting BellSouth's Petition for Confidentiality dated 6/15/2000.
37	(M) 06/26/00	REVISED CERTIFICATE OF SERVICE (CREIGHTON MERSHON/BELLSOUTH)
38	(M) 08/25/00	MOTION TO INTERVENE (RICHARD BREEN)
39	(M) 08/25/00	INTERVENING COMPLAINT (RICHARD BREEN)
40	09/01/00	Order granting motion of Richard M. Breen to intervene.
41	11/30/00	FINAL ORDER; DENIES PORTIONS OF IGLOU'S COMPLAINT; INFO DUE 12/30/2000
42	(M) 12/22/00	MOTION FOR RECONSIDERATION AND MOTION FOR EXTENSION OF TIME (DOROTHY CHAMBERS/BELLSOUTH)
43	(M) 01/03/01	ADSL DISCLOSURE SCRIPT (DOROTHY J. CHAMBERS BELLSOUTH)
44	(M) 01/03/01	RESPONSE TO MOTION FOR EXTENSION OF TIME (JONATHON AMLUNG IGLOU)
45	(M) 01/04/01	RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION (JONATHON N. AMLUNG IGLOU)
46	(M) 01/05/01	REPLY TO IGLOU'S RESPONSE TO BELLSOUTH MOTION FOR EXTENSION OF TIME (DOROTHY CHAMBERS BELLSOUTH)
47	01/11/01	Order scheduling 3/7/2001 informal conference; status report due 3/2/2001
48	(M) 01/24/01	MOTION TO STRIKE (JOHNATHON AMLUNG/IGLOU)
49	02/07/01	Order denying motion to strike

50 (M) 02/12/01 REVISED INTERNATIONAL STATE TARIFF (CREIGHTON MERSHON/BELLSOUTH)

51 (M) 02/15/01 RESPONSE TO COMMISSION'S ORDER OF JANUARY 11, 2001 ORDER (DOROTHY CHAMBERS/BELLSOUTH)

52 (M) 02/27/01 RESPONSE TO BELLSOUTH'S REVISION (JOHNATHON AMLUNG/IGLOU)

53 (M) 03/02/01 STATUS REPORT (JONATHAN AMLUNG/IGLOU)

54 (M) 03/02/01 LETTER CONCERNING CONFERENCE CALL (CREIGHTON MERSON/BELLSOUTH)

55 (M) 03/05/01 LETTER CONCERNING MEETING WITH IGLOU (BELLSOUTH)

56 03/21/01 Informal conference memo, any comments due within 5 days of receipt of letter.

57 (M) 03/21/01 RESPONSE TO COMMISSION'S REQUEST FOR INFORMAL CONFERENCE (DOROTHY CHAMBERS/BELLSOUTH)

58 (M) 03/28/01 LETTER REGARDING INFORMAL CONFERENCE (DOROTHY CHAMBERS/BELLSOUTH)

59 (M) 04/04/01 RESPONSE TO BELLSOUTH FILING OF MARCH 21, 2001 (JONATHAN AMLUNG/IGLOU)

60 04/09/01 FINAL ORDER; APPROVES PROPOSED FCC TARIFF REVISIONS FOR DSL SERVICE

61 (M) 04/10/01 REPLY TO IGLOU'S RESPONSE TO COMMISSION REQUEST (CREIGHTON MERSON/BELLSOUTH)

62 04/11/01 Petition for confidentiality granted for item 1, denied for item 2.

63 (M) 04/20/01 RESPONSE TO LETTER REGARDING PETITION FOR CONFIDENTIALITY (DOROTHY CHAMBERS/BELLSOUTH)

64 (M) 04/24/01 MOTION FOR EXTENSION OF TIME (CREIGHTON MERSHON/BELLSOUTH)

65 (M) 04/27/01 MOTION FOR EXTENSION OF TIME (JONATHAN AMLUNG/IGLOU)

66 (M) 04/30/01 MOTION FOR RECONSIDERATION OF APRIL 9,01 ORDER (DOROTHY CHAMBERS BELLSOUTH)

67 (M) 05/03/01 LETTER REGARDING CONFIDENTIAL FILING (DOROTHY CHAMBERS/BELLSOUTH)

68 05/09/01 Petition for confidential granted to Dorothy J. Chambers, Esq.

69 (M) 05/09/01 RESPONSE TO BELLSOUTH'S SECOND MOTION FOR RECONSIDERATION (JONATHAN AMLUNG/IGLOU)

70 (M) 05/10/01 FAX/LETTER REGARDING IGLOU FILING OF MAY 9, 2001. (DOROTHY CHAMBERS/BELLSOUTH)

71 (M) 05/11/01 LETTER REGARDING IGLOU'S FILING OF MAY9, 2001 (DOROTHY CHAMBERS/BELLSOUTH)

72 (M) 05/11/01 TO FILE REDACTED COPIES (JONATHON N. AMLUNG IGLOU)

73 05/14/01 Order entered; approves FCC tariff revision for DSL service; modifies 4/9 Order

74 (M) 05/14/01 RESPONSE TO BELLSOUTH'S SECOND MOTION FOR RECONSIDERATION (JONATHON AMLUNG)

75 (M) 05/14/01 COPY OF LETTER FROM AMLUNG TO DOROTHY CHAMBERS (JOHNATHOAN AMLUNG)

76 (M) 05/14/01 EDITED COPY OF RESPONSE TO BELLSOUTH SECOND MOTION FOR RECONSIDERATIO (JOHNATHAN AMLUNG)

77 (M) 05/14/01 LETTER CONCERNING PROVIDING DSL/BROADBAND (CARL GNADINGER)

78 (M) 05/14/01 RESPONSE TO COMMISSION'S MAY 11, 2001 ORDER (DOROTHY CHAMBERS/BELLSOUTH)

79 05/16/01 Response to Carl J. Gnadinger, Jr. re: his 5/10/01 letter.

80 (M) 05/18/01 RESPONSE TO PSC REQ FOR COST SUPPORT ASSOCIATED WITH MAY 15,01 (DOROTHY CHAMBERS)

81 05/21/01 Follow-up letter to Creighton Mershon

82 (M) 05/25/01 RESPONSE TO BELLSOUTH'S FILING PURPORTING TO SUPPORT RATE INCREASE (JONATHON N. AMLUNG IGLOU)

83 05/30/01 Letter to BellSouth response due within 5 days.

84 (M) 05/31/01 FAX/REPLY TO IGLOU'S RESPONSE OF MAY 25, 2001 (DOROTHY CHAMBERS/BELLSOUTH)

85 (M) 05/31/01 REPLY TO IGLOU'S RESPONSE (DOROTHY CHAMBERS/BELLSOUTH)

86 06/07/01 Letter granting BellSouth's petition for confidentiality filed 5/18/2001.

87 (M) 06/07/01 PETITION FOR CONFIDENTIALITY (DOROTHY CHAMBERS/BELLSOUTH)

88 06/11/01 Letter sent to Creighton Mershon advising review of recent filing by BellSouth.

89 06/12/01 Letter to Creighton Mershon granting confidential protection.

90 (M) 06/19/01 REQ FOR RECONSIDERATION & CLARIFICATION OF STAFF LETTER OF JUNE 11,01 (JONATHAN AMLUNG)

91 (M) 06/21/01 LETTER IN RESPONSE TO JUNE 18, 2001 OF JONATHAN AMLUNG (DOROTHY CHAMBERS/BELLSOUTH)

92 06/27/01 Response letters to Dorothy Chambers & Jonathan Amlung re: letters filed

93 05/22/02 Letter to Dorothy Chambers granting BellSouth's petition for confidentiality filed 5/14/02.



Paul E. Patton, Governor

Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
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Martin J. Huelsmann
Chairman

Gary W. Gillis
Vice Chairman

Robert E. Spurlin
Commissioner

May 22, 2002

Hon. Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

RE: BellSouth Petition for Confidential Protection
Case No. 99-484

Dear Ms. Chambers:

The Commission has received your petition filed May 14, 2002, to protect as confidential information regarding DSL port information provided pursuant to the Commission's Order entered May 14, 2001. A review of the information has determined that it is entitled to the protection requested on the grounds relied upon in the petition, and it will be withheld from public inspection.

If the information becomes publicly available or no longer warrants confidential treatment, you are required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

Sincerely,

A handwritten signature in black ink, appearing to read "T. M. Dorman".

for
Thomas M. Dorman
Executive Director

cc: Parties of Record



Jonathan N. Amlung
1000 Republic Building
429 W. Muhammed Ali Boulevard
Louisville, KY 40202

Honorable Richard M. Breen
2950 Breckenridge Lane
Suite 3
Louisville, KY 40220

Honorable Dorothy J. Chambers
Senior State Operations Counsel
BellSouth Telecommunications, Inc.
601 West Chestnut Street, 4NE
P. O. Box 32410
Louisville, KY 40232

Dr. Bob Davis
113 Pebble Beach
Georgetown, KY 40324

Honorable R. Douglas Lackey
Suite 4300, Bellsouth Center
675 West Peachtree Street, Ne
Atlanta, GA 30375

Honorable Creighton E. Mershon, Sr.
General Counsel
BellSouth Telecommunications, Inc.
601 West Chestnut Street, 4NE
P. O. Box 32410
Louisville, KY 40232

Tanya Monsanto
Legislative Research Commission
Capital Annex
Room 127
Frankfort, KY 40601



Paul E. Patton, Governor

**Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet**

**Thomas M. Dorman
Executive Director
Public Service Commission**

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Chairman**

**Edward J. Holmes
Vice Chairman**

**Gary W. Gillis
Commissioner**

June 27, 2001

Dorothy J. Chambers, General Attorney
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
Louisville, Kentucky 40203

Jonathan N. Amlung, Esq.
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202-2347

RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.
Case No. 99-484

Dear Dorothy and Jonathan:

The Commission has received your letters filed in the wake of the staff letter dated June 11, 2001. Your letters have been placed in the case file and have been brought to the Commission's attention. However, please be advised that this case is closed and no further action will be taken in this proceeding.

Any questions regarding these matters may be forwarded to Amy Dougherty at (502)564-3940, Extension 257.

Sincerely,

Thomas M. Dorman
Executive Director

AED/v

cc: Parties of Record



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

RECEIVED
JUN 21 2001
PUBLIC SERVICE
COMMISSION

June 20, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

This is in response to the June 18, 2001 letter of Jonathan Amlung on behalf of IgLou Internet Services, Inc ("IgLou"). Mr. Amlung's letter states it is a request for reconsideration and clarification of the Commission staff's letter, dated June 11, 2001, that concluded BellSouth had provided adequate cost support justification for the nonrecurring and termination liability charges and, therefore, these charges are reasonable. The Commission should reject as unsupported IgLou's request which not only attempts to seek reconsideration of the June 11, 2001 staff conclusion that the cost support for nonrecurring charges is adequate, but also appears to be a belated motion for reconsideration of the Commission's May 14, 2001 Order approving BellSouth's proposal to file a revised DSL tariff at the FCC eliminating the tier structure and the volume discount.

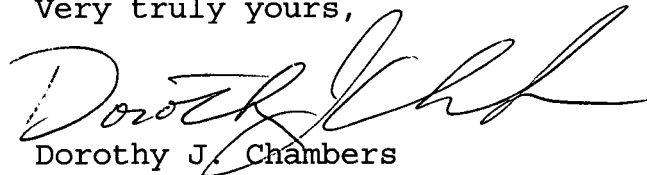
In the Commission's May 14 Order, this Commission indicated its willingness to consider BellSouth's proposal with respect to nonrecurring and termination liability charges upon submission of adequate cost justification. See, Commission's May 14 Order at 3. By letter dated May 18, 2001, BellSouth provided the results of the cost study for nonrecurring and termination liability charges. In response to the Commission staff's

Mr. Thomas M. Dorman
June 20, 2001
Page 2

request for copies of supporting work papers and other data, BellSouth provided by letter dated June 7, 2001, copies of the supporting work papers for the previously supplied cost study and BellSouth also provided detailed responses to each of the Commission Staff's questions regarding the cost study.

BellSouth's detailed responses and supporting work papers clearly are sufficient to support the conclusion the Commission Staff reached that those charges are cost-justified and, therefore, are reasonable. Mr. Amlung's June 18, 2001 letter provides no new or additional evidence that would justify reconsideration of that conclusion. Therefore, BellSouth respectfully suggests that these issues should be considered resolved, in accordance with the conclusions reached by the Commission staff.

Very truly yours,



Dorothy J. Chambers

cc: Parties of Record

395222

JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

RECEIVED

JUN 19 2001

PUBLIC SERVICE
COMMISSION
TELEPHONE: (502) 584-6838
FACSIMILE: (502) 584-0439
E-MAIL: jonathon@amlung.com

J.D./M.B.A.
LICENSED IN KENTUCKY, OHIO AND COLORADO

June 18, 2001

VIA FACSIMILE TO (502) 564-3460 AND
REGULAR U.S. MAIL

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.,
Case No. 99-484

Dear Mr. Dorman:

On behalf of my client, IgLou Internet Services, Inc., I request reconsideration and clarification of the Staff letter dated June 11, 2001. A brief overview of the recent history of this case should be of assistance in explaining my client's concerns.

On April 30, 2001, BellSouth proposed a rate hike for its ADSL services in a document filed with this Commission styled "Motion for Reconsideration of April 9, 2001 Order." On May 14, 2001, this Commission ordered BellSouth to modify its federal ADSL tariff to eliminate the termination liability charges and maintain the then-existing \$50.00 charge for installations.

BellSouth replied by filing its federal tariff without the requested modifications against the Commission's Order. The Commission Staff then responded via letter dated May 16, 2001, by giving BellSouth two days to file valid cost data supporting its rate hike.

BellSouth's only reply was to file two pages of numbers with absolutely no support. IgLou responded by pointing out the meaninglessness of the data and asserting that the data should not be trusted, and did not adequately support the rate hike.

On May 30, 2001, the Commission Staff, recognizing the meaninglessness of the data and the lack of response by BellSouth, determined that BellSouth was in violation of the Commission's May 14, 2001, Order. The Commission Staff warned that enforcement would be imminent if BellSouth did not comply with its May 14, 2001, Order. "At a minimum," the Staff wrote, "BellSouth should supply cost

Mr. Thomas Dorman
June 18, 2001
Page 2

justification and workpapers sufficient to permit an adequate review of the rates BellSouth has placed into effect despite the Commission's Orders." In response, BellSouth attempted to comply with the minimum requirements set forth in the Staff letter by filing more apparently meaningless cost data.

Surprisingly, the Staff's only response was a four-sentence letter dated June 11, 2001. The Staff did not recommend a fine, despite reiterating that BellSouth failed to comply with a Commission Order. There was no recommended enforcement of the Commission Order, nor was there any explanation for the Staff's acceptance of this cryptic data as "reasonable."

IgLou continues to have great concern over the data provided by BellSouth in this matter. By BellSouth's own admission, the data it provided to this Commission on May 18, 2001, was incorrect, further validating IgLou's concerns.

IgLou respectfully asks on behalf of broadband consumers across the Commonwealth that staff thoroughly disclose the rationale as to why it finds BellSouth's most recent filing to be "reasonable." In addition, IgLou requests the Commission Staff to outline what steps have been taken to ensure that the current data supplied by BellSouth is valid and reliable. As the Commission has stated before, the issues in this case transcend the private dispute between the parties. BellSouth's DSL cost data is a crucial element to be considered in making decisions affecting the future of the Commonwealth.

My client is concerned as to whether a rate hike in broadband services meets the Commission's goal of ubiquitous broadband deployment, and whether this rate hike is the best thing for Kentucky. Further, IgLou respectfully requests the Commission Staff to examine the cost justification of the rate hike in its entirety. It appears as if the Staff has examined only the cost justification of nonrecurring elements in the ADSL tariff. This cannot be viewed in isolation from the monthly recurring charges. Certainly, there must be cost justification for the rate hike in its entirety.

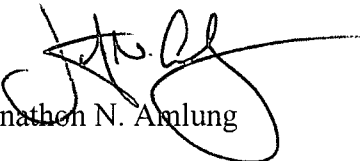
BellSouth has apparently not supplied adequate cost justification for its termination liability charge. According to BellSouth's own filing, there is at least a 200% profit margin built into its charges for this item. Certainly, this cannot be determined to be reasonable. In addition, the Staff should consider and examine the similarly excessive profit margin associated with BellSouth's recurring charges.

Finally, IgLou remains concerned that BellSouth has violated the Commission's Orders without even the smallest of fines. IgLou has yet to receive an answer to its request for a \$25 fine.

Mr. Thomas Dorman
June 18, 2001
Page 3

Thank you for your attention to these matters. The most recent Staff letter presents an obstacle to any understanding of where my client and broadband consumers across Kentucky stand. I respectfully ask for your prompt response.

Cordially yours,



Jonathon N. Amlung

cc: Parties of Record

File



Paul E. Patton, Governor

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

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June 12, 2001

Creighton E. Mershon, Sr., Esq.
General Counsel-Kentucky
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, Kentucky 40232

RE: BellSouth Petition for Confidential Protection
Case No. 99-484

Dear Mr. Mershon:

The Commission has received your petition filed June 7, 2001, to protect as confidential responses to staff questions regarding specifics of cost support data for the revisions to BellSouth's DSL tariff. A review of the information has determined that it is entitled to the protection requested on the grounds relied upon in the petition, and it will be withheld from public inspection.

If the information becomes publicly available or no longer warrants confidential treatment, you are required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

Sincerely,

Thomas M. Dorman
Executive Director

cc: Parties of Record





Paul E. Patton, Governor

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

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Gary W. Gillis
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June 11, 2001

Creighton Mershon, Sr.
General Counsel/Kentucky
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
Louisville, Kentucky 40203

Re: Case No. 99-484

Dear Creighton:

This is to advise you that Commission Staff has reviewed the supplemental cost information submitted by BellSouth in response to my letter of May 30, 2001 concerning the non-recurring charges denied by the Commission in its May 14, 2001 Order in this case. Based on review of the information submitted, Staff has concluded that the charges are cost-justified and therefore that they are reasonable.

We remain concerned that BellSouth technically failed to comply with the Commission's Order in that it submitted its tariff prior to obtaining Commission approval of the questioned charges. However, given that the Commission left the door open for further cost-justification in its Order, and given that such cost-justification has now been submitted, we will not recommend that the Commission take enforcement action in this matter.

Sincerely yours,

Thomas M. Dorman
Executive Director

TMD/DTE/cj

cc: Parties of Record
File





BellSouth Telecommunications, Inc.
601 W. Chestnut Street
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Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

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June 7, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
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Frankfort, KY 40602

RECEIVED
JUN 07 2001
PUBLIC SERVICE
COMMISSION

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

This is in response to your May 30, 2001 letter, which BellSouth received by facsimile transmission on that same date. Your May 30 letter and BellSouth's May 30 Reply to IgLou's Response of May 25 both address this Commission's most recent Order regarding BellSouth's revisions to its DSL tariff filed at the FCC.

As noted in BellSouth's Reply, BellSouth filed at the FCC the revised DSL tariff as BellSouth had proposed because BellSouth believed it satisfied the concerns raised by this Commission. Your letter of May 30, 2001, states that the Commission staff considers BellSouth to be in violation of the Commission's Order because BellSouth failed to make the modifications to the FCC tariff as ordered by this Commission. BellSouth wishes to assure the Commission that it has proceeded in good faith and believed it was in compliance with the Commission's Order.

Your May 30 letter requests further cost justification and work papers so that the staff may perform a further review of the cost justification BellSouth has submitted. The Commission

Mr. Thomas M. Dorman
June 7, 2001
Page 2

staff also has asked several specific questions regarding the cost study results. Enclosed please find the response to the Commission's questions as well as the supporting explanation and the work papers for the cost study as requested in your May 30, 2001, letter.

Portions of the Response and cost studies contain confidential, commercial, or proprietary information and, pursuant to 807 KAR 5:001, Section 7, enclosed is BellSouth's Confidentiality Petition. One copy of the proprietary information is provided to the Commission. A copy of the proprietary information is provided to IgLou and its counsel pursuant to the previously executed Protective Agreement in this case. Requisite edited copies are provided for the public record and other parties of record.

As you are aware, since the Commission staff had requested that the cost study be produced no later than May 18, 2001, this cost study was provided to the Commission on an expedited basis and without backup and a detailed explanation. In addition to now providing the detailed work papers and responding to the questions raised in your letter of May 30, 2001, BellSouth would be happy to make its cost experts available to the Commission staff at an informal conference to explain or answer any questions they may have about this information.

BellSouth respectfully requests that the Commission set an informal conference if it has any questions or if it believes further information is appropriate or necessary to establish that BellSouth is not in violation of the Commission's Order.

Very truly yours,



Dorothy J. Chambers

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)	
)	
Complainant)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Defendant)	

CONFIDENTIALITY PETITION
PURSUANT TO 807 KAR 5:001, SECTION 7

Petitioner, BellSouth Telecommunications, Inc., ("BellSouth" or the "Company"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to 807 KAR 5:001, Section 7, to treat portions of the attached Response and cost studies relative to the most recent nonrecurring cost study as confidential (those portions highlighted or copied in yellow) in accordance with the Commission's guidelines.

The Kentucky Open Records Act exempts certain commercial information from the public disclosure requirements of the Act. KRS 61.878(1)(c)1. To qualify for the commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of

the party seeking confidentiality if openly discussed. KRS 61.878(1)(c)1; 807 KAR 5:001, § 7. The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and a likelihood of competitive injury if the information is disclosed.

The material which BellSouth seeks to protect contains confidential cost information that is considered proprietary to BellSouth. Public disclosure of this information would provide BellSouth's competitors with an unfair advantage. The data is valuable to competitors and potential competitors in formulating strategic plans for entry, pricing, marketing and overall business strategies. This information relates to the competitive interests of BellSouth and disclosure would impair the competitive business of BellSouth as well as the third party vendors. This type of information has been held confidential by the Commission in this docket, see April 3, 2001 letter of Thomas M. Dorman, and also in previous dockets.

Several of BellSouth's current competitors, including Complainant, Covad, and Rhythms NetConnection, have publicly announced their intention to enter, or in fact have entered, the market to provide DSL services. Additionally, several potential competitors have likewise indicated their intention to enter the DSL market to compete with BellSouth. Business information such as that requested here would be extremely valuable to competitors in developing competitive business strategies, networks and

operations, designing their service offerings and, marketing plans for those services.

As further grounds for this Petition, BellSouth states as follows:

(1) The information as to which BellSouth is requesting confidential treatment is not known outside of BellSouth;

(2) The information is not disseminated within BellSouth and is known only by those BellSouth's employees who have a legitimate business need to know and act upon the information;

(3) BellSouth seeks to preserve the confidentiality of this information through all appropriate means, including the maintenance of appropriate security at its offices;

(4) The disclosure of this information would cause competitive injury to BellSouth in that it would provide BellSouth's competitors with sensitive financial data with respect to certain of BellSouth's services; and

(5) By granting BellSouth's Petition there would be no damage to any public interest in disclosure. In fact, the public would be best served by non-disclosure because competition would thereby be promoted.

For the foregoing reasons, BellSouth asks that its petition for confidential treatment of portions of the Response and cost studies be granted.

Respectfully submitted,



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391550

RESPONSE TO MR. THOMAS DORMAN'S LETTER OF MAY 30, 2001

1. Why has the work time for completion of specific tasks involved in DSL installation and other tasks dramatically increased in the most recent nonrecurring cost study as compared to the original cost study?

Answer: The original ADSL cost study for BellSouth ADSL service was performed in 1998 before BellSouth began actual ADSL deployment. As a result, the study included a number of estimates based on BellSouth's limited experience at that time. Many aspects of how BellSouth processes and provisions orders for ADSL have changed since that original study, and BellSouth has since matured as an ADSL service provider. These changes have resulted in reductions of the nonrecurring costs for some components, but also have resulted in increases for some nonrecurring cost components. As noted below, BellSouth has made significant investment in systems, resulting in reduced work times associated with service orders. However, provisioning costs generally have increased due to changes in the type and location of ADSL equipment being deployed.

Increased Nonrecurring Cost components

BellSouth's costs have increased since the original study in two main areas: the addition of remote DSLAM deployment and the introduction of a loop remediation process.

Increased Remote DSLAM Deployment

BellSouth's initial ADSL strategy was to deploy the service in only the largest metropolitan areas in BellSouth's territory. Initially, there were sixty-one central offices in six metros: South Florida (including Miami-Ft. Lauderdale area), Jacksonville, Fla., Atlanta, Charlotte, Birmingham and New Orleans. This deployment strategy primarily included central office based services in densely populated central offices with some limited remote deployment at digital subscriber loop remote terminals (RTs). At the time of the original study, a remote terminal provisioning process had not been developed and BellSouth had to estimate the cost of installing service in such an environment. Deployment then expanded to 30 metropolitan areas, with limited or no remote terminal solutions in the 24 additional metros. Finally, remotes were considered in all cities, and the number of MSAs with ADSL deployment increased to over 72¹ metro and rural areas by the end of 2001 in 1025 central offices.

Loop Remediation

BellSouth initially planned on using loop records to pre-qualify customers at the time of an order. If records indicated that ADSL service was possible via ADSL overlay of that particular end-user exchange line facility, installation was attempted. If, however, BellSouth discovered that the exchange line facility qualified due to record error, BellSouth's response to the customer would have been that their designated end-user premises would not qualify due to an incompatible exchange line facility, and BellSouth would then cancel the order.

¹ 63 metropolitan areas plus nine non-metro rural areas.

Unfortunately, records used for the pre-qualification process resulted in a number of customers being disappointed by disqualification of their end-user customer loops. In an attempt to increase customer satisfaction, a new policy was implemented in 1999 to make an effort to "fix" a loop if BellSouth inappropriately pre-qualified a customer. A policy was implemented such that, when BellSouth told a customer that a loop would qualify, but upon installation it was discovered that the loop would not qualify, an effort was made to make the loop work. BellSouth did not, however, for the 256 Kbps x 1.5 Mbps optional data rate, ever condition or modify loops that did not qualify upon initial request. Examples of where BellSouth will modify an unqualified exchange line facility if records erroneously indicated it was qualified are:

- A single load coil exists on the loop, and it is located in such a manner that it can be easily removed.
- Noise exists on a loop that does not impact voice service, but does impact ADSL. (If noise were on the line that impacted voice, that loop would be repaired as a part of the POTS service).
- An unqualified exchange line facility that cannot support ADSL and a qualified exchange line facility that have a common appearance in plant facilities. In this case a line and station transfer (LST) will be made, swapping the exchange facilities.

In addition, in order to qualify more lines, BellSouth made a decision to designate certain exchange lines "qualified" because other ADSL qualified exchange lines could be used to provide the service. This decision allowed broader deployment of ADSL, but also increased the numbers of line and station transfers, as well as the number of times a Service Technician is dispatched. For example, a potential ADSL end-user may be served by a long loop (i.e., greater than 18KFT) that is loaded (required for the voice to work). If this loop were routed through a remote terminal that had a remote DSLAM deployed, BellSouth would swap the loaded pair for the pair using the remote and provision ADSL using the remote DSLAM.

As noted, this loop remediation process increased the work times required to provision ADSL service, but at the same time, allowed more customers to be able to purchase it. BellSouth still is not able to provide ADSL to all customers in all circumstances. But where work efforts do not create "excessive" problems (e.g., having to dig up a street in a major intersection in a large city to remove a load coil) BellSouth will remove load coils, or switch pairs to a better quality pair, if, according to BellSouth's loop qualification system BellSouth has advised a customer he/she could have the service, yet upon installation, problems are found in the facility.

There are still occasions where BellSouth cannot provide ADSL to a particular customer, and an order will have to be cancelled. Some examples of these cases include:

- Excessive expenditures required to remove load coils or bridge tap
- Loop is too long and cannot technically support ADSL

- Loop is properly loaded and load coils cannot be removed without adversely affecting voice service.

The benefit of this program, which was not included in the original cost study, is an improvement in the overall customer experience and wider availability of ADSL. In addition, since BellSouth's ADSL service is wholesaled to ISPs, this process has added additional reliability to the service provisioning process, giving BellSouth's wholesale customers, such as ISPs, a greater level of assurance that their brand will not suffer because of BellSouth's inability to provision these services.

Cost Components Increased from Previous Study

Address and Facility Inventory Group (AFIG)

This group administrates the LFACS (Loop Facility Assignment Control System) database that assigns plant facilities for service orders. The group manually provisions those of orders that fall out of the mechanized process. The average work time per install is minutes, and per disconnect is minutes. The small change in work times from the previous study is due to more accurate data obtained from understanding these activities more fully after a few years of experience. See Appendix B, Worksheet 3.

Account Executive and Systems Designer

These groups were not included in the initial study, as BellSouth had originally planned to market ADSL service directly to end-user customers. These groups support wholesale customers as an interface into BellSouth.

Before the sale, the Account Executive makes initial and follow-up sales calls and presentations, proposals, and answers follow-up questions. After the sale, the account exec sets up necessary meetings with the client and handles ongoing issues, troubles, and operational changes involved in getting the customer service. On average, this takes minutes per Virtual Circuit, or end-user customer.

The Systems Designer travels with the Account Executive and is involved on the Design side with the same functions, including sales calls, presentations, and post sales meetings. The average time per Virtual Circuit for this workgroup is minutes. See Appendix B, Worksheet 1.

Central Office Installation & Maintenance Technician

This workgroup makes physical wiring connections on the frame at the time of order, tests for load coils and sync at the frame and makes any necessary adjustments to achieve sync at the frame. This may include checking the wiring to the DSLAM, checking for missing plugs, and making any necessary changes to achieve sync at the frame. The average time per order is minutes to install and minutes to disconnect. These are slightly different from the original study, which did not include any testing for sync or load coils at the frame activities. Sync at frame was a work effort added to reduce the time the I&M forces needed to be dispatched and to ensure ADSL connectivity before closing the order. See Appendix B, Worksheet 5.

Work Management Center

This group monitors the orders and is responsible for dispatch and administration of the order. This function is needed to ensure work proceeds on schedule. The average time per order is minutes per install and minutes per disconnect. This workgroup was not identified in the original study. See Appendix B, Worksheet 6.

Circuit Capacity Management (CCM) (JG58)

The CCM gets involved when something goes wrong with an order in the Central Office . They must then trouble-shoot the problem and work out an acceptable solution. The average time per order for this function is minutes. This workgroup was not included in the original cost study. See Appendix B, Worksheet 8.

Outside Plant Engineering

This group is involved when orders require loop modifications to provide ADSL service. The group reviews company records for loop changes that will allow the customer to receive service, such as a Line and Station Transfer. In the original study the intent was to provide service only to customers where loop changes would not be required.

The average time for this function is minutes. The function did not exist in the original study because the original intent was to cancel the service order for any line requiring a Line and Station Transfer or deloading of facilities in order to work. See Appendix B, Worksheet 9.

Outside Plant Construction (OSPC)

The OSPC performs the outside plant work authorized by an engineering work order. This group is involved when either a Bridge Tap or Load Coil removal is necessary to provide service where it was physically present but did not appear on company records. The group sets up its operation, opens and closes a splice and removes bridge tap or removes load coil(s) from pairs. Since this is a last resort solution, it only averages minutes per order. Again, this solution was not considered in the original cost study, as BellSouth did not plan to attempt to provide ADSL service where the exchange line facility was found not to qualify, after the order was taken. See Appendix B, Worksheet 10.

Installation and Maintenance (I&M) (POTS Service Technician)

This workgroup travels to the remote DSLAM unit (and sometimes to the Customer Premises) for all remote installations. They make the cross connects at the remote cross box, test the line for sync, talk with the end user to verify "POTS" service has not been adversely affected by the ADSL- driven work, and close out the orders. Due to some loop designs, the technician cannot always turn up the ADSL service. When this occurs the order is sent to Outside Plant Engineering. Once engineering determines a solution, the I&M technician will make a second trip to the remote DSLAM to perform the work required (e.g., to do a Line and Station Transfer, remote wiring, etc.(test the loop)) to provide the DSL service. The technician then travels to the Customer Premises in those cases where a "sync at the Network Interface Device (NID)" is necessary to verify

service. I&M is involved with all Line and Station Transfers, even those with Central Office solutions.

Additionally on central office based solutions, this work group travels to the field cross connect location (interface) to perform Line and Station Transfers when service is provided via available DSL qualified pairs in the interface. Again this work effort was not envisioned in the original study.

The original study assumed that BellSouth would deploy strategically in major metropolitan areas only, relying heavily on Central Office DSLAMs to provide service to customers. Little I&M involvement was necessary. Largely at the behest of state commissions and wholesale customers eager to see ADSL available to as many end-user consumers as possible, BellSouth is rapidly deploying remote DSLAM solutions that require much greater I&M time. See Appendix B, Worksheet 7.

The cost study provided to the KPSC on May 18, 2001 indicated that this work function averaged hours per service order. Upon review of the study, BellSouth found an error in its calculations due to the rush to provide information to the Commission in a 5-day interval. This input has been corrected to hours per order. This time is based on current processes and technologies and does not include the added time future fiber to the curb ADSL solutions will cause when they are deployed. A corrected Nonrecurring Cost Summary is attached at Appendix A.

Nonrecurring Increases - Summary

The times for several functions have increased since the last study as a result of both actual experience and changes in BellSouth deployment strategy and policies. The major increase in work times was for the service technician (I&M). This increase is primarily a result of the two major initiatives: increasing deployment of remote DSLAMs at RTs, and loop remediation. In addition, as newer technologies (which have not been included in this cost study) are being introduced into the outside plant network, these may also result in increased work times for the service technician. For example, provisioning of ADSL on fiber-to-the-curb technology. The first service ordered on new fiber to the curb technologies will require an additional two hours of the technician's time to modify the Optical Network Unit to be ADSL capable. A comparison between these two nonrecurring cost studies is attached as Appendix C.

Nonrecurring Cost Decreases

Reduction in certain nonrecurring cost centers is a result of the mechanization efforts BellSouth has made to developing and improving systems supporting ADSL.

Customer Service Associate (CSA)

the CSA is a support person in the Data Support Group (DSG). The CSA handles all ADSL orders. For those orders that do not flow through the system, which is approximately of the time, greater manual intervention is necessary. This person validates orders (installations) in Service Order Control System (SOCS) and Service Order Entry Gateway (SOEG) systems and posts disconnects in these systems, responds

to NSP questions as well as internal inquiries, and makes corrections for erroneous disconnects and other unprocessed fallout. BellSouth has gone to considerable expense to develop systems to process the orders, resulting in a drop in this work time from the original study (minutes) to the current minutes for an installation. The original study did not include any disconnect time, but experience has proven that this group is involved in the disconnect process and must handle all fall out disconnect orders manually. The average work time for this is minutes. See Appendix B, Worksheet 2.

Data Support Group Technician

The Data Support Group (DSG) was developed from the Data Customer Support Center to handle only ADSL orders. The DSG processes service orders through the Network Management System and manually does the translations for those orders that fall out of the mechanized systems. This process was originally manual but has since been mechanized. As a consequence, work times have decreased dramatically. Initially, it took a clerical person minutes and a technician minutes to complete each order. With the new systems in place, the clerical function has disappeared and the technician spends only minutes average per order. See Appendix B, Worksheet 4.

2. Account for any cost decreases associated with no longer needing to track tier information.

Answer: This activity would have been performed by an account executive. The time to do this activity was not identified in the original filing.

3. Explain the references in BellSouth's cost study to I&M for POTS. Further explain if these references are duplicative of BellSouth's cost recovery from basic charges.

Answer: These references do not duplicate BellSouth's cost recovery from basic charges. Some confusion about this work group was caused in the study submitted to the Kentucky Commission due to labeling. **There are two work groups used in I & M cost development. One group works on special services (SSIM) such as design circuits and the other group works on POTS non-designed circuits (I&M- POTS).** A subgroup of the POTS I&M work group is specially trained for ADSL installation. The work efforts shown in this study include only those **directly** associated with an ADSL order.

4. Explain what is meant by "work functions, such as job grade 57."

Answer: In developing a cost for a work activity BellSouth's cost development model requires a job function code (JFC) in order to identify the labor rate associated with the work group. When a management person is performing the activity, the management job grade (57, 58 or 59) is used. When a particular wage scale group is identified, that wage scale is used. The cost model then applies its own descriptions of the work groups to the output sheet based on the JFC used.

For the study submitted, the Job Grade 57 is an Outside Plant Engineer, the Job Grade 58 is a Circuit Capacity Manager, and the Wage Scale 32 is used once for the Customer Service Associate and once for the Data Support Group Technician. These are reflected on Appendix A, Workpaper 1, attached.

5. Supply work time calculations and labor rates.

Answer: See Appendix A, Workpaper 1, for labor rates and Appendix B, Worksheets 1-10, for work time calculations.

6. Supply work papers for cost support for the most recent nonrecurring cost study that was supplied to the KY Public Service Commission.

Answer: See Appendix B.

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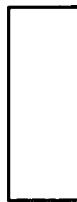
Nonrecurring Cost Summary

1 NONRECURRING UNIT COST DEVELOPMENT -
 2 RATE ELEMENT SPECIFIC COSTS

BellSouth ADSL Service
 USOC: ADF11
 Per Virtual Circuit

	Description	Worksheet Reference	Installation Worktime (hrs)	Disconnect Worktime (hrs)	Directly Assigned Labor Rate	Installation Cost	Disconnect Cost	Discounted Disconnect Cost	Total Cost
13	Account Executive w/Sales Comp	Appendix B, Worksheet 1			\$52.39				
14	Systems Designer w/Sales Comp	Appendix B, Worksheet 1			\$52.96				
15	Customer Service Associate (Wage Scale 32)	Appendix B, Worksheet 2			\$34.44				
16	Address & Facility Inventory (AFIG)	Appendix B, Worksheet 3			\$35.52				
17	Digital Service Group (DSG Wage Scale 32)	Appendix B, Worksheet 4			\$34.44				
18	Central Office Install & Mtce - Technician	Appendix B, Worksheet 5			\$43.51				
19	Work Management Center (WMC)	Appendix B, Worksheet 6			\$33.91				
20	Install & Mtce (Pots Service Technician)	Appendix B, Worksheet 7			\$41.66				
21	Circuit Capacity Management (Job Grade 58)	Appendix B, Worksheet 8			\$48.71				
22	Outside Plant Engineering (Job Grade 57)	Appendix B, Worksheet 9			\$41.96				
23	Outside Plant Construction (OSPC)	Appendix B, Worksheet 10			\$44.04				
24									
25									
26	Order Processing Systems Cost	Appendix B, Worksheet 11							
27									
28									
29									
30									
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44	TOTAL NONRECURRING COST:								
45									

TOTAL NONRECURRING COST:



Nonrecurring Cost Summary

1 NONRECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

BellSouth ADSL Service
USOC: N/A
LOA Coordination per Virtual Circuit

	<u>Description</u>	<u>Installation Worktime (hrs)</u>	<u>Disconnect Worktime (hrs)</u>	<u>Directly Assigned Labor Rate</u>	<u>Installation Cost</u>	<u>Disconnect Cost</u>	<u>Discounted Disconnect Cost</u>	<u>Total Cost</u>
14	Customer Service Associate (Wage Scale 32)			\$34.44				

44 TOTAL NONRECURRING COST:

45

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 1
EDITED**

Account Executive & Systems Designer

	<u>AE</u>	<u>SD</u>
(Times in hours)		
Initial Sales Calls		
Presentations		
Follow-up Calls / Presentations		
Proposals		
Follow-up Questions		
Post Sales		
Set up Meetings		
Provisioning (ATM, etc)		
Ongoing issues (troubles, operational changes, etc)		
Total time (hours)		
Total time (minutes)		
Approximate number NSP's		
Total time (minutes)		
Approximate DSL lines installed		
Time per line (minutes)		
Time per line (hours)		

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 2
EDITED**

Customer Service Associate

Install:

Handles all orders manually for minutes each

Handles fallout orders completely manually for minutes each

Fallout

Install time = (minutes *) + (minutes *) = minutes = hours

Disconnect:

Handles all orders manually for minutes

Handles fallout order completely manually for 35 minutes each

Fallout

Disconnect time = (minutes *) + (minutes *) = minutes = hours

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 3
EDITED**

Address and Facility Inventory Group (AFIG)

Mostly mechanized process, takes minutes install / minutes disconnect when order falls out
Fallout

Additional time for LST is minutes, which happens of the time.

Total Install = (min •) + (min •) = minutes = hours

Total Disconnect = min • = minutes = hours

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 4
EDITED**

Digital Services Group (DSG) Tech

Install:
Handles fallout orders completely manually for minutes each
Fallout

Install time = minutes * = minutes = hours

Disconnect:
Handles fallout order completely manually for minutes each
Fallout

Disconnect time = minutes * = minutes = hours

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 5
EDITED**

Central Office Install & Mtce Technician

Assumes takes an average of minutes installation for each CO based order, with orders for CO
solution; disconnects take minutes each.

Total Install: minutes * = minutes = hours
Total Disconnect: minutes * = minutes = hours

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 6
EDITED**

Work Management Center (WMC)

Average worktime minutes per install and minutes per disconnect = hours install and hours disc

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 7
EDITED**

Installation & Maintenance (I&M)

Average worktime per order processed through I&M is _____ hours (Productivity report). This includes travel, standard service order work, additional work due to LST, sync @ NID, and any other additional work required.

_____ hours translates to _____ minutes

1) All remote installs require I&M time. _____ installs are now at remote sites.
minutes * _____ = _____ min

2) Additional worktime per NGDLC solution _____ minutes, occurs in _____ of remote sites.
min * _____ = _____ min

3) _____ of installs are CO installs. Of these _____ require LST from provisioning systems
minutes * _____ = _____ minutes

4) _____ do not require immediate I&M involvement, but _____ require LST after CO work is done.
minutes * _____ * _____ = _____ minutes

5) Of the _____ of these orders that flow through without trouble, _____ will require I&M work after the order has been completed.
minutes * _____ * _____ * _____ = _____ minutes

The total of #1-5 is _____ minutes

After all this, only _____ of the orders worked result in a working ADSL line

_____ minutes / _____ = _____ minutes install = _____ hours install
No disconnect

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 8
EDITED**

Circuit Capacity Management (CCM)

Installation work only; based on _____ hours per job when get involved, but only on _____ in _____ orders.

_____ hours * 60 minutes per hour / _____ ADSL lines = _____ minutes = _____ hours

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 9
EDITED**

Outside Plant Engineering (OSPE)

Assumes orders will require OSPE involvement

1) Reads remarks on order and LQS response; searches LFACS for answer to serve customer, answer in SOCS. This occurs of the time and takes minutes for work, positive answer, 1 minute to post in SOCS.

$$(\text{ minutes } *) + (\text{ min } *) = \text{ minutes } ;$$

2) negative answer in #1, must go further: the Designer investigates the records to determine if a loop arrangement can be changed to provide ADSL. If this will work, assigns work order, otherwise cancels the order. Positive answer in Service Order Control System, negative answer to DSG for cancellation. Check planned remote sites for future solution. minutes for design investigation, which is successful of the time, minutes for assignment of work order, minute to answer in SOCS with cancelled and found in future remote solution @ minutes to look up and 1 minute to post in SOCS.

$$(\text{ minutes } * + (\text{ minutes } *) + (\text{ minute } * + (\text{ minute } *) + (\text{ minutes } *) + (\text{ minute } *)) = \text{ minutes}$$

Total Install time = minutes @ occurrence = minutes = hours

NONRECURRING UNIT COST DEVELOPMENT

**Appendix B
WorkSheet 10
EDITED**

Outside Plant Construction (OSPC)

Assumes orders will require work (orders to OSPE, of these cannot be served by LST,
of remainder can be served via Bridged Tap or Load Coil Removal, * * =)

Load Coil Removal:

Underground: Set up manholes (hours), open/close splice (hour), deload pairs (hours);
load coils removed, Underground, pairs unloaded.

$$(\text{hours} + \text{hour} + \text{hours}) * \text{load coils} / \text{pairs deloaded} * \text{occur} = \text{hours}$$

Buried / Aerial: Set-up (hour), open/close splice (hour), deload pairs (hours); load coils
removed, Buried / Aerial, pairs deloaded.

$$(\text{hour} + \text{hour} + \text{hours}) * \text{load coils} / \text{pairs deloaded} * \text{occur} = \text{hours}$$

$$\text{Total Load Coil Removal} = + = \text{hours} = \text{minutes}$$

Bridged Tap Removal:

Underground: Set up manholes (hours), open/close splice (hour), remove BT (hours); BT
removed, pairs unloaded.

$$(\text{hours} + \text{hour} + \text{hours}) * \text{BT removed} / \text{pairs deloaded} = \text{hours}$$

Buried / Aerial: Set-up (hour), open/close splice (hour), deload pairs (hours); BT
removed, pairs deloaded.

$$(\text{hour} + \text{hour} + \text{hours}) * \text{BT removed} / \text{pairs deloaded} = \text{hours}$$

$$\text{Total Bridged Tap Removal} = + = \text{hours} = \text{minutes}$$

Since numbers for Load Coil and Bridged Tap Removal are so close, used minutes @ occur
minutes * = minutes = hours

A	B	C	D	E	F	G	H	
1	CALCULATOR INPUT FORM - NONRECURRING EXPENSES DATA							
2	Instructions:							
3	1. Use this worksheet to record nonrecurring non-labor expenses to be input into the Calculator calculations.							
4	2. All amounts shown are per unit (e.g., per call, per loop, per MOU).							
5	3. Input data, by Cost Element, leaving no blank lines. On next row							
6	after last line of data, type END in Cost Element Column.							
7	4. All data on this form should be cell-referenced to study workpapers.							
8	5. Do NOT change columns, headings, sheet name.							
9	6. Use column D when cost element has a single nonrecurring cost; use columns E & F for elements with a first							
10	and additional nonrecurring cost; use columns G & H for elements with an initial and subsequent nonrecurring cost.							
11								
12								
13								
14								
15								
16	State	Cost	Nonrecurring	Nonrecurring	Nonrecurring	Nonrecurring	Nonrecurring	
17	BS	Element #	Expense Description	First	Additional	Initial	Subsequent	
18		ADSLInd	(Limited to 25 characters)	\$ Amount	\$ Amount	\$ Amount	\$ Amount	
19		END	SOEG / BOM / BASS / SOCS / SONGS					
20								
21								
22								
23								
24								
25								
26								
27								
28								
29								
30								

Nonrecurring Worktimes Comparison

Industrial ADSL 256 Kbps x 1.5 Mbps Filed May-98		Industrial ADSL 256 Kbps x 1.5 Mbps May-01	
	<u>Install Minutes</u>	<u>Disconnect Minutes</u>	
<u>Service Order</u>			<u>Service Order</u>
			Account Executive w/Sales Compensation
			System Designer w/Sales Compensation
Customer Service Associate			Customer Service Associate (WS32)
Address and Facility Inventory Group			Address and Facility Inventory Group (AFIG)
Data Customer Support Center - Clerical			
Data Customer Support Center - Technician			Data Support Group - Technician (W S32)
Network Infrastructure Support Center			
Total Service Order			Total Service Order
<u>Connect & Test</u>			<u>Connect & Test</u>
Central Office Install & Maint Technician			Central Office Install & Maint Technician
			Work Management Center (W MC)
Installation & Maint (POTS Sv c Technician)			Installation & Maint (POTS Sv c Technician)
			Circuit Capacity Management (JG58)
			Outside Plant Engineering (JG57)
			Outside Plant Construction (OSPC)
Total Connect & Test			Total Connect & Test

Nonrecurring Worktimes Comparison

Industrial ADSL 256 Kbps x 1.5 Mbps Filed May-98		Industrial ADSL 256 Kbps x 1.5 Mbps May-01	
	<u>Install Hours</u>	<u>Disconnect Hours</u>	
<u>Service Order</u>			<u>Service Order</u>
			Account Executive w/Sales Compensation
			System Designer w/Sales Compensation
Customer Service Associate			Customer Service Associate (W S32)
Address and Facility Inventory Group			Address and Facility Inventory Group (AFIG)
Data Customer Support Center - Clerical			
Data Customer Support Center - Technician			Data Support Group - Technician (W S32)
Network Infrastructure Support Center			
Total Service Order			Total Service Order
<u>Connect & Test</u>			<u>Connect & Test</u>
Central Office Install & Maint Technician			Central Office Install & Maint Technician
			Work Management Center (W MC)
Installation & Maint (POTS Sv c Technician)			Installation & Maint (POTS Sv c Technician)
			Circuit Capacity Management (JG58)
			Outside Plant Engineering (JG57)
			Outside Plant Construction (OSPC)
Total Connect & Test			Total Connect & Test

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 7th day of June, 2001.


Dorothy J. Chambers

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220



Paul E. Patton, Governor
Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet
Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Martin J. Huelsmann
Chairman
Edward J. Holmes
Vice Chairman
Gary W. Gillis
Commissioner

June 7, 2001

Creighton E. Mershon, Sr., Esq.
General Counsel-Kentucky
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, Kentucky 40232

RE: BellSouth Petition for Confidential Protection
Case No. 99-484

Dear Mr. Mershon:

The Commission has received your petition filed May 18, 2001, to protect as confidential the response to the Public Service Commission's request for cost support associated with BellSouth's May 15, 2001 FCC filing for ADSL Service. A review of the information has determined that it is entitled to the protection requested on the grounds relied upon in the petition, and it will be withheld from public inspection.

If the information becomes publicly available or no longer warrants confidential treatment, you are required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman".

Thomas M. Dorman
Executive Director



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 30, 2001

RECEIVED

MAY 31 2001

PUBLIC SERVICE
COMMISSION

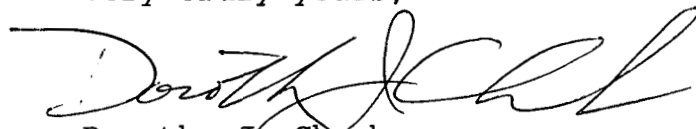
Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth's Reply to IgLou's Response of May 25, 2001.

Very truly yours,


Dorothy J. Chambers

Enclosure

cc: Parties of Record

390358

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)
)
 Complainant)
v.)
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
 Defendant)

CASE NO. 99-484

BELLSOUTH'S REPLY TO IGLOU'S RESPONSE OF MAY 25, 2001

BellSouth Telecommunications, Inc., ("BellSouth") by counsel, hereby respectfully replies to IgLou's Response of May 25, 2001.

On May 11, 2001, this Commission accepted, for the most part, BellSouth's proposed resolution to file a new interstate DSL tariff at the FCC. This FCC tariff eliminated volume discounts and created a single price applicable to all entities ordering DSL throughout BellSouth's region. An illustrative tariff was filed with BellSouth's April 30, 2001 Motion to consider this proposal.

This Commission found that the public interest would be served in considering BellSouth's proposal. Commission Order of May 11, 2001, at 2. This Commission also acknowledged that, at least in part, BellSouth's proposal offered an excellent solution to the concerns raised in this case regarding provision of

digital subscriber lines ("DSL") service to small Internet providers ("ISPs"). Id. As noted, BellSouth's new FCC Tariff provides DSL service at a single rate. Under the new tariff, there is no volume commitment above the 51 line minimum and shortfall charges associated with channels above the 51 line minimum are removed. The proposed new tariff increased nonrecurring charges and continued termination liability charges. This Commission found unacceptable the increase in the non-recurring charge and continuation of the termination liability charge for an end user who changes ISPs but continues to receive service over BellSouth's DSL facilities without the provision of cost support. However, this Commission expressed willingness to revisit both of these issues upon the submission of supporting cost information.

BellSouth proceeded with its proposal and filed the proposed tariff with the FCC on May 14, 2001, to be effective May 29, 2001. In accordance with the Commission's request for cost justification for the increase in the nonrecurring charge and to continue the termination liability charge, BellSouth also filed, on May 18, 2001, on a proprietary basis, the cost support associated with its May 15, 2001 FCC filing for ADSL service.

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After review of Earthlink's petition and BellSouth's response¹, the FCC tariff, with one revision², has become effective and is deemed lawful by operation of Section 204 of the Communications Act. If the FCC had found BellSouth's filing to be unlawful, or had believed that the intervention raised any legitimate questions of lawfulness warranting suspension or investigation the FCC would not have allowed the tariff to become effective. Accordingly, BellSouth's tariff at the FCC is lawful.

IgLou suggests that BellSouth's cost support for the new FCC tariff cannot be trusted because of a 1999 FCC audit finding regarding BellSouth's Continuing Property Records. IgLou's attempt to belatedly interject unrelated audit reports into this matter is neither permissible under due process standards, nor is it of any probative value. This two-year old FCC document is totally unrelated to the subject of ADSL services.³

Nevertheless, the FCC audit report actually demonstrates what BellSouth has contended all along, i.e., BellSouth is closely scrutinized by its auditors and federal regulators. However, in the last analysis, as the Audit Manager for the Florida PSC concluded after reviewing these FCC documents very closely, BellSouth's Continuing Property Records are subject to no

¹ See Reply, Transmittal No. 590, Exhibit 1.

² By transmittal 591 the minimum period for virtual circuits installed between November 29, 2000 and May 29, 2001 is waived.

³ BellSouth contested the accuracy of the FCC audit and the related extrapolated results. The Florida PSC auditors report validates BellSouth's belief that the FCC audit was flawed.

disclosures, a finding tantamount to a conclusion of no deviation by BellSouth.⁴

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IgLou continues to rely on rhetoric rather than substance in an attempt to create the impression that BellSouth has failed to comply with or does not fully respect this Commission's authority. On the contrary, throughout this proceeding, BellSouth has acknowledged this Commission's jurisdiction on intrastate matters. BellSouth's proposed resolution was offered to avoid the necessity of a protracted and contentious litigation of the jurisdictional issues. Further, BellSouth's proposed

⁴ See, Continuing Property Records and Associated Retirements Audit, Docket No. 920260-TI, Exhibit 2.

resolution, as this Commission has recognized, offers an excellent solution to many of the concerns raised in this proceeding. As this Commission also noted, elimination of the tiered structure eliminates the Commission's concern that "smaller ISPs simply cannot purchase the services their customers request in the volume necessary to receive the lowest tier price." May 11, 2001 Order at 3, and November 30, 2000 Order at 9.

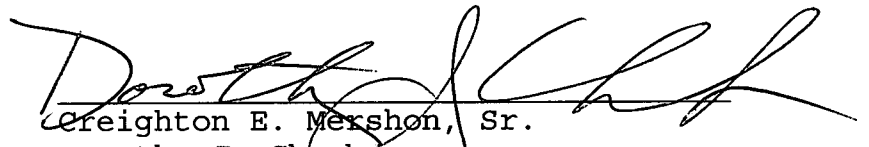
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BellSouth has taken this proceeding very seriously and has proceeded in good faith to file at the FCC the resolution it proposed. BellSouth believes this Commission has recognized the significant advantages in this resolution of the parity issue

with the single pricing proposal. BellSouth also has filed appropriate cost support to address the two items about which this Commission expressed concern. BellSouth respectfully urges this Commission to accept BellSouth's filing at the FCC as the resolution of this matter.

Respectfully submitted,



Creighton E. Merston, Sr.
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675 West Peachtree Street, NE
Atlanta, GA 30375

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

367458

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

In the Matter of)
)
BellSouth Telecommunications, Inc.) Transmittal No. 590
Tariff FCC No. 1)

REPLY

BellSouth Telecommunications Inc. ("BellSouth") hereby replies to the Petition To Reject or In the Alternative, To Suspend and Investigate the above referenced Transmittal filed by Earthlink, Inc ("Earthlink").

On May 14, 2001, BellSouth filed Transmittal 590 in which BellSouth restructured the rates for virtual circuits associated with its low speed ADSL service. The major features of the restructure were that BellSouth replaced the volume, banded rate structure with a non-volume sensitive structure. At the same time, BellSouth eliminated shortfall charge associated with the volume-based rate structure¹ and increased the nonrecurring installation charges.

Earthlink alone opposes the tariff filing. It asks the Commission to reject or, in the alternative, suspend the filing. As an initial matter, Earthlink fails to provide any basis for the Commission to reject the Transmittal. Rejection of a tariff can only be justified by a

¹ Earthlink expressed concern that it would be subject to a shortfall charge associated with a volume commitment under the old rate structure. Once the restructure becomes effective Earthlink is relieved of its volume commitment and would have no shortfall liability for such commitment. BellSouth's ADSL tariff, however, retains a six month minimum period per VC installed and a termination charge would apply in the event the six month minimum period is not met.

demonstration that the filing is patently unlawful, *e.g.*, a violation of a commission rule or order.² Earthlink has not even alleged, let alone demonstrated such unlawfulness. Accordingly, rejection is clearly unwarranted.

With regard to its request for suspension and investigation, Earthlink's petition fails to show that BellSouth's filing raises substantial questions of lawfulness that would warrant either suspension or investigation. Earthlink's complaints essentially fall into two categories. First, Earthlink objects to the rate increases and argues that they are contrary to the public interest. Second, Earthlink contends that the filing is objectionable because it was not accompanied by cost information.

The mere fact that a tariff filing proposes to increase rates does not automatically raise questions of lawfulness. While Earthlink's expectations may not coincide with BellSouth's restructure, the marketplace and the customers to be served by BellSouth are far broader than just the few urban markets that Earthlink serves in the BellSouth region. In making its decision to restructure its low speed ADSL offering, BellSouth reevaluated the market after nearly two years of experience with its ADSL tariff and determined that a non-volume structure at this time would meet the needs across the broad spectrum of potential ISP users. As such, BellSouth's restructured offering is pro-competitive in that it will appeal to a wide variety of potential customers regardless of size and, indeed, expand the universe of ISPs that undertake to provide high-speed internet service. Thus, contrary to Earthlink's view, BellSouth's restructure is

² United Video, Inc., 49 FCC 2d 878, 880 (1974), *recon denied*, 55 FCC 2d 516 (1975). See also *Associated Press v. FCC*, 448 F.2d 1095, 1103 (1971); *Municipal Light Boards, etc. Mass v. FPC*, 450 F.2d 1341, 1346 (1971).

consistent with the Commission's policies to promote the deployment of advanced services such as DSL and, thereby, serves the public interest.³

Earthlink's second category of objections, the absence of cost information, is pure makeweight. BellSouth is subject to the Commission's price cap rules. Under those rules, BellSouth is not required to submit cost support for rate restructures or rate changes. Instead, BellSouth is required to demonstrate that after taking into account the restructure and the changed rates that BellSouth's services remain within applicable price cap limits. The economic information accompanying BellSouth's filing, that Earthlink so cavalierly dismisses, demonstrates that BellSouth has fully complied with the Commission's rules. The Commission is without reason to suspend BellSouth's filing for failing to provide information that it is not required to file in the first instance.⁴

³ The fact that the restructure also results in an increase in rates for some customers (and a decrease for others) does not tarnish BellSouth's filing. The rates filed in the restructure remain competitively sound and will prove an attractive rate that will expand DSL penetration. Moreover, while Earthlink attempts to portray BellSouth ADSL as the only broadband alternative available to ISPs, such a portrayal is contrary to the facts. Indeed, Earthlink has been a pioneer in establishing broadband access arrangements with cable and satellite TV providers.

⁴ One of Earthlink's complaints is with the increase in nonrecurring charges. Although BellSouth has no obligation to submit cost information, BellSouth wants to assure the Commission that its rate changes are not arbitrary events as Earthlink suggests. BellSouth's installation charge does not exceed its nonrecurring cost.

BellSouth's filing fully comports with applicable Commission rules. Accordingly, the Commission should deny Earthlink's petition.

Respectfully submitted,

BELLSOUTH TELECOMMUNICAITONS, INC.

By:



Richard M. Sbaratta

Its Attorney

BellSouth Corporation
Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375-0001
(404) 335-0738

Date: May 23, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of May 2001 served the following parties to this action with a copy of the foregoing **REPLY** by hand or by placing a copy of same in the United States Mail, addressed to the parties listed below.

*Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
TW-A 325
Washington, D. C. 20554

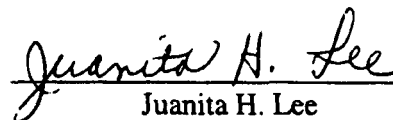
*Judith A. Nitsche, Chief
Tariff and Price Analysis Branch
of the Competitive Pricing Branch
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Washington, D. C. 20554

*International Transcription Service
The Portals, 445 Twelfth Street, S. E.
Suite CY-B400
Washington, D. C. 20554

*Jane E. Jackson
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Washington, D. C. 20554

Donna N. Lampert
Melissa A. Roover
EarthLink, Inc.
Lampert & O'Connor, P. C.
Suite 600
1750 K Street, N. W.
Washington, D. C. 20006

David N. Baker
Vice President – Law and Public Policy
EarthLink, Inc.
1375 Peachtree Street, N.W.
Level A
Atlanta, Georgia 30309



Juanita H. Lee

*** VIA HAND DELIVERY**

**FLORIDA PUBLIC SERVICE COMMISSION**

*DIVISION OF AUDITING AND FINANCIAL ANALYSIS
BUREAU OF AUDITING SERVICES*

Tallahassee District Office

BellSouth Telecommunications, Inc

Continuing Property Records and Associated Retirements Audit

HISTORICAL YEAR ENDED 1997

**Docket No. 920260-T1.
AUDIT CONTROL NO. 99-126-1-1**

Mark Caruth
Mark Caruth, Audit Manager

Rhonda L. Hicks
Rhonda Hicks, Audit Supervisor

TABLE OF CONTENTS

I. AUDITOR'S REPORT

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DISCLAIM PUBLIC USE	1
SUMMARY OF SIGNIFICANT FINDINGS	2
SUMMARY OF SIGNIFICANT PROCEDURES	2

**DIVISION OF AUDITING AND FINANCIAL ANALYSIS
AUDITOR'S REPORT**

February 23, 2000

TO: FLORIDA PUBLIC SERVICE COMMISSION AND OTHER INTERESTED PARTIES

We have applied the procedures described later in this report to audit the Continuing Property Records (CPRs) and associated retirements of Central Office Equipment (COE) during the historical period 1997 for BellSouth Telecommunications, Inc. (BST). There is confidential information associated with this audit, and there are no audit staff minority opinions.

This is an internal accounting report prepared after performing a limited scope audit. Accordingly, this report should not be relied upon for any purpose except to assist the Commission staff in the performance of their duties. Substantial additional work would have to be performed to satisfy generally accepted auditing standards and produce audited financial statements for public use.

SUMMARY OF SIGNIFICANT FINDINGS

The Continuing Property Records and associated retirements of Central Office Equipment of BST for 1997 are represented within the utility's books and records and are subject to no disclosures.

SUMMARY OF SIGNIFICANT PROCEDURES

Our audit was performed by application of judgmental research to certain utility procedures, transactions, and account balances which we believe are sufficient to base our opinion. Our examination did not entail a complete review of all financial transactions of the company. Our more important audit procedures are summarized below.

Researched the evolution of the BST CPR structure. Established the document chronology for filings before the Federal Communications Commission (FCC) regarding the development of a data structure to contain the detailed continuing property records for central office equipment. Researched the M-295 document of May 1968 which represented the outline of a plan for a mechanized accounting system which would be implemented in order to establish an electronic data processing framework to monitor detailed property records of central office equipment. Obtained a copy of the December 1968 K. Griffith letter (of the FCC) which indicated that the M-295 document meets the requirements of Part 31.

Reviewed the primary corporate procedures related to CPRs and associated retirements.

Researched the PricewaterhouseCoopers' (PWC) audit of BST's internal controls for those activities related to Plant Assets, Depreciation, and Allowance for Depreciation.

Reviewed internal audit reports of BST regarding asset controls and associated retirements. Researched selected BST internal audit work papers for details.

Reviewed the 1997 audit report and the associated work papers of the FCC audit of CPRs of BellSouth Telecommunications, Inc. Identified strengths and weaknesses within the FCC audit in order to minimize risk relative to this FPSC audit. Reviewed the BST responses to the FCC audit of CPRs. Formulated a set of audit strategies for this FPSC audit.

Reviewed BST performance regarding selected COE asset retirements. Researched COE retirements from the detailed continuing property record (DCPR) identification sheets to the DCPR retirement authorization forms and then onto the books and records of BST (as contained within the Asset Management Data Query Reports, General Ledger, and others).

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: March 31, 2000
TO: Division of Auditing and Financial Analysis (Lee)
FROM: Division of Auditing and Financial Analysis (Vandiver) *W*
RE: 920260-TL, BellSouth Telecommunications, Inc.
 Audit Report: Continuing Property Records and Associated Retirements
 Audit Control No. 99-126-1-1

Attached is the final audit report for the utility stated above. I am sending the utility a copy of this memo and the audit report. If the utility desires to file a response to the audit report, they should send it to the Division of Records and Reporting. There are no confidential work papers associated with this audit.

DNV/sp

Attachment

cc: Division of Auditing and Financial Analysis (Devlin/Causeaux/Harvey/File Folder)
 Tallahassee (Hicks)
 Division of Records and Reporting
 Division of Legal Services
 Research and Regulatory Review (Harvey)

✓ Mr. Marshall M. Criser, III
 BellSouth Telecommunications, Inc.
 150 South Monroe Street, Suite 400
 Tallahassee, FL 32301-1558

Mr. Bill Grassele
 Mahoney Law Firm
 P. O. Box 4099
 Jacksonville, FL 32201

RECEIVED

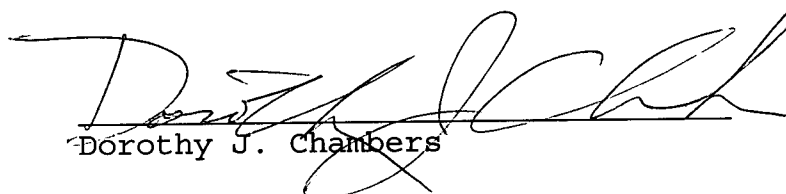
APR 04 2000

U.S. MAIL-REG. DEL. PERMIT
TALLAHASSEE, FL

6453

CERTIFICATE OF SERVICE

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Dorothy J. Chambers

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
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Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 3 0 2001

PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)	
)	
Complainant)	
v.)	CASE NO. 99-484
)	
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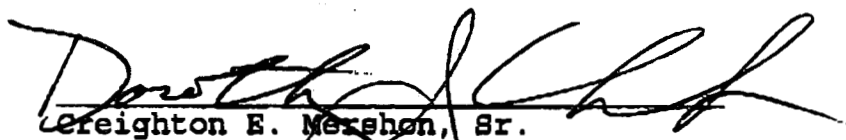
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Respectfully submitted,



~~Freighton E. Mereshon, Sr.~~
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601 West Chestnut Street, Room 407
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COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

367458

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

In the Matter of)
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Tariff FCC No. 1)

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BellSouth Telecommunications Inc. ("BellSouth") hereby replies to the Petition To Reject or In the Alternative, To Suspend and Investigate the above referenced Transmittal filed by Earthlink, Inc ("Earthlink").

On May 14, 2001, BellSouth filed Transmittal 590 in which BellSouth restructured the rates for virtual circuits associated with its low speed ADSL service. The major features of the restructure were that BellSouth replaced the volume banded rate structure with a non-volume sensitive structure. At the same time, BellSouth eliminated shortfall charge associated with the volume-based rate structure¹ and increased the nonrecurring installation charges.

Earthlink alone opposes the tariff filing. It asks the Commission to reject or, in the alternative, suspend the filing. As an initial matter, Earthlink fails to provide any basis for the Commission to reject the Transmittal. Rejection of a tariff can only be justified by a

¹ Earthlink expressed concern that it would be subject to a shortfall charge associated with a volume commitment under the old rate structure. Once the restructure becomes effective Earthlink is relieved of its volume commitment and would have no shortfall liability for such commitment. BellSouth's ADSL tariff, however, retains a six month minimum period per VC installed and a termination charge would apply in the event the six month minimum period is not met.

demonstration that the filing is patently unlawful, e.g., a violation of a commission rule or order.² Earthlink has not even alleged, let alone demonstrated such unlawfulness. Accordingly, rejection is clearly unwarranted.

With regard to its request for suspension and investigation, Earthlink's petition fails to show that BellSouth's filing raises substantial questions of lawfulness that would warrant either suspension or investigation. Earthlink's complaints essentially fall into two categories. First, Earthlink objects to the rate increases and argues that they are contrary to the public interest. Second, Earthlink contends that the filing is objectionable because it was not accompanied by cost information.

The mere fact that a tariff filing proposes to increase rates does not automatically raise questions of lawfulness. While Earthlink's expectations may not coincide with BellSouth's restructure, the marketplace and the customers to be served by BellSouth are far broader than just the few urban markets that Earthlink serves in the BellSouth region. In making its decision to restructure its low speed ADSL offering, BellSouth reevaluated the market after nearly two years of experience with its ADSL tariff and determined that a non-volume structure at this time would meet the needs across the broad spectrum of potential ISP users. As such, BellSouth's restructured offering is pro-competitive in that it will appeal to a wide variety of potential customers regardless of size and, indeed, expand the universe of ISPs that undertake to provide high-speed internet service. Thus, contrary to Earthlink's view, BellSouth's restructure is

² United Video, Inc., 49 FCC 2d 878, 880 (1974), *recon denied*, 55 FCC 2d 516 (1975). See also *Associated Press v. FCC*, 448 F.2d 1095, 1103 (1971); *Municipal Light Boards, etc. Mass v. FPC*, 450 F.2d 1341, 1346 (1971).

consistent with the Commission's policies to promote the deployment of advanced services such as DSL and, thereby, serves the public interest.³

Earthlink's second category of objections, the absence of cost information, is pure makeweight. BellSouth is subject to the Commission's price cap rules. Under those rules, BellSouth is not required to submit cost support for rate restructures or rate changes. Instead, BellSouth is required to demonstrate that after taking into account the restructure and the changed rates that BellSouth's services remain within applicable price cap limits. The economic information accompanying BellSouth's filing, that Earthlink so cavalierly dismisses, demonstrates that BellSouth has fully complied with the Commission's rules. The Commission is without reason to suspend BellSouth's filing for failing to provide information that it is not required to file in the first instance.⁴

³ The fact that the restructure also results in an increase in rates for some customers (and a decrease for others) does not tarnish BellSouth's filing. The rates filed in the restructure remain competitively sound and will prove an attractive rate that will expand DSL penetration. Moreover, while Earthlink attempts to portray BellSouth ADSL as the only broadband alternative available to ISPs, such a portrayal is contrary to the facts. Indeed, Earthlink has been a pioneer in establishing broadband access arrangements with cable and satellite TV providers.

⁴ One of Earthlink's complaints is with the increase in nonrecurring charges. Although BellSouth has no obligation to submit cost information, BellSouth wants to assure the Commission that its rate changes are not arbitrary events as Earthlink suggests. BellSouth's installation charge does not exceed its nonrecurring cost.

BellSouth's filing fully comports with applicable Commission rules. Accordingly, the Commission should deny Earthlink's petition.

Respectfully submitted,

BELLSOUTH TELECOMMUNICAITONS, INC.

By:



Richard M. Sbaratta

Its Attorney

BellSouth Corporation
Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375-0001
(404) 335-0738

Date: May 23, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of May 2001 served the following parties to this action with a copy of the foregoing **REPLY** by hand or by placing a copy of same in the United States Mail, addressed to the parties listed below.

*Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
TW-A 325
Washington, D. C. 20554

*Judith A. Nitsche, Chief
Tariff and Price Analysis Branch
of the Competitive Pricing Branch
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Washington, D. C. 20554

*International Transcription Service
The Portals, 445 Twelfth Street, S. E.
Suite CY-B400
Washington, D. C. 20554

*Jane E. Jackson
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Washington, D. C. 20554

Donna N. Lampert
Melissa A. Roover
EarthLink, Inc.
Lampert & O'Connor, P. C.
Suite 600
1750 K Street, N. W.
Washington, D. C. 20006

David N. Baker
Vice President – Law and Public Policy
EarthLink, Inc.
1375 Peachtree Street, N.W.
Level A
Atlanta, Georgia 30309



Juanita H. Lee

• **VIA HAND DELIVERY**

EXHIBIT 2



FLORIDA PUBLIC SERVICE COMMISSION

***DIVISION OF AUDITING AND FINANCIAL ANALYSIS
BUREAU OF AUDITING SERVICES***

Tallahassee District Office

BellSouth Telecommunications, Inc

Continuing Property Records and Associated Retirements Audit

HISTORICAL YEAR ENDED 1997

**Docket No. 920260-T1.
AUDIT CONTROL NO. 99-126-1-1**

Mark Caruth
Mark Caruth, Audit Manager

Rhonda L. Hicks
Rhonda Hicks, Audit Supervisor

TABLE OF CONTENTS

I. AUDITOR'S REPORT

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SUMMARY OF SIGNIFICANT PROCEDURES	2

**DIVISION OF AUDITING AND FINANCIAL ANALYSIS
AUDITOR'S REPORT**

February 23, 2000

TO: FLORIDA PUBLIC SERVICE COMMISSION AND OTHER INTERESTED PARTIES

We have applied the procedures described later in this report to audit the Continuing Property Records (CPRs) and associated retirements of Central Office Equipment (COE) during the historical period 1997 for BellSouth Telecommunications, Inc. (BST). There is confidential information associated with this audit, and there are no audit staff minority opinions.

This is an internal accounting report prepared after performing a limited scope audit. Accordingly, this report should not be relied upon for any purpose except to assist the Commission staff in the performance of their duties. Substantial additional work would have to be performed to satisfy generally accepted auditing standards and produce audited financial statements for public use.

05/09/00 23:11

950 222 8640
REGULATORY → 14045227347

NO. 720 P006

SUMMARY OF SIGNIFICANT FINDINGS

The Continuing Property Records and associated retirements of Central Office Equipment of BST for 1997 are represented within the utility's books and records and are subject to no disallowance.

SUMMARY OF SIGNIFICANT PROCEDURES

Our audit was performed by application of judgmental research to certain utility procedures, transactions, and account balances which we believe are sufficient to base our opinion. Our examination did not entail a complete review of all financial transactions of the company. Our more important audit procedures are summarized below.

Researched the evolution of the BST CPR structure. Established the document chronology for filings before the Federal Communications Commission (FCC) regarding the development of a data structure to contain the detailed continuing property records for central office equipment. Researched the M-205 document of May 1968 which represented the outline of a plan for a mechanized accounting system which would be implemented in order to establish an electronic data processing network to monitor detailed property records of central office equipment. Obtained a copy of the December 1968 K. Griffith letter (of the FCC) which indicated that the M-205 document meets the requirements of Part 31.

Reviewed the primary corporate procedures related to CPRs and associated retirements.

Researched the PricewaterhouseCoopers' (PWC) audit of BST's internal controls for those activities related to Plant Assets, Depreciation, and Allowance for Depreciation.

Reviewed internal audit reports of BST regarding asset controls and associated retirements. Researched selected BST internal audit work papers for details.

Reviewed the 1997 audit report and the associated work papers of the FCC audit of CPRs of BellSouth Telecommunications, Inc. Identified strengths and weaknesses within the FCC audit in order to minimize risk relative to this FPSC audit. Reviewed the BST responses to the FCC audit of CPRs. Formulated a set of audit strategies for this FPSC audit.

Reviewed BST performance regarding selected COE asset retirements. Researched COE retirements from the detailed continuing property record (DCPR) identification sheets to the DCPR retirement authorization forms and then onto the books and records of BST (as contained within the Asset Management Data Query Reports, General Ledger, and others).

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: March 31, 2000
TO: Division of Auditing and Financial Analysis (Lee)
FROM: Division of Auditing and Financial Analysis (Vandiver) *W*
RE: 920260-TL BellSouth Telecommunications, Inc.
 Audit Report: Continuing Property Records and Associated Retirements
 Audit Control No. 99-128-1-1

Attached is the final audit report for the utility stated above. I am sending the utility a copy of this memo and the audit report. If the utility desires to file a response to the audit report, they should send it to the Division of Records and Reporting. There are no confidential work papers associated with this audit.

DNV/sp

Attachment

cc: Division of Auditing and Financial Analysis (Devlin/Causseaux/Harvey/File Folder)
 Tallahassee (Hicks)
 Division of Records and Reporting
 Division of Legal Services
 Research and Regulatory Review (Harvey)

✓ Mr. Marshall M. Criser, III
 BellSouth Telecommunications, Inc.
 150 South Monroe Street, Suite 400
 Tallahassee, FL 32301-1568

Mr. Bill Grassele
 Mahoney Law Firm
 P. O. Box 4099
 Jacksonville, FL 32201

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6453



Paul E. Patton, Governor
Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet
Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
www.psc.state.ky.us
(502) 564-3940
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Martin J. Huelsmann
Chairman
Edward J. Holmes
Vice Chairman
Gary W. Gillis
Commissioner

May 30, 2001

VIA FACSIMILE TRANSMISSION

Creighton Mershon, Sr.
General Counsel/Kentucky
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
Louisville, Kentucky 40203

Re: Case No. 99-484

Dear Creighton:

On May 14, 2001, the Commission ordered BellSouth to submit with the Federal Communications Commission its proposed tariff revisions with certain modifications required by this Commission to be applicable to Kentucky. BellSouth has submitted the tariff proposal with the FCC but has failed to make the modifications ordered by this Commission. Accordingly, the Commission Staff considers BellSouth to be in violation of the Commission's Order as of May 29, 2001, the effective date of the FCC tariff applicable to Kentucky. BellSouth failed to eliminate the termination liability charge for an end-use customer who switches from one ISP to another. BellSouth also failed to maintain its existing non-recurring fee but instead substantially increased the fee in direct violation of this Commission's Order.

The Staff has reviewed information submitted by BellSouth in the wake of the May 14, 2001 Order. BellSouth has attempted to cost justify its increase to the non-recurring charge and its failure to eliminate the termination liability charge. Information supplied by BellSouth is insufficient for Staff to formulate an opinion about the justification of those charges. For example, BellSouth has dramatically increased the work time necessary for completion of specific tasks involved in DSL installation and other tasks. There is no explanation for this increase in the work hours between 1998 and 2001 cost studies. Nor is there an accounting for any cost decreases associated with no longer having to track tier information. Moreover, BellSouth's cost study refers to installation and maintenance for POTS which may be duplicative of BellSouth's cost recovery from basic charges. Work functions, such as "job grade 57," are not explained. Work time calculations and labor rates have not been supplied. Without additional information, including a detailed cost of service study with supporting documentation, this Commission Staff cannot review the reasonableness of this cost information.

Because BellSouth has chosen to implement its tariff applicable to Kentucky in violation of this Commission's Order and has failed to supply cost justification even after the fact, Commission Staff is prepared to recommend enforcement action to the Commission if this



Because BellSouth has chosen to implement its tariff applicable to Kentucky in violation of this Commission's Order and has failed to supply cost justification even after the fact, Commission Staff is prepared to recommend enforcement action to the Commission if this matter is not remedied immediately. Thus, BellSouth should comply with this Commission's Orders within 5 days of the date of this letter (either by filing an amendment to the FCC tariff or by filing a Kentucky-specific tariff at rates the Commission has approved). At a minimum, BellSouth should supply cost justification and workpapers sufficient to permit adequate review of the rates BellSouth has placed into effect despite the Commission's Orders. Commission Staff is continuously available to convene an informal conference on these matters. Please address your prompt reply to me with a copy to all parties of record.

Sincerely,



Thomas M. Dorman
Executive Director

cc: Parties of Record
File



JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

J.D./M.B.A.
LICENSED IN KENTUCKY, OHIO AND COLORADO

TELEPHONE: (502) 587-6838
FACSIMILE: (502) 584-0439
E-MAIL: jonathon@amlung.com

May 24, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED

MAY 25 2001

PUBLIC SERVICE
COMMISSION

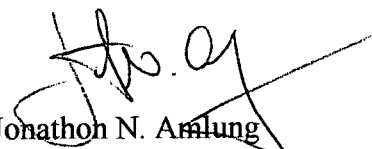
RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.,
Case No. 99-484

Dear Mr. Dorman:

Please find enclosed for filing an original and ten (10) copies of IgLou's Response to BellSouth's filing purporting to support BellSouth's ADSL rate increase for filing in the above-referenced case.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,


Jonathon N. Amlung

Enclosures

cc: Parties of record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAY 25 2001
PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)
)
Complainant)
v.) CASE NO. 99-484
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
Defendant)

**IGLOU'S RESPONSE TO BELLSOUTH'S FILING PURPORTING TO
SUPPORT BELLSOUTH'S RATE INCREASE**

Comes now IgLou Internet Services, Inc., by and through counsel, and hereby objects to BellSouth's most recent filing purporting to support the rate increase contained in the revision of its federal ADSL tariff.

**BELLSOUTH'S UNJUSTIFIED RATE INCREASE WILL HAMPER
BROADBAND ROLLOUT IN THE COMMONWEALTH**

As previously stated by the Complainant as well as other Kentucky-based ISPs, BellSouth's newest Federal ADSL tariff amounts to a rate increase to Internet Service Providers. This in turn will increase the prices that Kentucky consumers will have to pay to access broadband in the Commonwealth. Kentucky has a significant opportunity to raise the standard of living for its residents through the use of broadband technology. Whether through education or commerce, broadband is going play an integral role in the future of this State. The Commission recognized this important role of broadband in its November 30, 2000, Order and took steps it felt necessary in this case and others to facilitate the rollout of broadband technology across the Commonwealth.

BellSouth's latest tariff filing does not comply with the goals set out by this Commission. It was surely never the intent of this Commission to be used by BellSouth as a tool to approve a rate increase for broadband access. BellSouth's latest DSL tariff puts in place significant roadblocks that will hamper the ability of Kentucky-based ISPs to rollout DSL across the Commonwealth. Many Kentucky residents were faced with the difficult decision of whether or not to upgrade to DSL broadband technology at all. BellSouth's rate hike makes that decision easier. Many Kentuckians will simply not subscribe to broadband, resulting in this State continuing to be left behind.

PRESTO! IT'S DSL COST DATA

On January 11, 2001, this Commission ordered BellSouth to produce all supporting cost information for its DSL tariff. BellSouth refused to comply with this Commission's Order and produced no such cost data. BellSouth's reason for ignoring this Commission's Order was its claim that it did not have to submit any cost data at the Federal level and therefore would not have to comply with the Order of this Commission.

Again, at the Informal Conference in this case on March 7, 2001, this Commission asked BellSouth why it had not yet produced any cost data as ordered. BellSouth's response was that it had **no such cost data**. Now, more than four months after this Commission's original request for DSL cost data, BellSouth, as if by magic, is now able to produce cost data at will. This data unfortunately is unsubstantiated and does not comply with this Commission's Orders.

BELLSOUTH FAILED TO COMPLY WITH THE MAY 14, 2001, ORDER

In the Commission's most recent Order of May 14, 2001, the Commission ordered BellSouth, among other things, to file an ADSL tariff with a \$50 nonrecurring charge, rather than the \$110 charge requested by BellSouth. BellSouth, of course,

ignored this mandate and filed its tariff with the \$110 nonrecurring charge. As this Commission is well aware, its Order clearly required BellSouth to file an ADSL tariff at the specified nonrecurring charge rate of \$50.00. The Commission's Order then offered to *revisit* the issue down the road if BellSouth could demonstrate an *increase* in its costs associated with this charge. Nothing in the Commission's Order appears to contemplate the contemptuous actions taken by BellSouth. BellSouth once again has intentionally ignored a Commission Order.

In any event, BellSouth made its most recent filing in a half-hearted attempt to support the current charges. Aside from the absurdity of the filing, it is not at all what was contemplated by the Commission's Order.

As the Commission will recall, its Order stated that only if BellSouth "provides information to this Commission demonstrating any *increased costs* for this charge, the Commission will revisit the issue." (Emphasis Supplied)

Assuming, arguendo, that BellSouth's most recent filing could be taken seriously, it only shows a snapshot of costs BellSouth claims exist on a certain date. It is inconceivable how this filing could, therefore, demonstrate an *increase* in BellSouth costs. Logic dictates that one must provide data for two or more points in time to show any change in that data, whether an increase or a decrease, over that period of time. BellSouth provided no such basis of comparison. It is not enough, according to the Commission's own Order, to provide cost data for one point in time. As such, BellSouth ignored much of the Commission's May 14, 2001, Order just as it has ignored at least part of every prior Commission Order in this case.

NO SUPPORTING COST INFORMATION WAS SUPPLIED BY BELLSOUTH

In its most recent filing, BellSouth filed a document that purports to demonstrate a cost-basis for the rate hike in its federal ADSL tariff. In reality, the document is nothing but an unsupported, and thus meaningless, piece of paper with no real cost information supplied. This document should not be taken seriously, and should be ignored by the Commission in its entirety.

To assist the Commission in assessing the credibility of BellSouth's most recent filing, IgLou has conducted and prepared its own cost study of BellSouth's nonrecurring costs, attached hereto as "Exhibit 1." According to IgLou's exhaustive research into this topic, BellSouth's nonrecurring unit costs total \$31.58, which is unambiguously proven by the clear and convincing evidence represented by this exhibit. The Commission should give the same amount of weight to IgLou's exhibit as it does to BellSouth's most recent filing. Both are fully supported by *absolutely nothing*.

Further, IgLou has carefully researched and prepared a cost study, attached hereto as "Exhibit 2," demonstrating BellSouth's nonrecurring costs associated with the termination liability charge of \$50.00. That research has yielded a resulting cost to BellSouth of \$1.40 associated with this item. Again, this study is fully supported by the same amount of nothingness that supports BellSouth's study. Equal weight should be given to each.

CAN BELLSOUTH DATA BE TRUSTED?

As previously asserted by IgLou in its Reply to BellSouth's Second Proposal, BellSouth has a history of providing misleading and faulty cost data to regulatory agencies. In its most recent audit of BellSouth's Continuing Property Records, the FCC found severe problems with the filings made by BellSouth. In fact, because the problems

found in the most recent audit were so long standing, the FCC felt compelled to make the results of that audit public. In that audit, as this Commission will recall, the FCC stated that BellSouth and the other RBOCs had significantly overstated their costs. As a whole, the RBOCs had overstated their costs in the audit by some \$5 billion. In a separate statement, FCC Commissioner Gloria Tristani stated:

The costs of the capital investments of telephone companies, recorded in their continuing property records, account for more than half of the annual cost of operations. These costs are fundamental to calculating all financial information upon which this Commission and state commissions rely for decision making. If one-quarter of these records are in error, as the audit reports conclude, then there is a fundamental question of the soundness of financial information provided by the companies.

(See Exhibit 3)

The results of this audit raised significant questions in the minds of FCC Commissioners. It also raises significant questions in the minds of the Complainant and others about the cost data provided by BellSouth that simply cannot be trusted. Unsupported cost information, such as that now provided by BellSouth, should be even more heavily scrutinized.¹

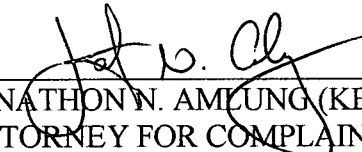
CONCLUSION

The Commission should consider very carefully if a rate hike by BellSouth, especially an unsubstantiated rate hike, is in keeping with its goals of broadband deployment and whether it meets the requirements of its most recent Order. Aside from the fact that BellSouth has once again ignored an Order by the Commission, there has been no information supplied by BellSouth in this case that supports the proposed rate increase. The "cost study" by BellSouth falls well short of supporting this increase.

¹ BellSouth's cost accounting creativity reminds Complainant of story regarding an E911 document purportedly stolen by hackers from BellSouth many years ago. In the book, *The Hacker Crackdown*, Bruce Sterling documents the confusing story of the true cost of this document, claimed by BellSouth to be approximately \$80,000.00. That same document was publicly available for \$20.00.

Fortunately this Commission has ended BellSouth's perpetual proposal machine. IgLou, however, requests this Commission to enforce its May 14, 2001, Order as it was drafted and compel BellSouth to file an ADSL tariff with nonrecurring installation charges of no more than \$50.00 and eliminating the termination liability charge as previously ordered. IgLou respectfully requests the Commission to carry out its May 14, 2001, Order forthwith as it was written.

Respectfully submitted,



JONATHON N. AMLUNG (KBA#86892)
ATTORNEY FOR COMPLAINANT
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202
Telephone (502) 587-6838
Facsimile (502) 584-0439

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage pre-paid, to the parties of record this the 25th day of May, 2001.



JONATHON N. AMLUNG (KBA#86892)

Service List:

Hon. Dorothy J. Chambers
Hon. Creighton Mershon
Counsel for BellSouth
BellSouth Telecommunications, Inc.
601 W. Chestnut St., Room 407
P.O. Box 32410
Louisville, KY 40232

Hon. R. Douglas Lackey
Counsel for BellSouth
BellSouth Telecommunications, Inc.
675 W. Peachtree St., N.W.
Suite 4300 - BellSouth Center
Atlanta, GA 30375

Tanya Monsanto
Legislative Research Commission
Capital Annex
Room 127
Frankfort, KY 40601

Hon. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

Nonrecurring Cost Summary

1 NONRECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

Bellsouth ADSL Service
USOC: ADF11
Per Virtual Circuit

Description	Installation (hrs)		Disconnect (hrs)		Directly Assigned Labor Rate	Installation Cost		Disconnect Cost		Total Cost
	Worktime (hrs)	Worktime (hrs)	Worktime (hrs)	Worktime (hrs)		Cost	Cost	Cost	Cost	
14 Acct Executive w/Sales Comp	0.03	0.02	0.02	0.02	\$52.39	\$1.57	\$1.05	\$1.01	\$2.58	
15 Systems Designer w/Sales Com	0.02	0.00	0.00	0.00	\$52.96	\$1.06	\$0.00	\$0.00	\$1.06	
16 Wage Scale 32	0.01	0.01	0.01	0.01	\$34.44	\$0.34	\$0.34	\$0.33	\$0.68	
17 Address & Facility Inventory (AFIG)	0.03	0.03	0.03	0.03	\$35.52	\$1.07	\$1.07	\$1.02	\$2.09	
18 Wage Scale 32	0.01	0.01	0.01	0.01	\$34.44	\$0.34	\$0.34	\$0.33	\$0.68	
19 CO Install & Mtce Field - Ckt & Fac	0.16	0.01	0.01	0.01	\$43.51	\$6.96	\$0.44	\$0.42	\$7.38	
20 Work Management Center (WMC)	0.01	0.01	0.01	0.01	\$33.91	\$0.34	\$0.34	\$0.33	\$0.67	
21 Install & Mtce - Pots	0.34	0.00	0.00	0.00	\$41.66	\$14.16	\$0.00	\$0.00	\$14.16	
22 Job Grade 58	0.01	0.01	0.01	0.01	\$48.71	\$0.49	\$0.00	\$0.00	\$0.49	
23 Job Grade 57	0.01	0.01	0.01	0.01	\$41.96	\$0.42	\$0.42	\$0.40	\$0.82	
24 Outside Plant Constr (OSPC)	0.02	0.00	0.00	0.00	\$44.04	\$0.88	\$0.00	\$0.00	\$0.88	
25 Order Processing System Cost									\$0.10	

43 TOTAL NONRECURRING COST:

\$31.58

The material contained within the box(es) on this page is non-proprietary and serves to exemplify the utter meaninglessness of Bellsouth's own cost summary.

Nonrecurring Cost Summary

1 NONRECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

3
4
5 BellSouth ADSL Service
6 USOC: N/A
7 LOA Coordination per Virtual Circuit
8
9

	<u>Description</u>	<u>Installation Worktime (hrs)</u>	<u>Disconnect Worktime (hrs)</u>	<u>Directly Assigned Labor Rate</u>	<u>Installation Cost</u>	<u>Disconnect Cost</u>	<u>Discounted Disconnect Cost</u>	<u>Total Cost</u>
10	Work Scale 1	0.16	0.00	\$8.75	\$1.40	\$0.00	\$0.00	\$1.40
11								
12								
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32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44	TOTAL NONRECURRING COST:							\$1.40
45								

The material contained within the box(es) on this page is non-proprietary and serves to exemplify the utter meaninglessness of BellSouth's own cost summary.

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

In the Matter of)	
)	
BellSouth Telecommunications'	)	ASD File No. 99-22
Continuing Property Records Audit)	

ORDER

Adopted: February 24, 1999

Released: March 12, 1999

By the Commission: Commissioners Ness and Tristani issuing separate statements; Commissioners Furchtgott-Roth and Powell dissenting in part and issuing separate statements.

I. INTRODUCTION

1. By this Order, we release to the public certain information obtained during an audit of BellSouth Telecommunications ("BellSouth"). The audit report to be released contains the Commission auditors' findings from an audit of BellSouth's continuing property records, conducted pursuant to sections 4(i), 4(j), 213, 217, 218, 220, 303(r), and 403 of the Communications Act of 1934, as amended ("Act"). In releasing the audit report or BellSouth's response attached thereto, we do not pass judgment on the accuracy of the audit report, its findings and conclusions, or the company's response. In the immediate future, we will initiate a proceeding seeking public comment on this matter.

II. BACKGROUND

2. Pursuant to its authority under the Act, the Accounting Safeguards Division (ASD) of the Commission's Common Carrier Bureau audited BellSouth's continuing property records in order to: (1) verify whether the costs on BellSouth's financial books accurately reflect telephone plant used for the provision of telephone service; and (2) determine whether BellSouth was in compliance with Part 32 of the Commission's accounting regulations.¹ The carrier is required by Part 32 to maintain a detailed inventory and other records of its telecommunications plant in service so that the equipment may be readily spot-checked for proof of physical existence.² Based upon this audit, ASD's auditors have prepared an audit report containing findings concerning BellSouth's compliance with the Part 32 rules.

3. The auditors provided a draft of their initial audit findings to BellSouth on July 27, 1998, and requested BellSouth to respond in writing by August 26, 1998. The auditors revised the findings as they deemed appropriate, based on BellSouth's response. On December 23, 1998, a final audit report

¹ 47 C.F.R. Part 32.

² 47 C.F.R. §§ 32.2000(e) and (f).

was provided to BellSouth with a letter that offered BellSouth a further opportunity to provide a final response by January 11, 1999. The letter stated that both the final audit report and BellSouth's response would be released to the public. As a procedural courtesy to BellSouth, we will attach their response to the audit.

III. DISCUSSION

4. Section 220(f) of the Act prohibits Commission personnel from disclosing to the public facts and information obtained during an audit, absent Commission or court order. By letter of January 11, 1999, BellSouth has waived its rights to confidential treatment of information contained in the audit report and to information contained in its response to the audit report.

5. We find that release of this audit report to the public serves the public interest by providing interested state regulatory commissions and ratepayers with information gathered during the audit. The findings of the audit report relate to joint assets of the carrier that are used for both state and interstate ratemaking purposes; thus, state commissions and ratepayers have an obvious interest in this information. An additional compelling reason for disclosure is that the audit report provides the basis for further inquiry to safeguard the public interest. We believe that the public policy interests favor release of this audit report. In releasing the audit report or BellSouth's response attached thereto, we do not pass judgment on the accuracy of the audit report, its findings and conclusions, or the company's response.

6. BellSouth has waived claims of confidentiality concerning the audit report and its response. Upon finding it in the public interest, we direct the Common Carrier Bureau to release for public inspection the audit report of BellSouth's continuing property records as well as the company's January 11, 1999 response to the final audit report.³

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to section 220(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(f), and Section 0.459(g) of the Commission's rules, 47 C.F.R. § 0.459(g), that the audit report and BellSouth Telecommunications' January 11, 1999 response to the final audit report attached herewith shall be released for public inspection.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

³ Because BellSouth has waived confidentiality, we need not provide BellSouth five (5) working days in which to seek judicial stay of the Commission's ruling as would otherwise be required by section 0.459(g) of our rules. See 47 C.F.R. § 0.459(g).

Separate Statement of Commissioner Gloria Tristani

Re: Orders Releasing the Continuing Property Records Audits of Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell, Southwestern Bell, and US WEST Telephone Companies.

Today, the Commission is releasing to the public audit reports of the Bell Operating Companies' hard-wired central office equipment. This report concludes that the BOCs' book costs for this equipment are overstated by approximately \$5 billion. I fully support the release of the audit reports prepared by the Common Carrier Bureau. At the same time, I am concerned that the Commission is not proceeding expeditiously to the next logical step, *i.e.*, issuance of an order to show cause seeking to enforce our rules.

The costs of the capital investments of telephone companies, recorded in their continuing property records, account for more than half of the annual cost of operations. These costs are fundamental to calculating all financial information upon which this Commission and state commissions rely for decision making. If one-quarter of these records are in error, as the audit reports conclude, then there is a fundamental question of the soundness of financial information provided by the companies. This would be very troubling because we base many important decisions on this information. For instance, cost data is key to making informed decisions on jurisdictional separations, allocation of costs between regulated and non-regulated activities and between competitive and non-competitive services, the accuracy of reported earnings, setting of rates under price caps (including the initial price cap rates, which were set with direct reference to the BOCs' ratebases), legacy cost issues, and universal service support.

Over the past year, the BOCs have lobbied the Commission heavily on this matter. They have aggressively attacked the audits, the competence of the auditors, and the credibility of the audit design. I have reviewed the audit reports and met with Bureau staff several times to discuss the audit findings, the audit procedures, and the specific attacks leveled by the companies. I find the Bureau's audit staff has been very thorough and careful in performing these audits. The staff has years of experience and specialized knowledge in this area and I am confident that the audits were well designed and executed.

In addition, I would strongly disagree with the suggestion that state commissions could uniformly perform the kind of audit that was conducted by the FCC. Resource constraints are a reality of life for most state commissions, and it would be unreasonable to assume that all -- or even most -- states have the resources to conduct these types of audits.

While I fully support public release of these audit reports, I very much want to hear from other parties, such as consumers, purchasers of access service, state commissions, and competitors, all of whom may be significantly affected by misstated regulatory accounts. I

encourage the Commission to move swiftly toward developing a full public record and to initiate any enforcement action that may be necessary.

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 18, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RECEIVED
MAY 18 2001
PUBLIC SERVICE
COMMISSION

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

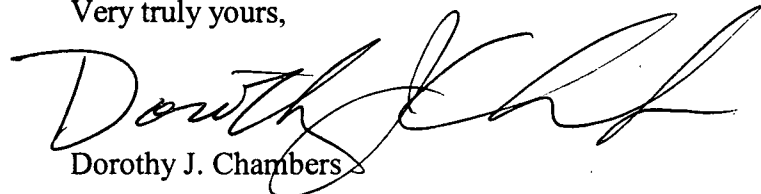
Dear Mr. Dorman:

Enclosed for filing in this case is BellSouth Telecommunications, Inc.'s response to the Commission's request for cost support associated with BellSouth's May 15, 2001, FCC filings for ADSL service.

Portions of the cost study contain confidential, commercial, or proprietary information. Pursuant to 807 KAR 5:001, Section 7, enclosed is BellSouth's Petition for Confidentiality.

One copy of the proprietary information is provided to the Commission. A copy of the proprietary information is provided to IgLou and its counsel pursuant to the previously executed Protective Agreement in this case. Requisite edited copies are provided for the public record and other parties of record.

Very truly yours,



Dorothy J. Chambers

Enclosures

cc: Parties of Record

345229

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAY 18 2001
PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)
)
 Complainant)
 v.) CASE NO. 99-484
)
 BELLSOUTH TELECOMMUNICATIONS, INC.)
)
 Defendant)

CONFIDENTIALITY PETITION
PURSUANT TO 807 KAR 5:001, SECTION 7

Petitioner, BellSouth Telecommunications, Inc., ("BellSouth" or the "Company"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to 807 KAR 5:001, Section 7, to treat BellSouth's Response to the Commission's request for cost support associated with BellSouth's May 15, 2001, FCC filings for ADSL service as confidential (those portions highlighted or copied in yellow) in accordance with the Commission's guidelines.

The Kentucky Open Records Act exempts certain commercial information from the public disclosure requirements of the Act. KRS 61.878(1)(b). To qualify for the commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of

the party seeking confidentiality if openly discussed. KRS 61.878(1)(b); 807 KAR 5:001, § 7. The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and a likelihood of competitive injury if the information is disclosed.

The material which BellSouth seeks to protect contains confidential cost information that is considered proprietary to BellSouth. Public disclosure of this information would provide BellSouth's competitors with an unfair advantage. The data is valuable to competitors and potential competitors in formulating strategic plans for entry, pricing, marketing and overall business strategies. This information relates to the competitive interests of BellSouth and disclosure would impair the competitive business of BellSouth as well as the third party vendors. This type of information has been held confidential by the Commission in this docket, see April 3, 2001 letter of Thomas M. Dorman, and also in previous dockets.

Several of BellSouth's current competitors, including Complainant, Covad, and Rhythms NetConnection, have publicly announced their intention to enter, or in fact have entered, the market to provide DSL services. Additionally, several potential competitors have likewise indicated their intention to enter the DSL market to compete with BellSouth. Business information such as that requested here would be extremely valuable to competitors in developing competitive business strategies, networks and

operations, designing their service offerings and, marketing plans for those services.

As further grounds for this Petition, BellSouth states as follows:

(1) The information as to which BellSouth is requesting confidential treatment is not known outside of BellSouth;

(2) The information is not disseminated within BellSouth and is known only by those BellSouth's employees who have a legitimate business need to know and act upon the information;

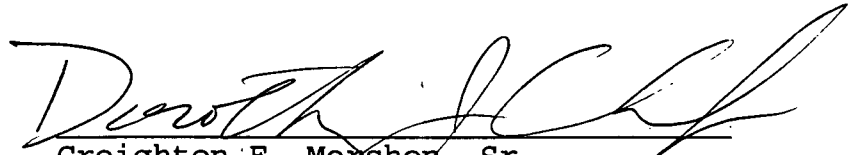
(3) BellSouth seeks to preserve the confidentiality of this information through all appropriate means, including the maintenance of appropriate security at its offices;

(4) The disclosure of this information would cause competitive injury to BellSouth in that it would provide BellSouth's competitors with sensitive financial data with respect to certain of BellSouth's services; and

(5) By granting BellSouth's Petition there would be no damage to any public interest in disclosure. In fact, the public would be best served by non-disclosure because competition would thereby be promoted.

For the foregoing reasons, BellSouth asks that its petition for confidential treatment of cost support associated with BellSouth's May 15, 2001 FCC filings for ADSL service be granted.

Respectfully submitted,



Creighton E. Mershon, Sr.
Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

R. Douglas Lackey
J. Phillip Carver
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

344687

Nonrecurring Cost Study

BellSouth's nonrecurring costs for BellSouth's wholesale ADSL services are \$_____.

See, Appendix A, work paper 1. This cost is partially recovered through the tariff non-recurring charge of \$110. The termination liability charge recovers the remaining unrecovered portion of the non-recurring charge for those customers that terminate their ADSL service within six months of their service being established.

In addition, as demonstrated in the cost study, there are costs associated with termination, even for end-user customers who switch from one ISP to another but continue to receive service over BellSouth's DSL facilities. See, Appendix A, work paper 2. BellSouth must obtain a Letter of Authorization ("LOA") signed by the end user before changing that end user's ISP. This LOA is to prevent "slamming" and to ensure the end user customer's desires are met, because the new ISP, not the end user, places the change order with BellSouth.

Under ideal circumstances, the new ISP faxes a LOA to BellSouth, preferably before an order is issued. Once the new ISP issues the order, the service order system rejects it since ADSL is already provisioned on the line. A service representative will retrieve the rejected orders and query the LOA database to see if the ISP change has been authorized by the end user. If the LOA is on record, the service representative completes the order and the change is made. If a LOA is not on file, the CSA rejects the order back to the ISP with a notice that a LOA must be provided before the change can be made. These orders

are followed up in seven days, and if no LOA has been received, the change order is cancelled. When the ISP sends in the LOA, it is entered in the database, and the pending service order is released to be worked. The cost to administer the LOA is shown on Appendix A, work paper 2.

Even under what appears to be normal conditions, the conversion of an ISP could result in substantial work and concomitant costs for BellSouth. An example is an end user customer who decides to discontinue service with his/her existing ISP and orders the ISP to disconnect the service. At the same time, the end user customer calls another ISP and orders ADSL service from the new ISP. Depending on when these two separate (and, to BellSouth's knowledge, unrelated) service orders hit the systems, several things could happen. One example is, if the order to connect service is entered before the order to disconnect service, the order will be rejected and manual intervention is required to resolve the issue.

BellSouth has not performed a cost study for all possible scenarios when an end user switches ISP's. However, BellSouth has provided the costs for managing the LOA requirements which are the minimum cost expected for an ISP switch. The results of these "best case" costs, show that BellSouth's filed rate of \$50.00 is reasonable and cost based.

It should be noted, the number of customers who switch ISP's and remain on BellSouth's network is very small. It is estimated that approximately 5% of those end users who

disconnect within the first six months switch ISPs and remain on BellSouth's DSL facilities. However, the cost to BellSouth for the termination of such a customer is supported in the attached documentation.

345140

Nonrecurring Cost Summary

1 NONRECURRING UNITCOST DEVELOPMENT -
 2 RATE ELEMENT SPECIFIC COSTS

BellSouth ADSL Service
 USOC: ADF11
 Per Virtual Circuit

	<u>Description</u>	<u>Installation Worktime (hrs)</u>	<u>Disconnect Worktime (hrs)</u>	<u>Directly Assigned Labor Rate</u>	<u>Installation Cost</u>	<u>Disconnect Cost</u>	<u>Discounted Disconnect Cost</u>	<u>Total Cost</u>
14	Acct Executive w/Sales Comp			\$52.39				
15	Systems Designer w/Sales Com			\$52.96				
16	Wage Scale 32			\$34.44				
17	Address & Facility Inventory (AFIG)			\$35.52				
18	Wage Scale 32			\$34.44				
19	CO Install & Mice Field - Ckt & Fac			\$43.51				
20	Work Management Center (WMC)			\$33.91				
21	Install & Mice - Pots			\$41.66				
22	Job Grade 58			\$48.71				
23	Job Grade 57			\$41.96				
24	Outside Plant Constr (OSPC)			\$44.04				
25								
26	Order Processing Systems Cost							
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44	TOTAL NONRECURRING COST:							
45								

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Nonrecurring Cost Summary

1 NONRECURRING UNIT COST DEVELOPMENT -
 2 RATE ELEMENT SPECIFIC COSTS

BellSouth ADSL Service
 USOC: N/A

LOA Coordination per Virtual Circuit

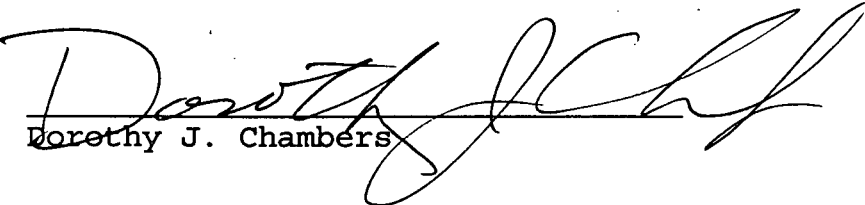
	<u>Description</u>	<u>Installation Worktime (hrs)</u>	<u>Disconnect Worktime (hrs)</u>	<u>Directly Assigned Labor Rate</u>	<u>Installation Cost</u>	<u>Disconnect Cost</u>	<u>Discounted Disconnect Cost</u>	<u>Total Cost</u>
14	Wage Scale 32			\$34.44				

44 TOTAL NONRECURRING COST:

45

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 18th day of May, 2001.


Dorothy J. Chambers

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
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Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 16, 2001

RECEIVED

MAY 17 2001

PUBLIC SERVICE
COMMISSION

Jonathon N. Amlung, Esq.
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, KY 40202-2347

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Jonathon:


I have received your May 11 letter in response to my May 10 letter requesting IgLou retrieve all copies of its May 9 filing that contained proprietary cost information without protective cover. I also have received your May 11 letter to the Commission filing a redacted copy of your Response. Thank you for retrieving all copies of the unredacted version of your response and now filing this information under proprietary cover.

For the record, I must respectfully disagree that there is any reasonable basis to claim that BellSouth has waived its position that the cost information is proprietary. As you know, BellSouth sought, and was granted, confidential treatment for this cost information. See Commission's April 3, 2001 letter. At the informal conference to which you refer, BellSouth representatives spoke in terms of hypothetical assumptions regarding possible cost data. Further, the Commission's very thorough conference memorandum memorializing that informal conference makes no mention of specific costs or stipulations as to DSL costs.

Jonathon N. Amlung, E
May 16, 2001
Page 2

BellSouth also has no interest in stirring up a heated debate over this matter. However, BellSouth must reaffirm that it takes very seriously the unauthorized release of proprietary information.

Very truly yours,



Dorothy J. Chambers

cc: Thomas M. Dorman, Kentucky Public Service Commission
Parties of Record

344207



Paul E. Patton, Governor

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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(502) 564-3940
Fax (502) 564-3460

Martin J. Huelsmann
Chairman

Edward J. Holmes
Vice Chairman

Gary W. Gillis
Commissioner

May 16, 2001

VIA FACSIMILE TRANSMISSION

Creighton Mershon, Sr.
General Counsel/Kentucky
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
Louisville, Kentucky 40203

Re: BellSouth's Compliance with Commission Order
In Case No. 99-484

Dear Creighton:

This letter follows-up our telephone conversation of late yesterday. As we discussed, BellSouth has filed revisions to its DSL tariff with the FCC as a substitute for a Kentucky tariff. On May 11, 2001, this Commission ordered BellSouth to modify its FCC tariff proposal to be applicable to Kentucky. BellSouth filed the tariff without the modifications ordered by this Commission and without the cost justification that the Commission indicated might be sufficient to persuade it to revisit the issue. BellSouth has, however, indicated that it will file cost support documentation regarding the non-recurring fee increase and the termination liability charge.

The Commission specifically requests such cost support documentation to be submitted by no later than Friday, May 18, 2001. Filing cost support documentation by this date will enable the Commission some time to review the cost support documentation prior to May 29, 2001, the effective date of the tariff in question. Please call me if you have questions or further comments.

Sincerely,

Amy E. Dougherty
Amy E. Dougherty
Counsel to the Commission

cc: Jonathon Amlung





Paul E. Patton,
Governor

Ronald B. McCloud,
Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director

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Fax (502) 564-1582

Martin J. Huelsmann
Chairman

Edward J. Holmes
Vice Chairman

Gary Gillis
Commissioner

May 15, 2001

Carl J. Gnadinger, Jr.
Louisville Telecom, LLC
P. O. Box 21187
Louisville, KY 40221-0187

Re: Case Number 1999-484

Dear Mr. Gnadinger:

Your letter to the Public Service Commission dated May 10, 2001 regarding the BellSouth DSC Tariff has been received and placed in Case No. 1999-484, In the Matter of Iglou Internet Services, Inc. vs. BellSouth Telecommunications, Inc. It will be considered by the Public Service Commission as comments in this proceeding. Should you have any further questions please contact Amy Dougherty at (502) 564-3940 ext. 257.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman", with a flourish extending to the right.

Thomas M. Dorman
Executive Director

TMD/lh



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 14, 2001

RECEIVED

MAY 14 2001

PUBLIC SERVICE
COMMISSION

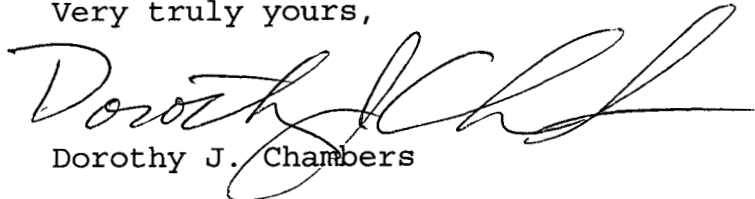
Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Response to the Commission's May 11, 2001, Order.

Very truly yours,


Dorothy J. Chambers

Enclosures

cc: Parties of Record

344208

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAY 14 2001
PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)
)
 Complainant)
v.)
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
 Defendant)

CASE NO. 99-484

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO THE COMMISSION'S MAY 11, 2001, ORDER

On May 11, 2001, this Commission accepted the April 30, 2001, proposal advanced by BellSouth Telecommunications, Inc., ("BellSouth"), to file at the FCC a revised tariff, creating a single price applicable to all entities ordering DSL throughout BellSouth's region. This proposal was to provide DSL service at a single rate with no volume commitment above the 51-line minimum and to remove shortfall charges associated with channels above the 51-line minimum. BellSouth's new FCC tariff also increases non-recurring charges and continues termination liability charges.

As BellSouth had indicated in its April 30, 2001, proposal, in order to promptly implement a final resolution, BellSouth proceeded with preparations to file the proposed tariff with the FCC on an expedited basis by May 14, 2001. This tariff is filed

this date with the FCC as per BellSouth's proposal. See attached. The tariff will become effective 15 days from filing.

This Commission indicated that BellSouth must maintain the non-recurring charge of \$50 unless it could provide cost justification for the proposed increase. This Commission also reaffirmed its earlier decision requiring BellSouth to delete termination liability charges if an end-user customer who switches from one ISP to another continues to receive service over BellSouth's DSL facilities. On both the non-recurring fee increase and termination liability charge, the Commission expressed willingness to revisit both issues if BellSouth would provide cost support information demonstrating that the charges are cost-based. Accordingly, BellSouth will file cost support documentation within 15 days in accordance with this Commission's order.

Contrary to claims made by IgLou in this proceeding, BellSouth fully respects this Commission's authority in the intrastate jurisdiction. BellSouth has suggested the resolutions proposed in this proceeding as a means to avoid a jurisdictional conflict. BellSouth's offering of ADSL service to ISPs is through the regulated wholesale tariff filed at the FCC. BellSouth's DSL wholesale offering is an interstate access service subject to the FCC's exclusive jurisdiction. BellSouth's compliance with this Commission's request for

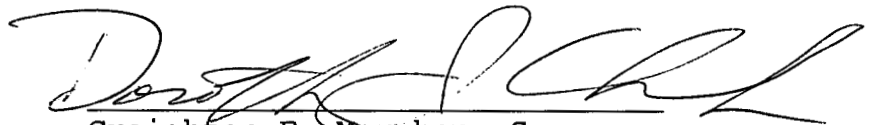
supporting cost data, to be provided on a proprietary basis, does not alter BellSouth's position on the jurisdictional issue.

CONCLUSION

BellSouth commends the Commission on its acceptance of BellSouth's proposal. The single pricing proposal, which BellSouth has offered, addresses the issue of parity amongst all entities. As this Commission has noted, this proposal satisfies the predominant concerns expressed by this Commission.

BellSouth respectfully has proceeded with its proposal so that its filing could be made on a timely basis with the FCC as previously indicated. BellSouth also will proceed with all due speed to complete and provide the requested cost information to this Commission.

Respectfully submitted,



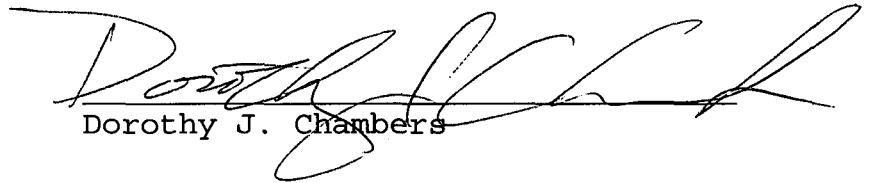
Creighton E. Mershon, Sr.
Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

R. Douglas Lackey
J. Phillip Carver
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375

COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 14th day of May, 2001.


Dorothy J. Chambers

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: MAY 14, 2001

TARIFF F.C.C. NO. 1
 474TH REVISED PAGE 1
 CANCELS 473RD REVISED PAGE 1

EFFECTIVE: MAY 29, 2001

ACCESS SERVICE
 CHECK SHEET

The Title Page and Pages 1 to 22-27 and Supplement No.105 inclusive of this tariff are effective as of the date shown.

<u>Page</u>	<u>Number of Revision Except as Indicated</u>	<u>Page</u>	<u>Number of Revision Except as Indicated</u>	<u>Page</u>	<u>Number of Revision Except as Indicated</u>
Title	2nd	27.4	4th	71	6th
1	474th*	27.5	Original	72	8th
2	154th	27.6	Original	72.1	5th
2.1	30th*	28	6th	73	5th
3	57th	29	7th	74	7th
3.1	5th	30	2nd	74.1	5th
4	146th	31	8th	75	10th
4.1	2nd	31.1	6th	75.1	8th
5	108th*	32	7th	75.2	12th
5.1	58th*	33	6th	75.2.1	1st
5.1.1	12th*	34	6th	76	5th
6	86th	35	3rd	77	3rd
6.1	21st	36	5th	1-1	4th
7	95th*	37	5th	2-1	2nd
8	48th	38	8th	2-2	4th
8.1	39th	39	5th	2-3	Original
9	15th	40	7th	2-4	Original
9.0.1	Original	41	2nd	2-5	4th
9.0.2	1st*	42	6th	2-6	1st
9.0.3	1st*	43	9th	2-7	1st
9.0.4	1st*	44	7th	2-8	2nd
9.0.5	Original	45	7th	2-8.1	Original
9.1	Original	46	7th	2-9	Original
10	1st	47	2nd	2-10	Original
11	8th	48	3rd	2-11	Original
12	12th	49	7th	2-12	13th
12.1	4th	50	5th	2-12.0.1	6th
13	14th	51	8th	2-12.0.2	3rd
14	6th	52	4th	2-12.1	14th
14.1	3rd	53	4th	2-12.2	9th
15	8th	54	8th	2-13	10th
16	3rd	55	8th	2-13.1	1st
17	11th	56	5th	2-14	11th
18	12th	57	4th	2-15	13th
18.1	4th	58	4th	2-15.1	3rd
19	5th	59	6th	2-16	16th
20	11th	60	9th	2-16.1	Original
21	12th	61	3rd	2-17	14th
21.1	Original	62	6th	2-17.1	5th
22	22nd	63	3rd	2-18	6th
22.1	3rd	63.1	3rd	2-18.1	5th
23	6th	64	4th	2-18.2	5th
24	7th	65	7th	2-18.3	5th
25	9th	66	3rd	2-18.4	2nd
26	Original	67	7th	2-19	2nd
27	4th	67.1	2nd	2-20	5th
27.0.1	2nd	68	4th	2-21	1st
27.1	3rd	69	4th	2-22	4th
27.2	6th	70	5th	2-23	2nd
27.3	3rd	70.1	1st	2-24	1st

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BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29G57, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
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4-2	2nd				
4-3	3rd				
4-4	3rd				
4-5	13th				
4-6	16th				
4-7	12th				
4-8	8th				
4-9	6th				
5-1	14th				
5-1.1	10th				
5-1.2	2nd				
5-1.3	2nd				
5-1.4	2nd				
5-2	4th				
5-2.1	1st				
5-3	5th				
5-4	6th				
5-5	8th				
5-6	7th				
5-7	8th				
5-8	8th				
5-8.1	3rd				
5-9	5th*				
5-9.1	2nd				
5-10	6th				
5-11	10th				
5-11.0.1	4th				
5-11.1	9th				
5-11.2	3rd				
5-12	17th				
5-13	11th				
5-14	3rd				
5-15	7th				
5-16	1st				
5-17	1st				
5-18	1st				
5-19	6th				
5-19.1	Original				
5-19.2	Original				
5-20	9th				
5-20.1	Original				
5-21	7th				
5-21.1	4th				
5-22	11th				
5-22.1	2nd				
5-23	6th				
5-23.1	2nd				
5-23.2	3rd				

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BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29G57, 675 W. Peachtree St., N.E.
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7-31	2nd	7-57.1	6th	7-80	4th
7-32	3rd	7-57.2	5th	7-80.1	1st
7-33	2nd	7-57.2.1	Original	7-81	6th
7-34	2nd	7-57.3	6th	7-81.1	2nd
7-35	1st	7-58	8th	7-81.2	1st
7-36	3rd	7-58.1	5th	7-82	4th
7-36.1	3rd	7-58.2	3rd	7-83	5th
7-37	4th	7-58.3	4th	7-84	10th
7-38	3rd	7-58.4	1st	7-84.1	6th
7-38.1	4th	7-58.5	2nd	7-85	12th
7-38.2	3rd	7-58.6	3rd	7-86	2nd
7-38.3	4th	7-58.6.1	3rd	7-86.1	9th
7-38.4	3rd	7-58.7	1st	7-86.1.1	Original
7-38.5	4th	7-58.7.1	2nd	7-86.2	4th
7-38.6	4th	7-58.8	5th	7-86.2.1	2nd
7-38.7	1st	7-58.8.1	1st	7-86.3	7th
7-38.7.1	Original	7-58.9	3rd	7-86.3.1	Original
7-38.8	2nd	7-58.9.1	1st	7-86.4	4th
7-38.9	4th	7-58.10	3rd	7-87	8th
7-38.9.1	Original	7-58.11	3rd	7-88	2nd
7-38.10	3rd	7-58.11.1	Original	7-88.1	4th
7-38.11	4th	7-58.12	3rd	7-89	4th
7-38.12	Original	7-58.13	4th*	7-90	4th
7-39	1st	7-58.14	2nd	7-90.1	3rd
7-40	2nd	7-58.15	2nd	7-91	7th
7-41	2nd	7-58.16	Original	7-91.0.1	1st
7-42	1st	7-58.17	Original	7-91.1	1st
7-43	1st	7-59	4th	7-92	3rd
7-44	3rd	7-60	5th	7-92.1	6th
7-45	3rd	7-61	4th	7-92.2	1st
7-46	3rd	7-61.1	1st	7-93	2nd
7-47	5th	7-62	3rd	7-94	3rd
7-48	7th	7-63	2nd	7-94.1	2nd
7-49	6th	7-64	1st	7-95	1st
7-49.0.1	2nd	7-65	5th	7-96	2nd
7-49.1	5th	7-66	4th	7-97	2nd
7-49.1.0.1	Original	7-67	4th	7-98	1st
7-49.1.1	3rd	7-68	5th	7-99	2nd
7-49.2	5th	7-68.1	1st	7-99.1	1st
7-49.3	5th	7-69	8th	7-99.2	1st
7-49.3.1	Original	7-70	15th	7-99.3	1st
7-49.4	5th	7-70.1	11th	7-100	8th
7-49.4.0.1	1st	7-71	3rd	7-100.1	Original
7-49.4.1	2nd	7-71.1	1st	7-101	6th
7-49.5	4th	7-72	2nd	7-101.1	5th
7-50	3rd	7-73	3rd	7-101.2	Original
7-51	4th	7-74	4th	7-102	7th
7-52	4th	7-74.1	4th	7-102.1	7th
7-53	5th	7-75	2nd	7-103	10th
7-54	4th	7-76	1st	7-103.1	6th
7-55	3rd	7-77	1st	7-103.1.1	2nd
7-55.1	2nd	7-78	1st	7-103.2	4th
7-56	8th	7-79	17th	7-103.3	4th
7-57	7th	7-79.1	Original	7-103.3.1	2nd
				7-103.4	2nd

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 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
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TARIFF F.C.C. NO. 1
 58TH REVISED PAGE 5.1
 CANCELS 57TH REVISED PAGE 5.1

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7-103.5	2nd	7-121	5th	7-145.0.2.1	1st
7-103.6	6th	7-122	4th	7-145.0.2.2	1st
7-103.6.1	1st	7-123	1st	7-145.0.3	1st
7-103.7	4th	7-124	1st	7-145.0.3.1	4th
7-103.8	5th	7-125	1st	7-145.0.3.2	7th
7-103.8.1	3rd	7-126	1st	7-145.0.3.3	5th
7-103.9	1st	7-127	9th	7-145.0.3.4	2nd
7-103.10	2nd	7-128	4th	7-145.0.3.5	6th
7-103.11	3rd	7-129	4th	7-145.0.3.6	5th
7-103.11.1	Original	7-129.1	7th	7-145.0.3.7	2nd
7-103.12	2nd	7-129.2	3rd	7-145.0.3.8	4th
7-103.12.1	Original	7-129.2.1	3rd	7-145.0.3.9	3rd
7-103.13	6th	7-129.3	7th	7-145.0.4	1st
7-103.14	5th	7-129.3.1	2nd	7-145.0.4.1	2nd
7-103.15	1st	7-129.4	9th	7-145.0.4.2	5th
7-103.15.1	Original	7-129.4.1	1st	7-145.0.4.3	4th
7-103.16	2nd	7-129.5	5th	7-145.0.4.4	Original
7-103.17	1st	7-129.6	3rd	7-145.0.4.5	Original
7-103.18	1st	7-129.7	5th	7-145.0.4.6	Original
7-103.18.1	Original	7-129.8	6th	7-145.0.4.7	Original
7-103.19	1st	7-130	2nd	7-145.0.5	5th
7-103.20	2nd	7-131	1st	7-145.0.6	2nd
7-103.21	1st	7-132	2nd	7-145.0.6.1	4th
7-103.22	4th	7-133	1st	7-145.0.6.2	6th
7-103.23	5th*	7-134	1st	7-145.0.6.3	2nd
7-103.24	5th*	7-135	11th	7-145.0.7	1st
7-103.24.0.1	1st*	7-136	11th	7-145.0.7.1	6th
7-103.24.1	3rd	7-137	7th	7-145.0.7.2	6th
7-103.24.2	2nd	7-138	7th	7-145.0.7.3	6th
7-103.24.3	2nd	7-139	2nd	7-145.0.7.4	3rd
7-103.24.4	1st	7-140	2nd	7-145.0.7.5	6th
7-103.24.5	Original	7-141	2nd	7-145.0.7.6	5th
7-103.25	Original	7-142	2nd	7-145.0.7.7	2nd
7-103.26	Original	7-143	5th	7-145.0.7.8	5th
7-104	2nd	7-144	6th	7-145.0.7.9	5th
7-105	1st	7-144.1	7th	7-145.0.8	4th
7-106	2nd	7-144.2	3rd	7-145.0.8.1	3rd
7-107	1st	7-144.3	Original	7-145.0.8.2	3rd
7-108	17th	7-145	6th	7-145.0.9	1st
7-109	9th	7-145.0.1	1st	7-145.0.9.1	5th
7-110	7th	7-145.0.1.1	3rd	7-145.0.9.2	7th
7-111	4th	7-145.0.1.2	5th	7-145.0.9.3	5th
7-112	2nd	7-145.0.1.2.1	3rd	7-145.0.9.4	4th
7-113	2nd	7-145.0.1.3	5th	7-145.0.9.5	6th
7-114	2nd	7-145.0.1.4	1st	7-145.0.9.6	4th
7-115	2nd	7-145.0.1.5	5th	7-145.0.9.7	3rd
7-116	2nd	7-145.0.1.6	4th	7-145.0.9.8	3rd
7-117	5th	7-145.0.1.7	Original	7-145.0.9.9	2nd
7-118	4th	7-145.0.1.8	4th	7-145.0.10	1st
7-119	13th	7-145.0.1.9	4th	7-145.0.10.1	3rd
7-120	5th	7-145.0.2	2nd	7-145.0.10.2	4th

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7-145.0.10.3	3rd	7-147.0.2.6	5th	7-147.0.4.2	6th
7-145.0.10.4	Original	7-147.0.2.7	3rd	7-147.0.4.3	6th
7-145.0.10.5	Original	7-147.0.2.8	5th	7-147.0.4.4	4th
7-145.0.10.6	Original	7-147.0.2.9	5th	7-147.0.4.5	6th
7-145.0.10.7	Original	7-147.0.2.9.1	Original	7-147.0.4.6	6th
7-145.0.11	5th	7-147.0.2.9.2	Original	7-147.0.4.7	5th
7-145.0.12	2nd	7-147.0.2.9.3	Original	7-147.0.4.8	6th
7-145.0.12.1	4th	7-147.0.2.9.4	Original	7-147.0.4.9	6th
7-145.0.12.2	4th	7-147.0.2.9.5	Original	7-147.0.4.9.1	1st
7-145.1	16th	7-147.0.2.9.6	Original	7-147.0.4.9.2	1st
7-145.2	15th	7-147.0.2.9.7	Original	7-147.0.4.9.3	1st
7-145.3	15th	7-147.0.2.9.8	Original	7-147.0.4.9.4	1st
7-145.4	10th	7-147.0.2.9.9	Original	7-147.0.4.9.5	1st
7-145.4.1	9th	7-147.0.2.9.10	Original	7-147.0.4.9.6	1st
7-145.4.2	8th	7-147.0.2.9.11	Original	7-147.0.4.9.7	1st
7-145.4.3	6th	7-147.0.2.9.12	Original	7-147.0.4.9.8	1st
7-145.4.4	7th	7-147.0.2.9.13	Original	7-147.0.4.9.9	1st
7-145.4.5	5th	7-147.0.2.9.14	Original	7-147.0.4.9.10	1st
7-145.5	9th	7-147.0.2.9.15	Original	7-147.0.4.9.11	1st
7-145.6	2nd	7-147.0.2.9.16	Original	7-147.0.4.9.12	1st
7-145.6.1	Original	7-147.0.2.9.17	Original	7-147.0.4.9.13	1st
7-145.6.2	1st	7-147.0.2.9.18	Original	7-147.0.4.9.14	1st
7-145.6.3	Original	7-147.0.2.9.19	Original	7-147.0.4.9.15	1st
7-146	13th	7-147.0.2.9.20	Original	7-147.0.4.9.16	1st
7-146.1	2nd	7-147.0.2.9.21	Original	7-147.0.4.9.17	1st
7-146.2	8th	7-147.0.2.9.22	Original	7-147.0.4.9.18	1st
7-146.3	7th*	7-147.0.2.9.23	Original	7-147.0.4.9.19	Original
7-147	5th	7-147.0.2.9.24	Original	7-147.0.4.9.20	Original
7-147.0.1	1st	7-147.0.2.9.25	Original	7-147.0.4.9.21	Original
7-147.0.1.1	3rd	7-147.0.2.9.26	Original	7-147.0.4.9.22	Original
7-147.0.1.2	4th	7-147.0.2.9.27	Original	7-147.0.4.9.23	Original
7-147.0.1.3	4th	7-147.0.2.10	4th	7-147.0.4.9.24	Original
7-147.0.1.4	2nd	7-147.0.3	1st	7-147.0.4.9.25	Original
7-147.0.1.5	4th	7-147.0.3.1	6th	7-147.0.4.9.26	Original
7-147.0.1.6	4th	7-147.0.3.2	6th	7-147.0.4.9.27	Original
7-147.0.1.7	3rd	7-147.0.3.3	6th	7-147.0.4.10	4th
7-147.0.1.8	5th	7-147.0.3.4	6th	7-147.1	14th
7-147.0.1.9	4th	7-147.0.3.5	6th		
7-147.0.1.10	1st	7-147.0.3.6	6th		
7-147.0.1.11	Original	7-147.0.3.7	6th		
7-147.0.1.12	Original	7-147.0.3.8	6th		
7-147.0.1.13	Original	7-147.0.3.9	6th		
7-147.0.1.14	Original	7-147.0.3.10	3rd		
7-147.0.1.15	Original	7-147.0.3.11	3rd		
7-147.0.1.16	Original	7-147.0.3.12	3rd		
7-147.0.1.17	Original	7-147.0.3.13	3rd		
7-147.0.1.18	Original	7-147.0.3.14	3rd		
7-147.0.1.19	Original	7-147.0.3.15	3rd		
7-147.0.2	1st	7-147.0.3.16	3rd		
7-147.0.2.1	3rd	7-147.0.3.17	3rd		
7-147.0.2.2	5th	7-147.0.3.18	3rd		
7-147.0.2.3	5th	7-147.0.3.19	3rd		
7-147.0.2.4	2nd	7-147.0.4	1st		
7-147.0.2.5	5th	7-147.0.4.1	6th		

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 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
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TARIFF F.C.C. NO. 1
 95TH REVISED PAGE 7
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7-156.60	Original	7-160	1st	10-5	1st
7-156.61	Original	7-161	1st	10-6	1st
7-156.61.1	Original	7-162	1st	10-6.1	1st
7-156.61.2	Original	7-163	1st	10-6.2	2nd
7-156.61.3	Original	7-164	1st	10-6.3	2nd
7-156.62	Original	7-165	1st	10-6.4	1st
7-156.63	Original	7-166	1st	10-6.5	1st
7-156.63.1	Original	7-167	1st	10-6.6	1st
7-156.63.2	Original	7-168	1st	10-6.7	1st
7-156.63.3	Original	7-169	1st	10-6.8	1st
7-156.64	Original	7-170	1st	10-6.9	1st
7-156.65	Original	7-171	1st	10-7	3rd
7-156.65.1	Original	7-172	3rd	10-7.1	Original
7-156.65.2	Original	7-170	1st	10-7.2	Original
7-156.65.3	Original	7-171	1st	10-8	1st
7-156.66	Original	7-172	3rd	10-9	Original
7-156.67	Original	8-1	Original	10-10	1st
7-156.67.1	Original	9-1	2nd	10-10.1	Original
7-156.67.2	Original	9-2	4th	10-10.2	1st
7-156.67.3	Original	9-3	6th	10-10.3	3rd
7-156.68	2nd	9-4	7th	10-11	1st
7-156.69	2nd	9-4.1	2nd	10-12	Original
7-156.70	2nd	9-5	2nd	10-13	Original
7-156.71	2nd	9-6	5th	10-14	Original
7-156.72	2nd	9-7	6th	10-15	Original
7-156.73	2nd	9-8	6th	10-16	Original
7-156.74	Original	9-9	3rd	10-17	Original
7-156.75	Original	9-10	6th	10-18	Original
7-156.76	1st	9-11	6th	10-19	Original
7-156.77	2nd	9-11.0.1	3rd	10-20	1st
7-156.78	2nd	9-11.0.2	3rd	10-21	Original
7-156.79	2nd	9-11.1	7th	10-21.1	Original
7-156.80	2nd	9-12	11th	10-21.2	Original
7-156.81	2nd	9-12.0.1	4th	11-1	1st
7-156.82	2nd	9-12.0.2	3rd	11-2	Original
7-156.83	Original	9-12.0.3	6th	11-3	Original
7-156.84	Original	9-12.0.3.1	8th	11-4	Original
7-156.85	1st	9-12.1	1st	11-5	Original
7-156.86	2nd	9-13	1st	11-6	Original
7-156.87	2nd	9-14	2nd	11-7	Original
7-156.88	2nd	9-15	1st	11-8	Original
7-156.89	Original	9-16	1st	11-9	Original
7-156.90	Original	9-17	1st	11-10	1st
7-156.91	1st	9-18	1st	11-11	1st
7-156.92	1st	9-19	2nd	11-12	Original
7-156.93	4th*	9-20	1st	11-13	1st
7-156.94	1st	9-21	Original	11-14	1st
7-156.95	1st	10-1	1st	11-15	Original
7-157	1st	10-2	1st	11-16	Original
7-158	1st	10-3	1st		
7-159	1st	10-4	1st		

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23-168	Original	23-323	Original	23-378	Original
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23-170	Original	23-325	Original	23-380	Original
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23-310	Original	23-365	Original	23-420	Original
23-311	Original	23-366	Original	23-421	Original
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23-452	Original	23-507	Original	23-562	Original
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23-467	Original	23-522	Original	23-577	Original
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23-470	Original	23-525	Original	23-580	Original
23-471	Original	23-526	Original	23-581	Original
23-472	Original	23-527	Original	23-582	Original
23-473	Original	23-528	Original	23-583	Original
23-474	Original	23-529	Original	23-584	Original
23-475	Original	23-530	Original	23-585	Original
23-476	Original	23-531	Original	23-586	Original
23-477	Original	23-532	Original	23-587	Original
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5 - Ordering Options for BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

5.2 Access Order (Cont'd)

5.2.7 Special Access Service (a.k.a. BellSouth SPA) and BellSouth SWA Transport Service

- (A) For all Special Access (a.k.a. BellSouth SPA) Services other than BellSouth ADSL service, the customer must specify the customer premises or Hubs involved, the channel type (e.g., Video (a.k.a. BellSouth SPA Video), Voice Grade (a.k.a. BellSouth SPA DSO VG), High Capacity (a.k.a. BellSouth High Capacity), etc.), the channel interface, technical specification package and options desired. When ordering Voice Grade (a.k.a. BellSouth SPA DSO VG) local channels and associated voice grade (a.k.a. BellSouth SPA DSO VG) interoffice channels, the customer must specify whether they are to be billed under the Voice Grade (a.k.a. BellSouth SPA DSO VG) Rate Stability Plan. For multipoint services the channel interface at each premises may, at the request of the customer, be different but all such interfaces shall be compatible. When establishing Special Access (a.k.a. BellSouth SPA) Service under the Shared Network Arrangement, the host subscriber must coordinate with each service user the design, testing and maintenance of the service. Additionally, the service user must provide to the BellSouth Telephone Companies the Connecting Facility Arrangement (CFA) and the High Capacity (a.k.a. BellSouth SPA High Capacity) Billing Account Number (HBAN) of the host subscriber.

For BellSouth ADSL service, the Customer must specify the Customer electronic mail address, confirmation of an end-user letter of authorization, end-user's Telephone Exchange service provider, Network Service Provider and in-service telephone number, type of request, BellSouth XAATMS Port, where appropriate, and the circuit identification of the transport facility between the Customer's premises and its Serving Wire Center. (C)

When a customer requests BellSouth ADSL service, End-User Aggregation, the customer must additionally specify the primary NSP, the number of sessions and destinations per line as specified in 7.2.17(K)(2)-(3) and all customer Domain Groups that each end-user can access. Furthermore, End-User Aggregation must be specified when initially ordering a transport facility to be utilized in conjunction with BellSouth ADSL service, End-User Aggregation. Connection to BellSouth ADSL service, End-User Aggregation, is accomplished with facilities dedicated to the transport of BellSouth ADSL service, End-User Aggregation, terminated in Company-specified Central Offices that are capable of providing BellSouth ADSL service, End-User Aggregation. Interstate dedicated Special Access (a.k.a. BellSouth SPA) service rates, charges and regulations are specified in Section 7 of this tariff. A BellSouth ADSL service, End-User Aggregation transport facility may not be terminated in BellSouth XAATMS. BellSouth ADSL service, End-User Aggregation, is required when the customer requests BellSouth ADSL service "Multiple Destinations" and/or "Multiple Sessions."

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7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.2 Service Descriptions (Cont'd)

7.2.17 BellSouth ADSL Service (Cont'd)

- (B) BellSouth ADSL service is furnished where suitable facilities are available as determined by the Telephone Company. BellSouth ADSL service Central Office availability will be as listed in the National Exchange Carriers Association (N.E.C.A.) F.C.C. Tariff No. 4.
- (C) BellSouth ADSL service is available at peak data rates of from 192 Kbps to 6.0 Mbps downstream and from 192 Kbps to 896 Kbps upstream, in combinations as specified following. (C)

	Downstream		Upstream	
	Minimum	Maximum	Minimum	Maximum
(1)	NA	1.5 Mbps	NA	256 Kbps
(2)	768 Kbps	NA	512 Kbps	NA
(3)	1.5 Mbps	1.8 Mbps	512 Kbps	768 Kbps
(4)	2.0 Mbps	4.0 Mbps	640 Kbps	896 Kbps
(5)	4.0 Mbps	6.0 Mbps	640 Kbps	896 Kbps
(6)	384 Kbps	NA	384 Kbps	NA
(7)	192 Kbps	NA	192 Kbps	NA

Actual data rate achieved may be affected by loop length and other factors. In some cases, the data rate provided by BellSouth may exceed the minimum data rates in (2) through (7) in order that the achieved minimum data rate will equal or exceed the minimum data rate specified. The movement of data in a direction away from the end-user premises, toward its normal Serving Wire Center (SWC), is in the upstream direction. The movement of data in a direction toward the end-user premises from its normal SWC is in the downstream direction.

Month-to-month terms are available for the BellSouth ADSL service VCs specified in (C)(1) and (2) preceding. Month-to-Month terms and variable commitment periods of 13 to 24 months, and greater than 24 months, are available for the BellSouth ADSL service VCs specified in (C)(3) through (7) preceding. (C)

(D) Multipoint service is not available.

(E) The regulations, rates and charges specified in this tariff for BellSouth ADSL service are in addition to applicable regulations, rates and charges specified in this and/or other Tariffs of the Telephone Company, but do not include any regulations, rates or charges which may be applied or charged to the end-user by the customer.

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service

- (A) Monthly rates and nonrecurring charges apply as specified in 7.5.21 following, and reflect the cost of providing BellSouth ADSL service to the customer, but do not reflect any additional incremental cost associated with providing service to customers of a NSP. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(1) and (2) is 51. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(3) through (7) is 1.
- (B) A monthly recurring rate will be billed to the customer for each BellSouth ADSL service VC established to an end-user premises. The monthly rate for data rate options specified in 7.2.17(C)(1) and (2) will be as specified in 7.5.21(A)(1) and (2). The monthly rate for data rate options specified in 7.2.17(C)(3) through (7) will be determined by the commitment period designated by the customer beginning with establishment of the customer account.

(T)
(T)
(C)
(C)
(D)
(D)

In addition to month-to-month (MTM) rates, customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are available for data rate options specified in 7.2.17(C)(3) through (7). When the customer requests these data rate options, the customer must designate to the Telephone Company the commitment and optional commitment period desired, e.g. a commitment of 20 months and a 13 to 24 month commitment period.

(T)
(T)
(T)

Rates stabilized under customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are exempt from Telephone Company-initiated increases. However, decreases will flow through to the customer. In the event that a VC is disconnected at customer request prior to completion of a customer-selected commitment period in excess of 12 months, the customer will be required to pay a termination charge as specified in (G) following. The customer-designated commitment and commitment period may not be reduced, however, renewals of the existing VC and data rate, at the same end-user premises are allowed at rates and terms and conditions appropriate for new service. The VC nonrecurring charges are not applicable for the renewed services.

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7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(B) (Cont'd)

Subsequent to the establishment of a customer-selected commitment period longer than 12 months, and prior to completion of that period, the existing commitment and commitment period may be replaced by a currently offered commitment and commitment period having a length equal to or longer than the time remaining in the existing arrangement. The appropriate rates will be as if for new service. Nonrecurring charges will not be re-applied for these renewals, and no credit will be provided for payments made during the formerly selected period. Changes to a commitment or commitment period with a length shorter than the existing arrangement will result in application of termination liability charges as specified in G. following. Recognition of previous service will not be a factor in determination of rates appropriate for a renewed arrangement.

- (C) For customer-selected VC data rates specified in 7.2.17(C)(1) and (2), existing customers of record as of May 28, 2001 will be allowed 180 days, and new or future customers beginning on/after May 29, 2001 will be allowed an initial period of 180 days beginning with establishment of the first billing account, to attain a combined quantity of VCs at data rates specified in 7.2.17(C)(1) and (2) that is equal to or greater than the minimum number of VCs as specified in 7.4.29(A) on billing accounts across the region. During this initial 180-day period, customers will be billed an amount equal to the number of VCs on their billing accounts across the region multiplied by the appropriate VC monthly recurring rate.

Upon completion of the 180-day period, a monthly review will be conducted of quantities of VCs specified in 7.2.17(C)(1) and (2) that are associated with each customer's billing accounts across the region. Each month, a customer account not meeting the minimum quantity of VCs specified in 7.4.29(A) will be charged an amount equal to the difference between the minimum quantity of VCs as specified in 7.4.29(A) and the customer's combined quantity of VCs at data rates specified in 7.2.17(C)(1) and (2), multiplied by the rate specified in 7.5.21(A)(1)(a). This charge is in addition to the normal monthly rates equal to the number of VCs actually attained on their billing accounts across the region, multiplied by the appropriate VC monthly recurring rate.

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7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

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7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (Cont'd)

7.5.9 High Capacity (a.k.a. BellSouth SPA High Capacity) Service (Cont'd)

(B) Interoffice Channel (Cont'd)

(2) 1.544 Mbps
 - Per Mile (Cont'd)

Per Month Rates

<u>Zone 3</u> <u>States</u>	<u>Month</u> <u>to</u> <u>Month</u>	<u>Plan A¹</u> <u>24 to 48</u> <u>Months</u>	<u>Plan B¹</u> <u>49 to 72</u> <u>Months</u>	<u>USOC</u>
Alabama	\$21.40 (R)	\$16.00	\$15.00	1L5XX
Florida	\$21.40 (R)	\$16.00	\$15.00	1L5XX
Georgia	\$21.40 (R)	\$16.00	\$15.00	1L5XX
Kentucky	\$21.40 (R)	\$16.00	\$15.00	1L5XX
Louisiana	\$21.40 (R)	\$16.00	\$15.00	1L5XX
Mississippi	\$21.40 (R)	\$16.00	\$15.00	1L5XX
North Carolina	\$21.40 (R)	\$16.00	\$15.00	1L5XX
South Carolina	\$21.40 (R)	\$16.00	\$15.00	1L5XX
Tennessee	\$21.40 (R)	\$16.00	\$15.00	1L5XX

ALL STATES

	<u>Nonrecurring</u> <u>Charges</u>	<u>Monthly Rates</u>		<u>USOC</u>
		<u>Fixed</u>	<u>Per Mile</u>	
(B) Interoffice Channel				
(3) 3.152 Mbps	ICB	ICB	ICB	1L5XX

ICB rates and charges are filed in 7.6 following.

Note 1: Channel Services Payment Plan and Area Commitment Plan Rates

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7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (cont'd)

7.5.21 BellSouth ADSL Service

(A) Low Speed, Asymmetric Virtual Circuits

- (1) Per Virtual Circuit, Downstream data rate up to 1.5 Mbps,
 Upstream data rate up to 256 Kbps

	Nonrecurring Charge <u>Per VC</u>	Monthly Rate <u>Per VC</u>	<u>USOC</u>	(C) (C) (C)
(a) each	\$110.00	\$33.00	ADF11	(C) (D) (D) (D) (D)

- (2) Per Virtual Circuit, Downstream data rate of at least 768 Kbps,
 Upstream data rate of at least 512 Kbps

	Nonrecurring Charge <u>Per VC</u>	Monthly Rate <u>Per VC</u>	<u>USOC</u>	(C) (C) (C)
(a) each	\$300.00	\$108.00	ADF61	(C) (D) (D) (D) (D)

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23 - Metropolitan Statistical Area Access Services (Cont'd)

23.5 Rates and Charges (Cont'd)

23.5.2 BellSouth SPA Service (Cont'd)

23.5.2.9 High Capacity (a.k.a. BellSouth SPA High Capacity) Service (Cont'd)

(B) Interoffice Channel (Cont'd)

(2) 1.544 Mbps
 - Per Mile (Cont'd)

Zone 3 States	Month to Month	Per Month Rates			USOC
		Plan A ¹ 24 to 48 Months	Plan B ¹ 49 to 72 Months		
Alabama	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
Florida	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
Georgia	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
Kentucky	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
Louisiana	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
Mississippi	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
North Carolina	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
South Carolina	\$21.40 (R)	\$16.00	\$15.00	1L5XX	
Tennessee	\$21.40 (R)	\$16.00	\$15.00	1L5XX	

ALL STATES

(B) Interoffice Channel	Nonrecurring Charges	Monthly Rates		USOC
		Fixed	Per Mile	
(3) 3.152 Mbps	ICB	ICB	ICB	1L5XX
(4) DS2 (6.312 Mbps) Service	ICB	ICB	ICB	1L0++

Note 1: Channel Services Payment Plan and Area Commitment Plan Rates

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23 - Metropolitan Statistical Area Access Services (Cont'd)

23.5 Rates and Charges (Cont'd)

23.5.2 BellSouth SPA Service (Cont'd)

23.5.2.21 BellSouth ADSL Service

(A) Low Speed, Asymmetric Virtual Circuits

- (1) Per Virtual Circuit, Downstream data rate up to 1.5 Mbps,
 Upstream data rate up to 256 Kbps

	Nonrecurring Charge <u>Per VC</u>	Monthly Rate <u>Per VC</u>	<u>USOC</u>	
(a) each	\$110.00	\$33.00	ADF11	(C)

(C)
(C)
(C)
(C)
(D)
(D)
(D)
(D)
(D)

- (2) Per Virtual Circuit, Downstream data rate of at least 768 Kbps,
 Upstream data rate of at least 512 Kbps

	Nonrecurring Charge <u>Per VC</u>	Monthly Rate <u>Per VC</u>	<u>USOC</u>	
(a) each	\$300.00	\$108.00	ADF61	(C)

(C)
(C)
(C)
(C)
(D)
(D)
(D)
(D)

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29G57, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: MAY 14, 2001

TARIFF F.C.C. NO. 1
 1ST REVISED PAGE 23-601
 CANCELS ORIGINAL PAGE 23-601

EFFECTIVE: MAY 29, 2001

ACCESS SERVICE

23 - Metropolitan Statistical Area Access Services (Cont'd)

23.6 Pricing Flexibility USOC Indicators (Cont'd)

<u>USOC</u>	<u>DESCRIPTION</u>	<u>INDICATOR*</u>
1PQE3	LightGate 1 COCI /Term/DS3	0
1PQE3	LightGate OC-3 COCI /Term/DS3	0
1PQE4	LightGate OC-3/12/48 COCI/STS-1	0
1PQE4	LightGate Sync COCI/STS-1	0
1PQE5	LGate Sync COCI/OC-3(2 Fiber)	0
1PQE5	LightGate OC-3/12/48 COCI/OC-3	0
1PQE5	LightGate Sync COCI/OC-3 (2 Fiber)	0
1PQE6	LGate Sync COCI/OC-3(4 Fiber)	0
1PQE7	LGate Sync COCI/STS-1 CS	0
1PQE8	LightGate OC-3/12/48 COCI/DS1	0
1PQE8	LightGate Sync COCI/DS1	0
1PQE9	LightGate OC-12/48 COCI/OC-3	0
1PQE9	LightGate Sync COCI/OC-3 CS	0
1PQEA	LGate Sync COCI/28DS1/DS1	0
1PQEA	LightGate OC-3/12/48 COCI/28 DS1/DS1	0
1PQEA	LightGate Sync COCI/28DS1/DS1	0
1PQEB	LightGate OC-3 COCI/OC-3 CS	0
1PQEC	LightGate 1-4 COCI / DS3	0
1PQEC	LightGate Async - COCI / DS3	0
1PQEC	LightGate OC-3/12/48 COCI/DS3	0
1PQEC	LightGate Sync COCI/DS3	0
1PQED	LightGate OC-12 4 Fiber COCI	0
1PQEE	LightGate OC-12 2 Fiber COCI	0
1PQEF	LightGate OC-48 4 Fiber COCI	0
1PQEO	LightGate OC-48 2 Fiber COCI	0
1PQEP	LightGate 1-4 CUCI / DS3	L
1PQEP	LightGate Async CUCI / DS3	L
1PQF1	LightGate OC-3 CUCI/DS1	L
1PQF2	LightGate OC-48 2 Fiber CUCI	L
1PQF3	LightGate OC-3 CUCI/DS3	L
1PQF4	LightGate OC-3/12/48 CUCI/STS-1	L
1PQF4	LightGate Sync CUCI/STS-1	L
1PQF5	LightGate OC-12/48 CUCI/OC-3	L
1PQF5	LightGate Sync CUCI/OC-3 (2 Fiber)	L
1PQF6	LightGate Sync CUCI/OC-3 (4 Fiber)	L
1PQF7	LightGate OC-12 4 Fiber CUCI	L
1PQF8	LightGate OC-12 2 Fiber CUCI	L
1PQF0	LightGate OC-48 4 Fiber CUCI	L
1RL2W	VG Improved Return Loss 2-Wire	0
ADF11	BellSouth ADSL Service 256Kbps x 1.5Mbps Asymmetric VC	0

(C)

*L (Local Channel), I (Interoffice Channel), 0 (Other)

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29G57, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: MAY 14, 2001

TARIFF F.C.C. NO. 1
 1ST REVISED PAGE 23-602
 CANCELS ORIGINAL PAGE 23-602

EFFECTIVE: MAY 29, 2001

ACCESS SERVICE

23 - Metropolitan Statistical Area Access Services (Cont'd)

23.6 Pricing Flexibility USOC Indicators (Cont'd)

USOC	DESCRIPTION	INDICATOR*	
ADF21	BellSouth ADSL Service, 384Kbps Symmetric VC	0	(D)
ADF31	BellSouth ADSL Service, 1.5-1.8 Mbps Asymmetric VC	0	(D)
ADF41	BellSouth ADSL Service, 2.0-4.0 Mbps Asymmetric VC	0	(D)
ADF51	BellSouth ADSL Service, 4.0-6.0 Mbps Asymmetric VC	0	(T)
ADF61	BellSouth ADSL Service, 512 x 768 Kbps Asymmetric VC	0	(T)
ADF71	BellSouth ADSL Service, 192Kbps Symmetric VC	0	(D)
ADR	BellSouth ADSL Service, VC Redirection Charge-Ea VC	0	(D)
APF19	FlexServ Dial Acc 1.2-19.2Kbps	L	(D)
APF1A	FlexServ Analog 4W 1.2Kbps Port	L	(D)
APF2D	FlexServ Digital 4W 1.2Kbp Port	L	(D)
APF4D	FlexServ Digital 4W 4.8Kbps Port	L	(D)
APF9A	FlexServ Analog 4W 9.6Kbps Port	L	(D)
APF9D	FlexServ Digital 4W 9.6Kbps Port	L	(D)
AVBSM	ISMDI - SS7 Point Code for MWI	0	(D)
BCND2	VG/WAL 2 Wire Data Bridge - Per Port	0	(D)
BCND4	VG/WAL 4 Wire Data Bridge - Per Port	0	(D)
BCNDA	DDAS Bridging - Per Port	0	(D)
BCNF2	VG/WAL 2 Wire Tele Bridge	0	(D)
BCNF4	VG/WAL 4 Wire Tele Bridge	0	(D)
BCNM3	Metallic 3 Prem. Bridge - Per Port	0	(D)
BCNMS	Metallic Series Bridge - Per Port	0	(D)
BCNPT	AP Dist Amp Bridge	0	(D)
BCNT2	Telegraph 2 Wire Bridge	0	(D)
BCNT4	Telegraph 4 Wire Bridge	0	(D)
BCNV2	VG/WAL 2 Wire Bridge	0	(D)
BCNV4	VG/WAL 4 Wire Bridge	0	(D)
BM30X	SMARTGate On-Net DS3	L	(D)
BM3XX	SMARTGate Off-Net DS3	L	(D)
BMAOX	SMARTGate On-Net DS1	L	(D)
BMAXX	SMARTGate Off-Net DS1	L	(D)
CCAPD	P. C. Est/Chg - per Dest. Code	0	(D)
CCAPO	P. C. Est/Chg - per Orig Code	0	(D)

*L (Local Channel), I (Interoffice Channel), 0 (Other)



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-484
BELLSOUTH TELECOMMUNICATIONS, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on May 14, 2001.

See attached parties of record.

Stephanie D. Bell

Secretary of the Commission

SB/sa
Enclosure

Honorable Jonathon N. Amlung
Attorney for Iglou Internet Services
1000 Republic Building
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Louisville, KY. 40202 2347

Dr. Bob Davis
113 Pebble Beach
Georgetown, KY. 40324

IgLou Internet Services, Inc.
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Honorable Dorothy J. Chambers
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Tanya Monsanto
Legislative Research Commission
Capital Annex
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Creighton E. Mershon
BellSouth Telecommunications, Inc.
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Louisville, KY. 40203

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY. 40220

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
VS.	)	CASE NO.
	)	99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	

O R D E R

On April 30, 2001, BellSouth Telecommunications, Inc. ("BellSouth") filed a motion styled "Reconsideration of April 9, 2001 Order," to which IgLou Internet Services, Inc. has responded. BellSouth filed its motion pursuant to KRS 278.400, which provides for rehearing in which a "party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing." BellSouth's motion contains no additional evidence. Rather, it purports to be a "proposed resolution" and BellSouth asserts that it "withdraws its original proposal and offers this alternative proposal."¹ Accordingly, the Commission does not consider BellSouth's motion pursuant to KRS 278.400. Instead, recognizing the unusual circumstances of this case and the ever-changing regulatory and technological parameters of the issues in this docket, the Commission considers the motion and alternative proposal pursuant to its general grant of authority under KRS Chapter 278 to ensure fair, just, and reasonable utility services and rates. Though the procedural posture of this case is unusual, we believe that, under the circumstances, the public interest would not be served by our

¹ BellSouth Motion at 2.

refusal to consider an additional BellSouth proposal which, at least in part, offers an excellent solution to concerns discussed in this docket regarding provision of digital subscriber line ("DSL") service to small Internet service providers ("ISPs").

BellSouth proposes to provide DSL service at a single rate with no volume commitment above the 51 line minimum; to remove shortfall charges associated with channels above the 51 line minimum; and to increase non-recurring charges. In addition, BellSouth does not propose to comply with our previous order requiring it to "delete the termination liability charge if the end-use customer continues to receive service over BellSouth's DSL facilities."²

IgLou objects to BellSouth's motion. In its May 9, 2001 response, IgLou asserts that BellSouth's proposal contains a substantial rate increase with no demonstration of any associated cost increase. IgLou also contends that the Commission should continue to take every step possible to ensure that Kentuckians are provided competitive choice for access to broadband services.

According to BellSouth, its alternative proposal resolves the parity issue addressed by this Commission in its November 30, 2000 Order. In that Order, we required BellSouth to reduce its DSL tiers applicable to Kentucky. Requesting rehearing of that Order, BellSouth proposed to revise its Federal Communications Commission ("FCC") tariff to reduce the monthly rate from \$37 to \$32 for the minimum volume, low data-rate range. However, upon this Commission's acceptance of this alternative proposal, BellSouth did not file that FCC tariff. BellSouth has now submitted this new alternative proposal. The Commission finds that the elimination of the tier

² April 9, 2001 Order at 3.

structure to BellSouth's tariff eliminates the Commission's concern that "smaller ISPs simply cannot purchase the services their customer's request in the volume necessary to receive the lowest tier price."³ Accordingly, this portion of BellSouth's alternative proposal should be accepted. The elimination of the tier structure will place IgLou, its larger competitors, and BellSouth's own ISP operations on this same footing regarding the monthly recurring charges.

Other portions of BellSouth's motion are not, however, acceptable. For example, BellSouth's proposal to charge non-recurring fees of \$110 rather than \$50 lacks cost justification. BellSouth must maintain the non-recurring charge of \$50, unless and until it can provide cost justification for the proposed increase. If BellSouth provides information to this Commission demonstrating any increased costs for this charge, the Commission will revisit this issue.

Moreover, the Commission affirms its April 9, 2001 decision requiring BellSouth to delete its termination liability charge if an end-use customer who switches from one ISP to another continues to receive service over BellSouth's DSL facilities. BellSouth may, however, submit cost information demonstrating that this termination liability charge is cost-based. If such information is submitted, the Commission will revisit this issue.

As a final note, the Commission is well aware that this proceeding has been a lengthy one. In it, we have been presented with complex issues of first impression, and have been, accordingly, reluctant to refuse to accept relevant ideas or information. However, eventually there must be a finality to any Commission case. Accordingly, the

³ November 30, 2000 Order at 9.

Commission does not contemplate the consideration of any additional motions in this proceeding.

CONCLUSION

The Commission, having considered BellSouth's alternative proposal and IgLou's response thereto, and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth's proposed FCC tariff revision for DSL service eliminating the tier structure and the volume discounts are hereby approved as a substitute for the terms previously ordered by this Commission, as modified herein.

2. The April 9, 2001 Order in this matter is modified to the extent that its provisions conflict with this Order.

3. BellSouth shall file with the FCC, no later than 15 days from the date of this Order, its proposed tariff revisions with the modifications described herein to be applicable to Kentucky, and shall file a copy of the same with this Commission.

4. BellSouth shall file with this Commission a copy of all modifications to its DSL tariff, along with cost justification for such modifications, simultaneous with its filing with the FCC.

5. One year from the date of this Order, BellSouth shall file a report stating the number of DSL lines in Kentucky sold to each ISP, and explaining in detail whether, in its opinion, the tariff approved herein continues to promote competition in Kentucky that benefits consumers.

6. Within 6 months from the date of this Order, there shall be an informal conference in the Commission's offices to discuss the status of DSL competition in Kentucky.

Done at Frankfort, Kentucky, this 14th day of May, 2001.

By the Commission

Chairman Martin J. Huelsmann took no part in the decision of this case.

ATTEST:



Executive Director

Deputy

LOU-TELECOM.NET

Mr Tom Dorman
Executive Director
Ky Public Service Commission
Case #99434

99-484
RECEIVED

MAY 14 2001 10 May, 2001

PUBLIC SERVICE
COMMISSION

RE: Bellouth DSL Tarif

Mr Dorman,

As the founder and owner of Louisville Telecom, LLC, a small ISP serving both Louisville, Ky and the surrounding rural communities of Bagdad, Bardstown, Battletown, Bedford, Bloomfield, Brandenburg, Campbellsburg, Carrollton, Chaplin, Cropper, Eminence, Finchville, Fort Knox, Ghent, Irvington, Lebanon Jct., Milton, Mount Eden, New Haven, North Garrett, Payneville, Port Royal, Radcliff, Rose Terrace, Shelbyville, Sanders, Simpsonville, Sulfur, Taylorsville, Vine Grove, and Waddy, I am very anxious to offer DSL - Broadband Internet Services.

I consider Louisville Telecom to be a vital part of Kentucky's Internet Industry. Louisville Telecom, like most all other Independent Service Providers in Kentucky, provides a unique level of service and support to those Rural Kentuckians that have always felt that they have been left out.

As of this letter, Louisville Telecom has not been able to offer DSL/Broadband to the Kentuckians we serve. The reason for this is quite simple. To date, the cost of wholesale DSL/Broadband from Bellsouth, along with the huge commitments to circuits deployed over time, has simply made it impossible for Louisville Telecom to be even remotely competitive. I am trying to compete with a large monopoly that has essentially been given their taxpayer financed infrastructure and guaranteed rate structures. They continually use their monopoly status and size to keep any reasonable competition at bay by giving away goods and services, free modems and installation, that Independent Service Providers simply cannot do and remain viable providers to the communities we serve.

It appears to me that Bellsouth simply goes through the motions with the Public Service Commission, leaves the table, then returns to "business as usual."

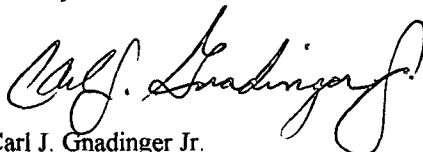
As to the business before the commission, this rate increase proposed by Bellsouth would have a very negative impact on Louisville Telecom's ability to offer DSL/Broadband. However, with the following rates, we would consider ourselves able to supply DSL/Broadband to Kentuckians desperately wanting it.

Single Circuit Rate - \$29 recurring
Installs - \$50
Termination Fee - \$0

I am aware of no reason for the Bellsouth wholesale rates to increase. I feel that it would be a grave mistake for the Public Service Commission to consider the rate increase as proposed. The proposed wholesale rate increase, including the installation/termination fees will actually impede the deployment of DSL/Broadband throughout the state of Kentucky.

In closing, I am asking only that Louisville Telecom and all the other Independent Service Providers in Kentucky be allowed the reasonable chance of providing DSL/Broadband and thereby further enhancing the development of commerce within the State of Kentucky. As we all should know, competition is what brings new ideas to fruition in our society. That competitive drive is what keeps us all at the forefront of humanity. We only ask for this reasonable chance to compete.

Thank you.


Carl J. Gnadinger Jr.
Louisville Telecom, LLC

<http://www.lou-telecom.net>

JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

J.D./M.B.A.
LICENSED IN KENTUCKY AND OHIO

TELEPHONE: (502) 587-6838
FACSIMILE: (502) 584-0439
E-MAIL: jonathon@amlung.com

May 11, 2001

**VIA FACSIMILE TO (502) 582-1573
AND REGULAR U.S. MAIL**

Ms. Dorothy J. Chambers
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
Louisville, Kentucky 40203

RECEIVED

MAY 14 2001

PUBLIC SERVICE
COMMISSION

**RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.,
KY P.S.C. Case No. 1999-484.**

Dear Dorothy:

Thank you for your letter dated May 10, 2001, in which you expressed concern over IgLou's most recent filing in the above-referenced case. The information to which you refer was made publicly available by Fred Gerwing at least twice during an informal conference at the Public Service Commission. This conference was open to the public and was attended by people who were not parties to the confidentiality agreement you reference. As such, BellSouth apparently waived any interest it had in keeping this information confidential.

Apparently, you believe the information contained in IgLou's brief was gleaned from the package of information that was sent by BellSouth in response to the Commission's request at the informal conference. I do not recall this information being contained in that filing and, to be completely candid, we could not garner any useful or understandable information from that filing. In any event, it appears that most or all of that information is publicly available from the F.C.C.

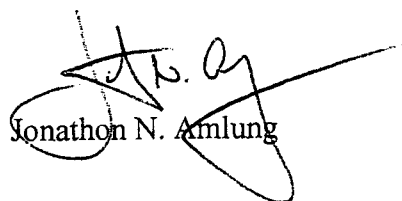
I urge you to refrain from throwing around accusations of "violating" protective agreements and confidentiality provisions of the Commission without being entirely sure of the basis of your allegations. Again, this information was made publicly available by BellSouth itself through its agent, Fred Gerwing. I have not violated any agreements or confidentiality provisions, nor has IgLou.

Regardless, I have no interest in stirring up a heated debate over this small issue. Therefore, I will submit an edited copy of IgLou's most recent filing to eliminate the information in question for the portion of the file that is available for public viewing. In addition, I have contacted the third-parties in this case, and they have agreed to return their copies directly to me unopened.

Ms. Dorothy J. Chambers
May 11, 2001
Page 2

I trust this represents a satisfactory resolution of this matter for you. Please do not hesitate to contact me should you have any questions or need further information.

Cordially yours,



Jonathon N. Amlung

cc: Thomas M. Dorman, Kentucky Public Service Commission
Parties of Record

JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

RECEIVED

MAY 14 2001

PUBLIC SERVICE
COMMISSION

J.D./M.B.A.
LICENSED IN KENTUCKY AND OHIO

TELEPHONE: (502) 587-6888
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May 11, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

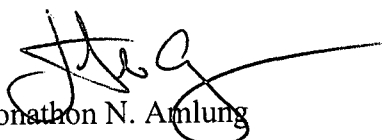
RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.
Case No. 99-484

Dear Mr. Dorman:

Please find enclosed for filing an edited copy of IgLou's Response to BellSouth's Second Motion for Reconsideration for filing in the above-referenced case. According to BellSouth, the original document contained proprietary and confidential information. Rather than argue this point, I have prepared this edited document for public inspection. An original and ten (10) unedited copies will follow in a separate envelope.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,


Jonathon N. Amlung

Enclosures

cc: Parties of record

RECEIVED
MAY 14 2001
PUBLIC SERVICE
COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION

BELLSOUTH TELECOMMUNICATIONS, INC.,)
Petitioner,)
v.) No. 1999-484
IGLOU INTERNET SERVICES, INC.,)
Respondent.)

IGLOU INTERNET SERVICES, INC.'S RESPONSE TO
BELLSOUTH'S SECOND MOTION FOR RECONSIDERATION

* * * * *

Comes now Respondent, IgLou Internet Services, Inc., and hereby objects to BellSouth's Second Motion for Reconsideration.

IGLOU'S DEMAND FOR EVIDENTIARY HEARING

BellSouth filed its newest Motion for Reconsideration based upon the rehearing statute, K.R.S. 278.400. In accordance with due process considerations and K.R.S. 278.400, IgLou is entitled to a formal evidentiary hearing in this matter should reconsideration be granted. IgLou objects to BellSouth's newest motion. IgLou specifically hereby demands such a hearing if the Commission does not overrule BellSouth's second Motion for Reconsideration.

BELLSOUTH'S PROPOSAL REPRESENTS A SUBSTANTIAL RATE
INCREASE WITHOUT ANY ASSOCIATED COST INCREASE

In its most recent proposal, BellSouth would raise installation fees for DSL circuits from \$50 per install to \$110 per install, an increase of 120%. BellSouth would also raise its monthly rates to \$33.00, a 14% increase over the rates that most ISPs in

Kentucky would have paid under the Commission's November 30, 2000, Order. Finally, BellSouth completely ignores the Commission's prior Order mandating the elimination of termination liability charges for customers switching ISPs without leaving BellSouth. This newest proposal, in what promises to be a long line of proposals by BellSouth, leaves Kentucky's ISPs in a far worse situation when compared to the Commission's prior Orders (which have been completely ignored) and BellSouth's own prior proposal.

BELLSOUTH'S COSTS HAVE NOT CHANGED

██████████
██████████ Under the Commission's original Order of November 30, 2000, BellSouth would reap a profit of over ██████████.¹ Apparently, that was not enough. BellSouth now seeks a profit margin of over ██████████%, not including the 120% increase in its installation prices. BellSouth's costs **have not changed**, yet the prices keep going up. BellSouth is simply seeking increased revenues from every angle at the expense of Kentucky consumers. From this rate hike, BellSouth stands to make nearly an additional quarter million dollars from IgLou and its customers alone in a single year (based upon IgLou's prior commitment to this Commission of 2,000 lines).

**KENTUCKIANS DO NOT NEED A RATE HIKE TO
STIMULATE BROADBAND DEPLOYMENT**

This Commission has correctly recognized the vital importance of broadband access to the economic future of the Commonwealth, and has expressed on numerous occasions in this case and others that it seeks rapid broadband deployment throughout Kentucky. Providing access to broadband with a competitive choice will provide

¹ IgLou affirmatively represented to this Commission that it would commit to the 2,000 line threshold in the November 30, 2000, Order, at the \$29.00 monthly rate.

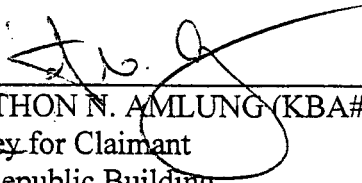
Kentuckians with the tools necessary to bring about economic parity with surrounding states and other parts of the country. This goal has been in keeping with that of the Complainants throughout this case.

It should be noted that BellSouth claims that its most recent proposal "more completely satisfies the Commission's concerns as well as the issues raised by the complainant in this case." However, BellSouth's newest proposal does nothing to achieve the goals of the Commission nor alleviate the concerns of IgLou. IgLou has never intentionally requested a 120% increase in its nonrecurring charges as well as a 14% increase in the monthly DSL rates, and IgLou never will make this request. It is equally unlikely that this Commission would ever recommend such a rate hike to meet its goals of ubiquitous broadband deployment.

CONCLUSION

This Commission should not be misled by BellSouth's latest proposal as being anything other than a rate hike in disguise. As this case drags on, it becomes more apparent that this Commission must take affirmative steps to ensure its goals of rapid broadband deployment are met and closure to this long-standing case can be achieved. BellSouth has continually denied this Commission's power to require the filing of an intrastate DSL tariff. IgLou respectfully requests that this Commission require such an intrastate tariff.

Respectfully submitted,



JONATHON N. AMLUNG (KBA#86892)
Attorney for Claimant
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202
Telephone (502) 587-6838
Facsimile (502) 584-0439

CERTIFICATION

I hereby certify that a true and correct copy of the foregoing was mailed, postage pre-paid, to the parties of record this the 9th day of May, 2001.



JONATHON N. AMLUNG (KBA#86892)

Service List:

Hon. Dorothy J. Chambers
Counsel for BellSouth
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Hon. Creighton E. Mershon
BellSouth Telecommunications, Inc.
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Hon. Richard M. Breen
2950 Breckenridge Lane, Suite 3
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Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 10, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RECEIVED

MAY 11 2001

PUBLIC SERVICE
COMMISSION

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Per the attached letter to Mr. Jonathon Amlung regarding the response IgLou filed in the above-captioned case on May 9, 2001, it appears that the response contains proprietary cost information to which the Commission granted confidential treatment. It appears that this response has been filed without seeking proprietary treatment of this cost information. BellSouth respectfully requests that IgLou's May 9, 2001, response not be put in the public record until it can be determined if there is any confidential information which needs to be redacted.

Very truly yours,

Dorothy J. Chambers

Attachment

cc: Parties of Record

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 10, 2001

Jonathon N. Amlung, Esq.
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, KY 40202-2347

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

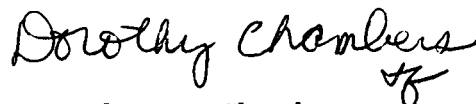
Dear Mr. Amlung:

The response filed by IgLou in this case on May 9, 2001, contains proprietary cost information which BellSouth filed with the Commission under protective cover along with a Petition for Confidentiality. On April 3, 2001, the Commission granted BellSouth's request for protection of that information.

This proprietary information was provided to IgLou and its counsel pursuant to a proprietary agreement. Your inclusion of the proprietary cost information in the response violates the protective agreement you and your client have executed and also is in violation of the confidentiality provisions adopted by the Commission.

BellSouth hereby requests that you not distribute the response any further. In the event unredacted copies already have been distributed, BellSouth requests that you retrieve all copies of the response.

Very truly yours,



Dorothy J. Chambers

cc: Thomas M. Dorman, Kentucky Public Service Commission
Parties of Record

343648



BellSouth Telecommunications, Inc.

601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 10, 2001

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Richard M. Breen, Esq.
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

Re: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Ms. Monsanto and Mr. Breen:

It appears that the response IgLou filed in the above-captioned case on May 9, 2001, contains proprietary information to which the Commission granted confidential treatment. If you have been provided an unredacted copy of this response, BellSouth requests that you return that information unopened to the undersigned or to Mr. Jonathon Amlung, counsel for IgLou.

Very truly yours,

Dorothy Chambers

Dorothy J. Chambers *h*

cc: Mr. Thomas M. Dorman, Kentucky Public Service Commission
Jonathon N. Amlung, Esq., Counsel for IgLou

JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

D./M.B.A.
LICENSED IN KENTUCKY AND OHIO

TELEPHONE: (502) 587-6838
FACSIMILE: (502) 584-0439
E-MAIL: jonathon@amlung.com

May 11, 2001

VIA FACSIMILE TO (502) 582-1573
AND REGULAR U.S. MAIL

RECEIVED

MAY 11 2001

PUBLIC SERVICE
COMMISSION

Ms. Dorothy J. Chambers
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
Louisville, Kentucky 40203

RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.,
KY P.S.C. Case No. 1999-484.

Dear Dorothy:

Thank you for your letter dated May 10, 2001, in which you expressed concern over IgLou's most recent filing in the above-referenced case. The information to which you refer was made publicly available by Fred Gerwing at least twice during an informal conference at the Public Service Commission. This conference was open to the public and was attended by people who were not parties to the confidentiality agreement you reference. As such, BellSouth apparently waived any interest it had in keeping this information confidential.

Apparently, you believe the information contained in IgLou's brief was gleaned from the package of information that was sent by BellSouth in response to the Commission's request at the informal conference. I do not recall this information being contained in that filing and, to be completely candid, we could not garner any useful or understandable information from that filing. In any event, it appears that most or all of that information is publicly available from the F.C.C.

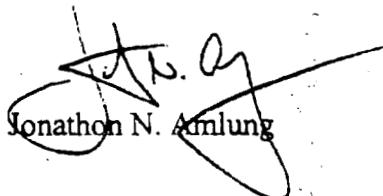
I urge you to refrain from throwing around accusations of "violating" protective agreements and confidentiality provisions of the Commission without being entirely sure of the basis of your allegations. Again, this information was made publicly available by BellSouth itself through its agent, Fred Gerwing. I have not violated any agreements or confidentiality provisions, nor has IgLou.

Regardless, I have no interest in stirring up a heated debate over this small issue. Therefore, I will submit an edited copy of IgLou's most recent filing to eliminate the information in question for the portion of the file that is available for public viewing. In addition, I have contacted the third-parties in this case, and they have agreed to return their copies directly to me unopened.

J. Chambers
001

I trust this represents a satisfactory resolution of this matter for you. Please do not hesitate to contact me should you have any questions or need further information.

Cordially yours,



Jonathon N. Amlung

cc: Thomas M. Dorman, Kentucky Public Service Commission
Parties of Record

 **BELLSOUTH**

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

RECEIVED

MAY 10 2001

502 582 1476
Fax 502 582 1673

**PUBLIC SERVICE
COMMISSION**

May 10, 2001

RECEIVED

MAY 10 2001

GENERAL COUNSEL

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Per the attached letter to Mr. Jonathon Amlung regarding the response IgLou filed in the above-captioned case on May 9, 2001, it appears that the response contains proprietary cost information to which the Commission granted confidential treatment. It appears that this response has been filed without seeking proprietary treatment of this cost information. BellSouth respectfully requests that IgLou's May 9, 2001, response not be put in the public record until it can be determined if there is any confidential information which needs to be redacted.

Very truly yours,



Dorothy J. Chambers

Attachment

cc: Parties of Record

343679



BellSouth Telecommunications, Inc.
801 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 10, 2001

Jonathon N. Amlung, Esq.
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, KY 40202-2347

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Amlung:

The response filed by IgLou in this case on May 9, 2001, contains proprietary cost information which BellSouth filed with the Commission under protective cover along with a Petition for Confidentiality. On April 3, 2001, the Commission granted BellSouth's request for protection of that information.

This proprietary information was provided to IgLou and its counsel pursuant to a proprietary agreement. Your inclusion of the proprietary cost information in the response violates the protective agreement you and your client have executed and also is in violation of the confidentiality provisions adopted by the Commission.

BellSouth hereby requests that you not distribute the response any further. In the event unredacted copies already have been distributed, BellSouth requests that you retrieve all copies of the response.

Very truly yours,

A handwritten signature in cursive script that reads "Dorothy Chambers".

Dorothy J. Chambers

cc: Thomas M. Dorman, Kentucky Public Service Commission
Parties of Record

343648



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1476
Fax 502 582 1573

May 10, 2001

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Richard M. Breen, Esq.
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

Re: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Ms. Monsanto and Mr. Breen:

It appears that the response IgLou filed in the above-captioned case on May 9, 2001, contains proprietary information to which the Commission granted confidential treatment. If you have been provided an unredacted copy of this response, BellSouth requests that you return that information unopened to the undersigned or to Mr. Jonathon Amlung, counsel for IgLou.

Very truly yours,

Dorothy J. Chambers

cc: Mr. Thomas M. Dorman, Kentucky Public Service Commission
Jonathon N. Amlung, Esq., Counsel for IgLou



Paul E. Patton, Governor

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Martin J. Huelsmann
Chairman

Edward J. Holmes
Vice Chairman

Gary W. Gillis
Commissioner

May 9, 2001

Dorothy J. Chambers, Esq.
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, Kentucky 40232

RE: Petition for Confidential Protection
Case No. 99-484

Dear Ms. Chambers:

The Commission has received your petition filed April 30, 2001, to protect as confidential the pricing and structure of the 256 Kbps x 1.5 Mbps and 512 Kbps x 768 Kbps rate elements in BellSouth's illustrative FCC tariff. A review of the information has determined that it is entitled to the protection requested on the grounds relied upon in the petition, and it will be withheld from public inspection.

If the information becomes publicly available or no longer warrants confidential treatment, you are required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

Sincerely,

Thomas M. Dorman
Executive Director

Mailed by LH to LC





BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 3 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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MAY 03 2001

PUBLIC SERVICE
COMMISSION

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Reference is made to BellSouth's April 30 Motion for Reconsideration in this case and the Illustrative Tariff attached thereto.

BellSouth sought confidential treatment of a portion of the illustrative tariff until a public announcement was made. This information now has been made public so there is no longer a need to protect it as proprietary. Accordingly, BellSouth advises the Commission that it hereby withdraws its request to treat the highlighted information in the Illustrative Tariff as confidential.

Very truly yours,

Dorothy J. Chambers

Enclosures

cc: Parties of Record

314452

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582 1475
Fax 502 582 1573

May 3 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RECEIVED

MAY 03 2001

**PUBLIC SERVICE
COMMISSION**

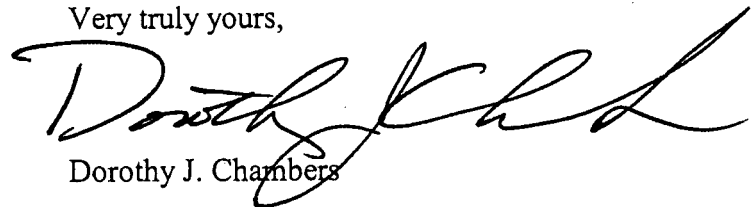
RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Reference is made to BellSouth's April 30 Motion for Reconsideration in this case and the Illustrative Tariff attached thereto.

BellSouth sought confidential treatment of a portion of the illustrative tariff until a public announcement was made. This information now has been made public so there is no longer a need to protect it as proprietary. Accordingly, BellSouth advises the Commission that it hereby withdraws its request to treat the highlighted information in the Illustrative Tariff as confidential.

Very truly yours,



Dorothy J. Chambers

Enclosures

cc: Parties of Record

314452



BellSouth Telecommunications, Inc.
P.O. Box 32410
Louisville, KY 40232

or
BellSouth Telecommunications, Inc.
601 West Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582-1475
Fax 502 582-1573

April 30, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RECEIVED
APR 30 2001
PUBLIC SERVICE
COMMISSION

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

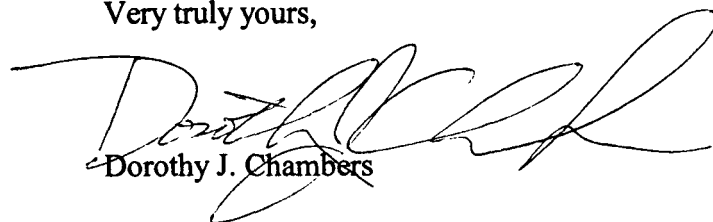
Dear Mr. Dorman:

Enclosed for filing in this case are copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration of April 9, 2001, Order.

Portions of the Attachment to the Motion for Reconsideration contain confidential, commercial, or proprietary information. Pursuant to 807 KAR 5:001, Section 7, enclosed is BellSouth's Petition for Confidentiality.

One copy of the proprietary information is provided to the Commission. A copy of the proprietary information is provided to IgLou and its counsel pursuant to the previously executed Protective Agreement in this case. Requisite edited copies are provided for the public record and other parties of record.

Very truly yours,



Dorothy J. Chambers

Enclosures

cc: Parties of Record

292119

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
COMPLAINANT)	
)	
V.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

RECEIVED
APR 30 2001
PUBLIC SERVICE
COMMISSION

CONFIDENTIALITY PETITION
PURSUANT TO 807 KAR 5:001 SECTION 7

Petitioner, BellSouth Telecommunications, Inc., ("BellSouth"), hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to KRS 61.878 and 807 KAR 5:001, §7, to classify as confidential the following described information:

The information highlighted with transparent ink in the illustrative tariff.

The information for which BellSouth seeks confidentiality relates to pricing and structure of the 256 Kbps x 1.5 Mbps and 512 Kbps x 768 Kbps rate elements in BellSouth's illustrative FCC tariff.

The Kentucky Open Records Act exempts certain commercial information from the public disclosure requirements of the Act. KRS 61.878 (1)(c)1. To qualify for this commercial information exemption and, therefore, keep the information confidential, a

party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality if openly disclosed. KRS 61.878 (1)(c)1; 807 KAR 5:001, §7. The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and a likelihood of competitive injury if the information is disclosed.

In the present case, if the proposed pricing information BellSouth seeks to protect were disclosed, it would constitute an inappropriate disclosure before proper announcements are able to be accomplished. If the Commission finds this proposal acceptable, BellSouth anticipates making a prompt public announcement at which time BellSouth will withdraw its request for confidential treatment. BellSouth's competitors for DSL services include competitive local exchange carriers and data competitive local exchange carriers such as COVAD.

BellSouth would suffer competitive injury if its illustrative tariff were disclosed before public announcement of the tariff. Disclosure of this information would give BellSouth's competitors an unfair business advantage over BellSouth in that they have advanced knowledge of BellSouth's pricing direction and rate structure. Because of this, BellSouth's illustrative tariff should be protected from disclosure until it is publicly announced.

BellSouth recognizes that this information may be helpful to the Commission. However, to require that this information be divulged to BellSouth's competitors creates substantial unfair disadvantage to BellSouth. In addition, the Commission should accord confidential treatment to this information for the following reasons:

- (1) The information as to which BellSouth is requesting confidential treatment is not known outside of BellSouth;
- (2) The information is not disseminated within BellSouth and is known only by those of BellSouth's employees who have a legitimate business need to know and act upon the information;
- (3) BellSouth seeks to preserve the confidentiality of this information through all appropriate means, including the maintenance of appropriate security at its offices;
- (4) The disclosure of this information would cause competitive injury to BellSouth in that it would provide BellSouth's competitors with sensitive financial data with respect to certain of BellSouth's services. The disclosure of this information would be an

inappropriate and premature disclosure of proposed pricing in an FCC tariff before a public announcement; and

(5) By granting BellSouth's petition, there would be no damage to any public interest in disclosure. In fact, the public would be best served by non-disclosure because competition would thereby be promoted.

For these reasons, the Commission should grant BellSouth's request for confidential treatment of the information highlighted with transparent ink in the illustrative tariff.

Respectfully submitted,



Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
(502) 582-1475

J. Phillip Carver
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30375
Telephone No. (404) 335-0710

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

286142

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 30 2001

PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)	
)	
Complainant)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Defendant)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR RECONSIDERATION OF APRIL 9, 2001, ORDER

BellSouth Telecommunications, Inc., ("BellSouth"), by counsel, hereby respectfully requests reconsideration of the Commission's Order issued April 9, 2001.

BellSouth is requesting reconsideration of the April 9, 2001, Order because of the rapid changes that continue to occur in the DSL marketplace. Further, the proposal presented herein more adequately addresses all of the Commission's concerns identified in this case and achieves the parity that the Complainant has insisted throughout this proceeding was its fundamental concern. BellSouth also believes that this proposed resolution, as was the case with BellSouth's original proposed

resolution, has the added advantage of mooted the significant jurisdictional issue that otherwise would need to be addressed.

The Commission's April 9, 2001, Order did not fully accept BellSouth's proposed resolution. Accordingly, BellSouth withdraws its original proposal and offers this alternative proposal.

BellSouth offers in this proposed resolution to file a new interstate DSL tariff at the FCC that eliminates volume discounts and creates a single price applicable to all entities ordering DSL throughout BellSouth's region. See attached illustrative tariff. This tariff proposes:

- 1) Availability of 256Kbps x 1.5Mbps and 512Kbps x 768Kbps Virtual Channels at a single rate, per VC associated with each speed (no volume commitment above the 51 minimum).
- 2) Removal of Shortfall Charges associated with virtual channels above the 51 minimum commitment level.
- 3) Increases the 256Kbps x 1.5Mbps nonrecurring charge
- 4) Revision of period to reach minimum 51 virtual channels.
- 5) Clarification of treatment for customers with fewer than the 51 virtual channel minimum.

Since this tariff is an illustrative, incidental changes could occur before the tariff filing package is actually filed with the FCC.

This proposal has the advantage of addressing the parity issue identified by this Commission and resolving the alleged pricing disparity complained of by IgLou. In addition, this proposal simplifies BellSouth's interstate tariff at the FCC for wholesale DSL.

This Commission found that the reductions of BellSouth's first proposal adequately met the requirements for reducing shortfall penalties and were sufficient to allow BellSouth's competitors to function in the DSL market. As this Commission noted, although BellSouth's first proposed resolution did not specifically modify the terms relating to the penalty provisions, since BellSouth's shortfall penalties were largely tied to prices, BellSouth's original proposal had the effect of proportionately reducing the penalty provisions by 3/8ths of the current penalties. BellSouth's current proposal also has the benefit of eliminating the shortfall charge for volumes by establishing a single pricing structure.

This Commission's November 2000 Order required BellSouth to file an intrastate DSL tariff that reduced the DSL tiers applicable to Kentucky to reflect 5 percent of the FCC's tariff volumes. However, the Commission in its April 9, 2001, Order stated its willingness to approve a portion of BellSouth's first proposed resolution to file a revised interstate tariff with the FCC. BellSouth's first proposal included substantially

collapsed DSL wholesale tariff prices.¹ This Commission recognized that a comparison of BellSouth's first proposal and the requirements of this Commission's November 2000 Order demonstrated BellSouth's first proposal would create substantial benefits for IgLou and other similarly situated ISPs over the Commission's November Order.

BellSouth believes that the proposal offered herein is necessary because of the changing DSL landscape and also is a better resolution for all concerned. As this Commission noted in its April 9, 2001, Order, BellSouth's original proposed resolution continued the volume tiered structure but proposed to reduce the prices while retaining a regional count. The single pricing proposal presented herein should be accepted because it addresses the issue of parity amongst all entities obtaining DSL from BellSouth, including BellSouth's provision of DSL to itself.

BellSouth notes that it is not only willing, but anxious to implement a final resolution satisfactory to the Commission and to accomplish it with all due speed. Therefore, BellSouth respectfully requests the comments and determination on this

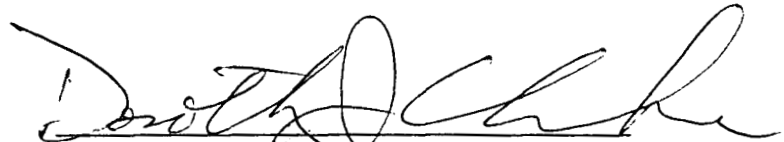
¹ IgLou continued to object to BellSouth's proposed resolution because of, among other issues, the tiered structure would be continued. Thus, IgLou complained that the best price was available only to those who ordered 40,000 DSL lines on a region-wide basis.

final proposed resolution be expedited. If the Commission finds this resolution is acceptable, BellSouth is prepared to file the proposed tariff on an expedited basis and, in any event, no later than May 14, 2001, with the FCC.

BellSouth believes that the alternative it is proposing herein more completely satisfies the Commission's concerns as well as the issues raised by the complainant in this case.

For these reasons, BellSouth respectfully requests that the Commission grant reconsideration and modify its April 9, 2001, Order based on the resolution BellSouth herein proposes.

Respectfully submitted,



Creighton E. Mershon, Sr.
Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

R. Douglas Lackey
J. Phillip Carver
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

262653

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 14, 2001

TARIFF F.C.C. NO. 1
4TH REVISED PAGE 5-9
CANCELS 3RD REVISED PAGE 5-9
EFFECTIVE: MAY 29, 2001
EDITED

ACCESS SERVICE

5 - Ordering Options for BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

5.2 Access Order (Cont'd)

5.2.7 Special Access Service (a.k.a. BellSouth SPA) and BellSouth SWA Transport Service

- (A) For all Special Access (a.k.a. BellSouth SPA) Services other than BellSouth ADSL service, the customer must specify the customer premises or Hubs involved, the channel type (e.g., Video (a.k.a. BellSouth SPA Video), Voice Grade (a.k.a. BellSouth SPA DSO VG), High Capacity (a.k.a. BellSouth High Capacity), etc.), the channel interface, technical specification package and options desired. When ordering Voice Grade (a.k.a. BellSouth SPA DSO VG) local channels and associated voice grade (a.k.a. BellSouth SPA DSO VG) interoffice channels, the customer must specify whether they are to be billed under the Voice Grade (a.k.a. BellSouth SPA DSO VG) Rate Stability Plan. For multipoint services the channel interface at each premises may, at the request of the customer, be different but all such interfaces shall be compatible. When establishing Special Access (a.k.a. BellSouth SPA) Service under the Shared Network Arrangement, the host subscriber must coordinate with each service user the design, testing and maintenance of the service. Additionally, the service user must provide to the BellSouth Telephone Companies the Connecting Facility Arrangement (CFA) and the High Capacity (a.k.a. BellSouth SPA High Capacity) Billing Account Number (HBAN) of the host subscriber.
- (B) For BellSouth SWA Dedicated Transport Services, the customer must specify the Facility Hubs involved, if applicable, the channel type (e.g. BellSouth SWA Voice Grade, BellSouth SWA DS1, etc.), the channel interface and any options desired. When establishing BellSouth SWA Transport Services under the Shared Network Arrangement, the host subscriber must coordinate with each service user the design testing and maintenance of the service. Additionally, the service user must provide to BellSouth Telecommunications, Inc., the Connecting Facility Arrangement (CFA) and the Billing Account Number (BAN) of the host subscriber.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375

TARIFF F.C.C. NO. 1
4TH REVISED PAGE 7-58.13
CANCELS 3RD REVISED PAGE 7-58.13 EDITED

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.2 Service Descriptions (Cont'd)

7.2.17 BellSouth ADSL Service (Cont'd)

(B) BellSouth ADSL service is furnished where suitable facilities are available as determined by the Telephone Company. BellSouth ADSL service Central Office availability will be as listed in the National Exchange Carriers Association (N.E.C.A.) F.C.C. Tariff No. 4.

(C) BellSouth ADSL service is available at peak data rates of from 192 Kbps to 6.0 Mbps downstream and from 192 Kbps to 896 Kbps upstream, in combinations as specified following. (C)

	Downstream		Upstream	
	Minimum	Maximum	Minimum	Maximum
(1)	NA	1.5 Mbps	NA	256 Kbps
(2)	768 Kbps	NA	512 Kbps	NA
(3)	1.5 Mbps	1.8 Mbps	512 Kbps	768 Kbps
(4)	2.0 Mbps	4.0 Mbps	640 Kbps	896 Kbps
(5)	4.0 Mbps	6.0 Mbps	640 Kbps	896 Kbps
(6)	384 Kbps	NA	384 Kbps	NA
(7)	192 Kbps	NA	192 Kbps	NA

Actual data rate achieved may be affected by loop length and other factors. In some cases, the data rate provided by BellSouth may exceed the minimum data rates in (2) through (7) in order that the achieved minimum data rate will equal or exceed the minimum data rate specified. The movement of data in a direction away from the end-user premises, toward its normal Serving Wire Center (SWC), is in the upstream direction. The movement of data in a direction toward the end-user premises from its normal SWC is in the downstream direction.

(D) Multipoint service is not available.

(E) The regulations, rates and charges specified in this tariff for BellSouth ADSL service are in addition to applicable regulations, rates and charges specified in this and/or other Tariffs of the Telephone Company, but do not include any regulations, rates or charges which may be applied or charged to the end-user by the customer.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 14, 2001

TARIFF F.C.C. NO. 1
5TH REVISED PAGE 7-103.23
CANCELS 4TH REVISED PAGE 7-103.23

EDITED

EFFECTIVE: MAY 29, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service

- (A) Monthly rates and nonrecurring charges apply as specified in 7.5.21 following, and reflect the cost of providing BellSouth ADSL service to the customer, but do not reflect any additional incremental cost associated with providing service to customers of a NSP. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(1) and (2) to which the customer can commit is 51. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(3) through (7) to which the customer can commit is 1.
- (B) A monthly recurring rate will be billed to the customer for each end-user premises to which the customer has a VC established using BellSouth ADSL service.

The initial monthly rate for data rate options specified in 7.2.17(C)(3) through (7) will be determined by the commitment period designated by the customer beginning with establishment of the customer account.

In addition to month-to-month (MTM) rates, customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are available for data rate options specified in 7.2.17(C)(3) through (7). When the customer orders service for these data rate options, the customer must designate to the Telephone Company the commitment and optional commitment period desired, e.g. a commitment of 20 months and a 13 to 24 month commitment period.

Rates stabilized under customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are exempt from Telephone Company-initiated increases. However, decreases will flow through to the customer. In the event that a VC is disconnected at customer request prior to completion of a customer-selected commitment period in excess of 12 months, the customer will be required to pay a termination charge as specified in (G) following. The customer-designated commitment and commitment period may not be reduced, however, renewals of the existing VC and data rate, at the same end-user premises are allowed at rates and terms and conditions appropriate for new service. The VC nonrecurring charges are not applicable for the renewed services.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 14, 2001

TARIFF F.C.C. NO. 1
5TH REVISED PAGE 7-103.24
CANCELS 4TH REVISED PAGE 7-103.24

EDITED

EFFECTIVE: MAY 29, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(B) (Cont'd)

Subsequent to the establishment of a customer-selected commitment period longer than 12 months, and prior to completion of that period, the existing commitment and commitment period may be replaced by a currently offered commitment and commitment period having a length equal to or longer than the time remaining in the existing arrangement. The appropriate rates will be as if for new service. Nonrecurring charges will not be re-applied for these renewals, and no credit will be provided for payments made during the formerly selected period. Changes to a commitment or commitment period with a length shorter than the existing arrangement will result in application of termination liability charges as specified in G. following. Recognition of previous service will not be a factor in determination of rates appropriate for a renewed arrangement.

(C)

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 14, 2001

TARIFF F.C.C. NO. 1
1ST REVISED PAGE 7-103.24.0.1 **EDITED**
CANCELS ORIGINAL PAGE 7-103.24.0.1
EFFECTIVE: MAY 29, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375

TARIFF F.C.C. NO. 1
4TH REVISED PAGE 7-156.93
CANCELS 3RD REVISED PAGE 7-156.93

EDITED

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (cont'd)

7.5.21 BellSouth ADSL Service

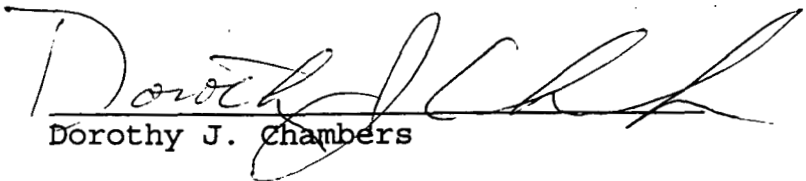
(A) Low Speed, Asymmetric Virtual Circuits

(1) Per Virtual Circuit, Downstream data rate up to 1.5 Mbps,
Upstream data rate up to 256 Kbps

(2) Per Virtual Circuit, Downstream data rate of at least 768 Kbps,
Upstream data rate of at least 512 Kbps

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 30th day of April 2001.


Dorothy J. Chambers

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

J.D./M.B.A.
LICENSED IN KENTUCKY AND OHIO

TELEPHONE: (502) 587-6838
FACSIMILE: (502) 584-0439
E-MAIL: jonathon@amlung.com

April 26, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED

APR 27 2001

PUBLIC SERVICE
COMMISSION

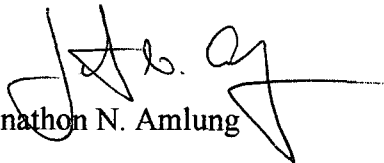
RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.,
Case No. 99-484

Dear Mr. Dorman:

Please find enclosed for filing in the above-referenced case an original and ten (10) copies of IgLou's Response to BellSouth's Motion for Extension of Time.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,


Jonathon N. Amlung

Enclosures

cc: Parties of record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

APR 27 2001

IGLOU INTERNET SERVICES, INC.,

Complainant

v.

BELLSOUTH TELECOMMUNICATIONS, INC.

Defendant

PUBLIC SERVICE
COMMISSION

) **CASE NO. 99-484**
)
)
)
)
)
)

IGLOU'S RESPONSE TO BELLSOUTH'S MOTION
FOR EXTENSION OF TIME

Comes now Complainant, IgLou Internet Services, Inc. ("IgLou"), by and through Counsel, and for its Response to BellSouth's Motion for Extension of Time, states that it objects to BellSouth's motion as an untimely, absurd and blatant attempt to drag out this case.

ENOUGH IS ENOUGH

BellSouth is in clear violation of the Commission's April 9, 2001, Order. As this Commission will recall, it ordered BellSouth to file its revised Federal ADSL tariff by April 24, 2001. Obviously, that did not happen. This was a document that was drafted by BellSouth in February of this year, at the very latest. The modification mandated by the Commission could have, and should have, been implemented by BellSouth in a matter of hours. BellSouth has once again completely ignored a Commission Order just as it ignored much of the November 30, 2000, Order (relating to jurisdictional matters) and just as it ignored much of the January 11, 2001, Order (relating to the filing of ADSL cost information).

In addition, BellSouth has constantly delayed its responsibilities in this action with motions for extensions of time and reconsideration. These delays, as BellSouth is aware, are furthering the destruction of competition to BellSouth in Kentucky. Enough is enough.

IGLOU REQUEST FOR FINE

Pursuant to K.R.S. 278.990, any utility that does not comply with an Order of the Commission *shall* be subject to a fine starting at \$25.00. The deadline in the Order was April 24, 2001, and BellSouth has once again refused to comply. IgLou respectfully requests the Commission to impose the statutorily mandated fine of \$25.00 on BellSouth.

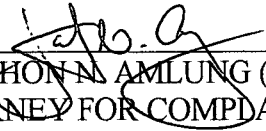
In its Motion, BellSouth claims that the Commission made a “substantial alteration” to its proposal by ordering the elimination of termination fees in the tariff. A \$25.00 fine would be equally “substantial” and is certainly justified in this case.

In reality, there is no question that BellSouth simply does not want to be under an Order by the Commission. BellSouth’s way of getting out from under these Orders is to offer “proposals” of its own to achieve what it claims the Commission wants. At that point, these proposals have the appearance of voluntary changes in BellSouth’s discriminatory business practices. BellSouth will clearly continue this pattern until an Order is enforced against it.

CONCLUSION

IgLou stands ready to sell ADSL to thousands of people throughout Kentucky. Other Kentucky ISPs stand ready also. The only thing stopping this is BellSouth’s refusal to comply with this Commission’s Orders. IgLou respectfully requests this Commission to immediately enforce the April 9, 2001, Order against BellSouth, impose a \$25.00 fine, and deny BellSouth’s Motion for Extension of Time.

Respectfully submitted,



JONATHON N. AMLUNG (KBA#86892)
ATTORNEY FOR COMPLAINANT
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202
Telephone (502) 587-6838
Facsimile (502) 584-0439

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage pre-paid, to the parties of record this the 26th day of April, 2001.



JONATHON N. AMLUNG (KBA#86892)

Service List:

Hon. Dorothy J. Chambers
Counsel for BellSouth
BellSouth Telecommunications, Inc.
601 W. Chestnut St., Room 407
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Louisville, KY 40232

Hon. R. Douglas Lackey
Counsel for BellSouth
BellSouth Telecommunications, Inc.
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Suite 4300 - BellSouth Center
Atlanta, GA 30375

Tanya Monsanto
Legislative Research Commission
Capital Annex
Room 127
Frankfort, KY 40601

Hon. Creighton E. Mershon
BellSouth Telecommunications, Inc.
P.O. Box 32410
Louisville, KY 40203

Hon. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220



BellSouth Telecommunications, Inc.
P.O. Box 32410
Louisville, KY 40232

or
BellSouth Telecommunications, Inc.
601 West Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582-1475
Fax 502 582-1573

April 24, 2001

RECEIVED

APR 24 2001

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the
original and ten (10) copies of BellSouth Telecommunications,
Inc.'s Motion for Extension of Time.

Very truly yours,

Dorothy J. Chambers

Enclosure

cc: Parties of Record

264052

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 24 2001

PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)	
)	
Complainant)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Defendant)	

MOTION FOR EXTENSION OF TIME

BellSouth Telecommunications, Inc., ("BellSouth"), by counsel, hereby respectfully requests an extension of time up to and including April 30, 2001, to respond to the Commission's Order of April 9, 2001.

The Commission's April 9, 2001 Order approved BellSouth's proposal to revise its interstate wholesale digital subscriber line ("DSL") tariff on file with the Federal Communications Commission ("FCC") rather than to file a Kentucky-specific tariff, subject to a modification to the tariff termination penalty provision. Thus, although the Commission's found much of BellSouth's proposal an acceptable resolution of this proceeding, the Commission also made a substantial alteration to that proposal. This proposed alteration, as well as the continuing changes and rapid developments in the DSL marketplace, have required BellSouth to further analyze its proposal with respect

to its FCC DSL tariff and to consider various alternatives that would be responsive to this Commission's concerns. BellSouth respectfully seeks this additional time to respond to the Commission's order and to file a motion for reconsideration with a revised proposal. This request is made so that BellSouth can fully and accurately respond to the Commission's order. Further, a motion for reconsideration filed within the time extension requested herein would be timely under the statutory provisions for rehearing. KRS 278.400.

For these reasons, BellSouth respectfully requests that its motion for extension of time be granted.

Respectfully submitted,



Creighton E. Mershon, Sr.
Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

R. Douglas Lackey
J. Phillip Carver
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 24th day of April, 2001.



Creighton E. Mershon, Sr.

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

BellSouth Telecommunications, Inc.
P.O. Box 32410
Louisville, KY 40232

or
BellSouth Telecommunications, Inc.
601 West Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582-1475
Fax 502 582-1573

RECEIVED

APR 20 2001

**PUBLIC SERVICE
COMMISSION**

April 19, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

This is in response to your letter dated April 3, 2001, regarding BellSouth's Petition for Confidential Protection in Case No. 99-484. BellSouth hereby respectfully requests an extension up to and including April 30, 2001, to file a petition to establish that the information is entitled to protection under the applicable statute and regulations.

As a follow-up to the Commission's March 7, 2001 informal conference in this matter, BellSouth produced, along with other requested information, the names of Internet Service Providers purchasing BellSouth's ADSL service at the 40,000 plus volume level. BellSouth sought protection of the specific customer names as proprietary on the grounds that releasing such information would be an unwarranted invasion of those customers' privacy, and also would be valuable competitive information to both competitors of the customers in question and also to BellSouth's competitors with respect to strategic plans and business strategies. While BellSouth has provided this information to the Commission, and also has provided a copy of

Mr. Thomas M. Dorman

April 19, 2001

Page 2

the information to the Complainant and its counsel in accordance with a previously executed Proprietary Agreement, BellSouth feels strongly that the extremely sensitive and proprietary nature of this information in the current marketplace should qualify the information for protection under the Open Records Statute. KRS 61.870, et seq. Because of the delay in BellSouth's receiving the Commission's April 3 letter, and the importance of this request to BellSouth and its customers, BellSouth respectfully requests this extension of time.

Thank you for your consideration of this request.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dorothy J. Chambers".

Dorothy J. Chambers

Enclosures

cc: Parties of Record

246074



BellSouth Telecommunications, Inc.
P.O. Box 32410
Louisville, KY 40232

or
BellSouth Telecommunications, Inc.
601 West Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582-1475
Fax 502 582-1573

April 9, 2001

RECEIVED

APR 10 2001

PUBLIC SERVICE
COMMISSION

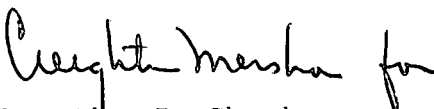
Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Reply to IgLou's Response to the Commission's Request and IgLou's Response to BellSouth's filing of March 21, 2001.

Sincerely,


Dorothy J. Chambers

Enclosures

cc: Parties of Record

236554

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)
)
 Complainant)
v.)
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
 Defendant)

RECEIVED

APR 10 2001

PUBLIC SERVICE
COMMISSION
CASE NO. 99-484

BellSouth Telecommunications, Inc.'s Reply to IgLou's
Response to the Commission's Request and
IgLou's Response to BellSouth's Filing of March 21, 2001

BellSouth Telecommunications, Inc., ("BellSouth"), by counsel, hereby Replies to IgLou's Internet Service, Inc's ("IgLou") April 4, 2001 Response to BellSouth's Filing of March 21, 2001 and IgLou's Response to the Commission's request from the informal conference of March 5, 2001.

As this Commission is well aware, IgLou has been accorded full due process in this case, which included a formal hearing, extensive direct and rebuttal testimony, and BellSouth's production of voluminous documents of over 1,500 pages. As a result, this Commission issued an order on November 30, 2000 that included in part a determination in BellSouth's favor and

rejecting IgLou's allegations of alleged inappropriate marketing practices and alleged violations of accounting safeguards¹.

BellSouth sought, and this Commission granted, a rehearing pursuant to KRS 278.400 with respect to BellSouth's wholesale ADSL tariff. This Commission granted reconsideration specifically to consider BellSouth's proposed resolution which is an offer to file with the FCC a substantially collapsed ADSL wholesale tariff. There are a number of advantages to the resolution BellSouth has suggested. In addition to the fact that filing this proposed tariff with the FCC would avoid a jurisdictional confrontation on this matter, it also would avoid further delay in delivery of the benefits of this proposal to the ISP community and to end users. BellSouth's proposal would result in pricing for the smaller ISPs in Kentucky that would be **lower** than the pricing IgLou supports. The pricing IgLou supports is advantageous only to ISPs as large as IgLou. In addition, the proposed revised FCC tariff would be applicable across the entire nine-state region in which BellSouth operates.

¹ IgLou neither sought, nor was granted, a rehearing on the Commission's November 30, 2000 Order. Nevertheless, IgLou continues to attempt to re-argue with either repetitious recitations of the same alleged facts or additional but outdated or irrelevant claims to continue its mantra that BellSouth has engaged in alleged unlawful marketing practices and sales procedures and allegedly "overall leverages" its current monopoly. Even if these belated collateral attempts did not offend all notions of due process, they still do not present anything of substance to support any other determination beyond what this Commission already has found on these issues. See, Exhibit 1.

On the other hand, an intrastate DSL tariff would, of necessity, apply only to intrastate services. Again, IgLou has not substantively replied to the legal authorities BellSouth has cited that make clear an ADSL tariff utilized by ISPs to connect to the Internet is interstate, not intrastate in nature. A Kentucky specific DSL tariff could not be used by ISPs such as IgLou to provide ADSL based Internet connectivity for ISP customers. Even if BellSouth were to file an intrastate tariff, if IgLou attempted to circumvent BellSouth's ADSL tariff filed at the FCC for interstate DSL access, there would be no choice but to raise these jurisdictional issues for resolution before the FCC. Even if IgLou does not agree with what would be the outcome, it can not be ignored that such a jurisdictional dispute would have the unfortunate consequence of considerable delay.

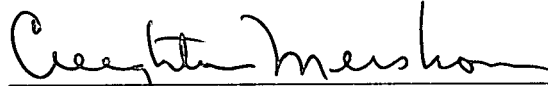
This Commission granted reconsideration of its November 30, 2000 Order for the purpose of considering BellSouth's proposal to file a revised wholesale ADSL tariff before the FCC. IgLou's response fails to respond to BellSouth's proposal in any substantive manner, but instead implies that this Commission should not give serious consideration to BellSouth's proposal, because BellSouth is guilty of "misrepresentations" and providing "misinformation." Such is clearly not the case. See, Exhibit 1. IgLou's approach is no different than that of the parlor magician who hides the rabbit with one hand while flourishing colorful scarves in his other hand. For example, instead of responding to

BellSouth's list of specific inaccuracies in IgLou's statements, at the informal conference on March 7, 2001, IgLou states it "stands by the assertions it made at the informal conference memorialized in the well-written staff memorandum dated March 20, 2001." Page 6, IgLou's Response of April 4, 2001. BellSouth agreed that this Commission's informal conference memorandum correctly summarized IgLou's comments. However, as BellSouth noted in its letter dated March 26, 2001, not only were many of IgLou's statements made without citation to any authority, but they also were incorrect or incomplete. BellSouth's March 26, 2001 response provided specific corrections and references to which IgLou, again, has not substantively responded.

This Commission granted reconsideration to consider BellSouth's proposal to file a revised ADSL tariff at the FCC. The record before this Commission fully supports the fact that this resolution is a fair and reasonable solution and that the proposal offers a number of advantages, not just for the parties, but for the many Kentucky customers who are eager to move quickly towards having access to high speed Internet service.

For these reasons, BellSouth respectfully requests the Commission to give favorable consideration to the resolution BellSouth has proposed.

Respectfully submitted,



Creighton E. Mershon, Sr.
Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

R. Douglas Lackey
J. Phillip Carver
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

233371

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 9th day of April, 2001.



Creighton E. Mershon, Sr.

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

IgLou Does not have Its "Straight Facts" Straight

ALLEGATION

BellSouth's "unlawful, anti-competitive behaviors" in rollout of DSL as evidenced by radio advertising allegedly demonstrates BellSouth's own retail offering (FastAccesssm) had advantage of advance information and preference. IgLou Response, pg. 2, paragraph 2.

FACT

Radio advertisement was not an advertisement for BellSouth's FastAccesssm DSL Internet service. The word "ADSL" was mentioned one time in an advertisement of approximately 180 words. This was an advertisement that described a number of technical terms. See, transcript of record at 262-263, attached.

ALLEGATION

BellSouth allegedly has repeatedly rested on "the existence of free ISPs" BellSouth allegedly arguing that because there are free ISPs, BellSouth should have a blank check to utilize any means necessary to deploy its Internet service. However, the "free model" has been declared "dead." IgLou Response at pg. 2-3.

FACT

BellSouth has never claimed that the existence of free ISPs provides BellSouth a "blank check" to the deployment of Internet services. Rather, BellSouth has stated that Internet access is a very competitive market and the fact that there have been free Internet Service Providers demonstrates just how competitive the market has been at times for Internet access. See, Cox direct testimony of May 11, 2000, pg. 10, line 19 and pg. 11, line 13.

ALLEGATION

BellSouth claims that there are ample competitive DSL providers, but BellSouth "intentionally or negligently misrepresented the market conditions" because, as IgLou recently learned, a number of these competitive choices are failing or have failed. IgLou Response, pg. 3, first full paragraph.

FACT

BellSouth has neither "intentionally" or "negligently" misrepresented market conditions. Market conditions change as does the financial conditions of competitors. Nevertheless, Covad, which has combined with BlueStar, for example, was advertising the availability of its services on Louisville radio stations on April 9, 2001.

ALLEGATION

IgLou alleges that BellSouth's counsel made a statement regarding BellSouth.Net, Inc. and its role in a recent hearing before the Florida Public Service Commission, which allegedly is directly contrary to statements made before this Commission that BellSouth.Net, Inc. does not sell to the general public. IgLou alleges BellSouth has deceived either the Florida or the Kentucky Public Service Commission. No citation is provided by IgLou, other than the Florida docket number 001332-TL. IgLou Response, pg. 3, second full paragraph.

FACT

BellSouth has correctly informed the Kentucky Commission regarding the relationship between BellSouth.net and BellSouth Telecommunications. BellSouth.net does not sell DSL products to the public, but facilitates BellSouth Telecommunications' provision of "FastAccesssm" service to the public.

ALLEGATION

IgLou states that BellSouth failed to properly deploy PRI lines for IgLou and claimed it had credited IgLou for its "inconvenience." However, IgLou had not received such a credit and "the problem was not truthfully resolved until many months after the fact." IgLou Response, pg. 3-4.

FACT

BellSouth was forthright in its acknowledgement that there was an error with respect to PRI lines and that IgLou would receive an adjustment. See, BellSouth's Post Hearing Brief of June 16, 2000, at page 3. As soon as it was brought to BellSouth's attention that this credit had not yet been received, BellSouth apologized and assured that the credit would appear on IgLou's October, 2000 bill. See, September 28, 2000 letter to Jonathan Amlung, attached.

ALLEGATION

IgLou claims BellSouth misled the Commission about "its full compliance with all FCC regulations and the cost accounting procedures" because IgLou references a 1998 audit of BellSouth by the FCC and attaches the audit report as evidence that BellSouth has failed to comply with FCC accounting procedures. IgLou Response at pg. 4.

FACT

IgLou is attempting again to cloud the issues by interjecting as "new evidence" a two-year-old FCC document that is totally unrelated to the subject of ADSL services. Moreover, other than showing some misleading statements by BellSouth, the FCC audit report demonstrates that BellSouth is closely scrutinized by auditors and federal regulators.

ALLEGATION

The FISPA aggregation proposal is a questionable arrangement where an ISP "pays off a third party and joins a club in Florida in order to obtain DSL lines from BellSouth at the \$29 rate. Nothing changes about this ISP or its relationship to BellSouth in acquiring DSL lines, other than the fact that they have sent a check to a third party." IgLou Response at pg. 5.

FACT

The Florida ISP Association has committed to the current volume requirements in BellSouth's FCC tariff necessary for members to obtain the \$29 rate. The fee arrangement to FISPA is held by FISPA in reserve in case the commitment levels are not met. IgLou's interpretation and implications are an insult to FISPA and the many other ISPs that utilize this legitimate aggregator arrangement.

ALLEGATION

BellSouth refused to comply with the mandate of the Commission to provide cost support data. IgLou response at pg. 6.

FACT

As BellSouth has explained, it does not have a current cost support study developed in association with the proposed FCC tariff filing. No such cost support now is required for filing at the FCC. In response to the Commission's request that the informal conference of March 7, 2001, BellSouth filed the cost studies that it had

available in support of DSL tariffs that previously have been filed at the FCC. BellSouth has never claimed that the older cost study was relevant to this proposal. This Commission has not required BellSouth to perform a cost study for this proposal; nor does the FCC require a cost study should BellSouth's proposal be accepted and the tariff be filed at the FCC.

233448

1 Wingate. There is two item numbers. Is it
2 the second one?
3 Q Oh, I'm sorry. The second fifth paragraph. Yes.
4 A "I have read the complaint filed in this case and
5 am familiar with BellSouth's advertising of it's
6 fast access ADSL service. To the best of my
7 knowledge and belief, BellSouth did not sponsor
8 radio commercials in the Louisville market place
9 promoting retail offering fast access ADSL service
10 in the time frame of November, 1998. The first
11 mass media advertising of fast access ADSL service
12 in the Louisville market place was in September,
13 1999."
14 Q Thank you. As far as the letter is concerned that
15 you have before you--
16 A Uh-huh.
17 Q --have you had a chance to review it?
18 A Just a second, please. Okay. Yes.
19 Q Okay. Would you please read the final paragraph
20 on that letter and identify the author of the
21 letter?
22 A The author of the letter is Joan A. Coleman.
23 She's the Director Regulatory of BellSouth in
24 Kentucky. The letter is dated October the 8th,

1 1999. It's addressed to Mr. Gregoire. The
2 paragraph that you requested me to read reads,
3 "Your electronic message contains several
4 inaccuracies. For example, ADSL service was
5 available in Louisville in May of this year.
6 Local television commercials promoting
7 BellSouth.net fast access service began airing the
8 Louisville market in September, 1999, not
9 November, 1998, as you indicated in your e-mail.
10 Q And I have one more item I would like you to read
11 and then we'll move on.
12 MR. AMLUNG:
13 I apologize for the break in questions.
14 Q While my cohort is reading, do you recognize the
15 advertisement before you?
16 A Yes. I believe this is a radio promotional spot
17 that was done in the Louisville market as a part
18 of the data--response to the data request that you
19 all made to BellSouth.
20 Q Does that radio advertisement contain anything
21 about ADSL?
22 A Yes. It has one word out of all these words that
23 says ADSL.
24 Q Would you please read the line containing that

1 phrase ADSL?
2 A No, Santa, I want new technology like ADSL.
3 Q Okay. And that was--as far as you can tell,
4 that's an advertisement that was run in Louisville
5 in November of 1998, is that correct?
6 A Right. This is an advertisement for Internet
7 service that was ran in the Louisville market
8 place at that time.
9 MR. AMLUNG:
10 Okay.
11 A Is that it?
12 Q Well, could you tell me--no, that's it. I won't
13 have you read any more off of these.
14 A Okay. Well, I was just going to explain that I
15 don't think Mr. Wingate would characterize this as
16 a fast access advertisement. It doesn't mention
17 the word fast access whatsoever in it. And, in
18 fact, the price that's mentioned is our dial-up
19 service price. In the promotional period that's
20 part of this same ad mentions it ends February the
21 28th, 1999. We didn't offer ADSL--fast access
22 service in Louisville at that period of time. So,
23 I don't think it would be fair to characterize
24 this as a fast access radio advertisement.

1 There's several things in here, she talks about, I
2 want 56K modem access, I want built in redundancy.
3 She--this talks about a lot of high tech bells and
4 whistles.
5 Q Well, I guess, suffice to say that you were--
6 BellSouth was running advertisements for ADSL in
7 November of 1998, is that correct?
8 A BellSouth ran four separate radio promotions for
9 BellSouth Internet services in that period of
10 time. Again, I would not characterize--I think
11 the other three that were ran at that same time
12 don't mention the word ADSL and they don't mention
13 the word fast access. This word mentions the word
14 ADSL one time out of probably about 180 words.
15 Q But it is mentioned?
16 A It is mentioned.
17 Q Okay. That's all. Referring to your rebuttal
18 testimony on page 2, specifically, lines 21
19 through 22. You bring up the idea that the lack
20 of forecast information from a heavy user such as
21 IgLou can make it difficult to meet rapid demand
22 for cable pairs, is that a fair characterization
23 of your testimony sir?
24 A Yes. That can certainly impact that. You know,

FILE COPY

September 28, 2000

Mr. Jonathan N. Amlung, Esq.
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, KY 40202-2347

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Johathon:

This is in response to your letter dated September 20, 2000. BellSouth indicated this adjustment of \$4,651.00 would be credited to IgLou's account. The credit should appear on IgLou's October bill. I appreciate you bringing to BellSouth's attention that this credit had not yet been posted to IgLou's account.

Very truly yours,

Dorothy J. Chambers

cc: Amy Dougherty

230102



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-484
BELLSOUTH TELECOMMUNICATIONS, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on April 9, 2001.

See attached parties of record.

Stephanie J. Bell

Secretary of the Commission

SB/sa
Enclosure

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Louisville, KY. 40203

Mr. Richard M. Breen
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Louisville, KY. 40220

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
COMPLAINANT)	
)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

O R D E R

On January 11, 2001, the Commission granted rehearing to BellSouth Telecommunications, Inc. ("BellSouth") on its November 30, 2000 Order (the "November 2000 Order") to determine whether BellSouth's proposal to revise its Federal Communications Commission ("FCC") interstate wholesale digital subscriber line ("DSL") tariff rather than to file a Kentucky-specific tariff sufficiently addresses the Commission's concerns regarding BellSouth's provision of DSL service in Kentucky.¹ BellSouth has filed its entire proposed revised DSL tariff for the Commission's review. IgLou Internet Services, Inc. ("IgLou") has responded to BellSouth's proposal and an informal conference has been held. The parties agree that no additional public hearing is necessary.

Having reviewed BellSouth's proposals, we approve them subject to future review, with one modification to the tariffed termination penalty provision, and modify our earlier decisions in this case accordingly.

¹ This Commission has authority to address IgLou's complaint, as it has explained in previous Orders. Despite BellSouth's contentions to the contrary, we reaffirm our previous holdings on this issue here.

BELLSOUTH'S ALTERNATIVE PROPOSAL TO VOLUME
REDUCTIONS FILED IN AN INTRASTATE TARIFF

The November 2000 Order required BellSouth to reduce its DSL tiers applicable to Kentucky to reflect 5 percent of the FCC's tariffed volumes. Thus, the per-line rate for the lowest volume tier would have been \$37 a month. Instead of reducing the volumes necessary to qualify for specific prices, BellSouth proposes to reduce the prices themselves while retaining the regional count. Thus, for entities ordering 51 to 10,000 DSL lines, the per-line rate in BellSouth's proposal is \$32 a month. For those ordering 10,001 to 40,000 DSL lines, the per-line rate is \$30 a month. For those ordering more than 40,000 lines, the per-line rate is \$29 a month.

BellSouth asserted at the March 7, 2001 informal conference that, if the Commission accepts its FCC revisions in lieu of the requirements imposed by the Commission's November 30, 2000 Order, BellSouth will file its revisions with the FCC within 15 days of the Commission's Order.

IgLou objects to BellSouth's proposal. Because the best price is available only to those who provide 40,000 DSL lines on a region-wide basis, IgLou states it will never be able to match the best price which BellSouth currently provides to itself. Moreover, IgLou expressed concern that BellSouth is not legally required to maintain for any specified period of time the proposed FCC tariff changes which it has agreed to file in response to this Kentucky proceeding.

Nevertheless, a comparison of the requirements of the November 2000 Order, wherein BellSouth was ordered to reduce the volumes necessary to be eligible for each price range tier, and BellSouth's proposed FCC tariff revision, wherein the monthly rate is reduced from \$37 to \$32 for the entry level range, demonstrates that IgLou and other

similarly situated providers are substantially benefited by the proposed revisions to the FCC tariff.² Thus, the Commission accepts BellSouth's proposal.

PENALTY REDUCTIONS IN BELL SOUTH'S PROPOSAL

The November 2000 Order also required BellSouth to eliminate or greatly reduce the tariff penalties associated with DSL service. BellSouth's proposed revised FCC tariff does not specifically modify the terms relating to the penalty provisions. However, because BellSouth's shortfall penalties are largely tied to prices, the price reductions automatically reduce the penalty provisions. The shortfall penalties in BellSouth's proposed revised tariff are, in fact, three-eighths of the current penalties. The Commission finds that such reductions meet its requirements for shortfall penalties and will allow BellSouth's competitors to function in the DSL market.

The tariff still, however, contains a termination liability charge that the Commission finds inappropriate insofar as it applies when an end-use customer switches Internet service providers ("ISP") but continues to receive service over BellSouth's DSL facilities. Under such circumstances, BellSouth suffers no loss: the customer has terminated his agreement with a particular ISP but his new ISP will continue to pay BellSouth for DSL service. Accordingly, the terms of BellSouth's tariff should be modified to delete the termination liability charge if the end-use customer continues to receive service over BellSouth's DSL facilities, despite having severed his relationship with the ISP who otherwise would incur the termination charge.

² Additionally, with the reduction in price, the effectiveness of the Florida Internet Services Providers Association agreement is minimized. This agreement would allow a member to purchase a DSL line for \$2.00 less than otherwise available, plus any membership fees.

CONCLUSION

Rapid deployment of, access to, and extensive use of DSL are vital to Kentucky's economic future. Accordingly, we will continue to monitor the terms and conditions upon which the service is offered and will require, from time to time, such reports as are necessary to ensure that all Kentuckians receive the benefits of this technology as soon as possible.

For the time being, smaller ISPs should be able to obtain service for their customers and to compete effectively under the terms approved in this Order. The modification approved herein gives these ISPs better prices than they would have received under the terms of the November 2000 Order between volumes of 51 DSL lines and 2,000 DSL lines. Because further issues that implicate the public interest in the terms and conditions under which DSL is sold in Kentucky may arise in the future, BellSouth should file, one year from the date of this Order, a report justifying the continued applicability of the tariff approved herein. In the alternative, BellSouth may file proposed changes to this tariff which may more effectively serve the Kentucky DSL market.

The Commission, having considered BellSouth's request for rehearing and IgLou's response thereto and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth's proposed FCC tariff revisions for DSL service are hereby approved as a substitute for the specifications ordered previously by this Commission, with the modification to its termination penalty charge as described herein.
2. The November 2000 Order in this matter is modified to the extent that its provisions conflict with this Order.

3. BellSouth shall file with the FCC no later than 15 days from the date of this Order, its proposed tariff revisions with the modifications described herein, and shall file a copy of the same with this Commission.

4. One year from the date of this Order, BellSouth shall file a report stating the number of DSL lines in Kentucky sold to each Internet service provider, and explaining in detail whether, in its opinion, the tariff approved herein continues to promote competition in Kentucky that benefits consumers; or, in the alternative, BellSouth shall file further proposed amendments to its DSL tariff.

5. Six months from the date of this Order, there shall be an informal conference in the Commission's offices to discuss the status of DSL competition in Kentucky.

Done at Frankfort, Kentucky, this 9th day of April, 2001.

By the Commission

ATTEST:


Executive Director

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 14 2001

NEW JERSEY

BELLSOUTH TELECOMMUNICATIONS, INC.,)

Petitioner,)

v.) No. 1999-484

IGLOU INTERNET SERVICES, INC.,)

Respondent.)

RECEIVED

APR 14 2001

NEW JERSEY

IGLOU INTERNET SERVICES, INC.'S RESPONSE TO
BELLSOUTH FILING OF MARCH 21, 2001, PURSUANT
TO REQUEST BY THE PUBLIC SERVICE COMMISSION

* * * * *

Comes now Respondent, IgLou Internet Services, Inc., and hereby submits its Response to the Commission's Request from the Informal Conference of March 5, 2001, as well as its Response to BellSouth's Filing of March 21, 2001.

IGLOU'S MARKET ENTRY PROJECTIONS PURSUANT TO
NOVEMBER 30, 2000, ORDER BY THE COMMISSION

As discussed at the informal conference and throughout this case, there are a number of factors affecting a fair and equal deployment of DSL services to ISPs outside the pricing and cost issues that were discussed at the informal conference. These include, but are not limited to, BellSouth's continued unlawful marketing practices, sales procedures, and overall leveraging of its current monopoly to gain a stronghold in the DSL marketplace. These other factors make it difficult for IgLou to accurately forecast and commit to an exact number of DSL circuits. Notwithstanding these roadblocks, **IgLou affirmatively states to the Commission that it will commit to the 2,000 line tier level as described under the November 30, 2000, Order at \$29 per circuit.**

> *straight facts*

Throughout this case, one thing that has become increasingly clear is BellSouth's intent to use misinformation and delay tactics to prevent this Commission from rendering a decisive Order positively affecting the future of DSL and broadband services throughout the Commonwealth. The examples are numerous. BellSouth's past misrepresentations cast a shadow on BellSouth's current assertions and promises. This history should be considered when assessing BellSouth's current proposal.

> Almost two years ago, IgLou sent a 13-page letter to BellSouth attempting to address BellSouth's unlawful anticompetitive behaviors in the rollout of DSL and other Internet services. BellSouth's response was a simple two-page letter (See Attachment "A"). The letter only dealt specifically with one issue, i.e., BellSouth's denial of the existence of the DSL radio advertisement pointed out by IgLou. As the Commission will recall, the advertisement did, in fact, exist. BellSouth finally submitted the script for the advertisement pursuant to IgLou's discovery request on the eve of the formal hearing in this case. This was an important issue because the advertisement demonstrated BellSouth's knowledge of the rollout of DSL services for its own ISP several months before the service even became available for other ISPs, such as IgLou. BellSouth, of course, denied and hid the existence of this advertisement until the last minute when it became apparent that IgLou would produce the advertisement as evidence at the formal hearing. Was this omission simply an oversight, or an intentional misrepresentation?

> Another issue on which BellSouth has repeatedly rested throughout this case is the existence of free ISPs. It appears that BellSouth used the existence of the free ISPs as a blank check to utilize any means necessary to deploy its Internet services, including

DSL. BellSouth asserted that the market supports zero-priced Internet service. As stated by IgLou at the hearing, and throughout this case, the market cannot support a free ISP model and BellSouth's assertions were incorrect. As we have now learned through the resulting shutdown of those companies or the modified business plans thereof, the free model has been declared "dead."

> BellSouth continues to assert that there are "ample" competitive DSL providers from which IgLou could choose. IgLou has maintained throughout this proceeding that no such competitive choice exists. Once again, as we have recently learned, these competitive choices pointed out by BellSouth are failing or have failed. Again, BellSouth intentionally or negligently misrepresented the market conditions surrounding the deployment of Internet services, and DSL.

> Another issue discussed ad nauseum in this proceeding is what role BellSouth.net, Inc., plays in the sale of Internet and DSL services to the public. In this case, BellSouth has stated affirmatively that BellSouth.net, Inc., does not, in any way, sell to the general public. In a recent hearing before the Florida Public Service Commission, (Docket Number 001332-TL), however, Nancy White, counsel for BellSouth, affirmatively stated the exact opposite regarding BellSouth.net, Inc.'s, role. This Florida docket dealt with many of the same issues as the present case. In fact, this case was cited during a recent hearing in the Florida proceeding. BellSouth has thus stated contradictory stories regarding the role BellSouth.net plays in the deployment of DSL to the public. Both assertions cannot be true, so BellSouth has deceived at least one Commission.

> Another issue brought forth by IgLou was an incident in which BellSouth failed to properly deploy PRI lines for IgLou. BellSouth's response in its closing brief to this

incident was that IgLou was properly credited for its "inconvenience" and led this Commission to believe that the issue was closed. At that point in time, however, IgLou had not received such a credit from BellSouth. The problem was not truthfully resolved until many months after the fact and after the Commission was led to believe it was resolved.

> BellSouth further misled this Commission about its full compliance with all FCC regulations and cost accounting procedures. The Commission's November 30, 2000, Order held only the BS "appears" to be in compliance with these federal guidelines. Regardless, BellSouth repeatedly states that the Commission affirmatively found BellSouth in compliance with those regulations and procedures. One does not need to look very far to find "major inaccuracies" with BellSouth's cost filings at the FCC. In fact, a 1998 audit of BellSouth by the FCC (Attachment "B"), showed that:

We consider these deficiencies to be substantive in that the carrier's CPR contained inadequate or no asset descriptions, inaccurate quantities, missing and inaccurate location descriptions--errors that clearly violate the requirements specified in the Commission's rules for maintaining property records.

Accurate plant account balances are important because policymakers use them, among other things, to evaluate financial results, regulated/nonregulated cost allocations, jurisdictional separations allocations, depreciation rates...

Clearly, this does not paint the same picture of a company in that is in compliance with FCC accounting procedures, as continuously asserted by BellSouth.

BELLSOUTH'S PROPOSAL

Turning to the issues that are raised by BellSouth's most recent proposal, the Commission should be mindful of BellSouth's history in this case. At the informal conference, BellSouth once again raised the issue of FISPA and DSL aggregation

agreements. This Commission has already recognized that such aggregators are an unnecessary burden to the ISPs of Kentucky. Yet, BellSouth continues to present this as a viable alternative. However, as stated by IgLou throughout the proceeding and again at the informal conference, the FISPA aggregation proposal is a questionable arrangement that may also violate state and federal law. Under the FISPA arrangement, it is BellSouth, not FISPA, that handles all aspects of the DSL ordering process for each ISP. The only role FISPA plays is to collect membership dues and additional line surcharges. The result of this is that an ISP can call BellSouth to order 51 DSL lines and be quoted \$37 per line. If the ISP pays off a third party and joins a club in Florida, however, BellSouth will then provide DSL lines to that ISP for \$29.00. Nothing changes about this ISP or its relationship to BellSouth in acquiring DSL lines, other than the fact that they have sent a check to a third party. BellSouth, therefore, is creating a special class of purchasers that get a special rate, to the detriment of those potential purchasers that do not belong to this special group. *See* 47 U.S.C. §202, Discrimination and Preferences.

Furthermore, the Commission must fully appreciate the arrangement of the FISPA contract. As discussed at the informal conference, the contract between FISPA and the ISP clearly shows in paragraph 5 that FISPA, in fact, has full control of these lines and can reassign them at any time. So, in addition to paying overall higher rates through the FISPA surcharges and membership fees, FISPA members are subjected to contractual obligations that jeopardize the future of that ISPs DSL connectivity. This clearly is not a viable solution to providing ISPs with access to DSL on an equal basis with BellSouth.net. Once again, there appears to be serious misrepresentations.

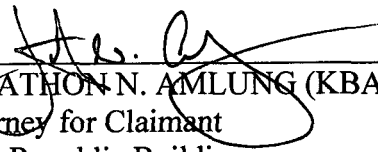
BELLSOUTH'S FILING OF MARCH 21, 2001

In the January 11, 2001, Order for the current reconsideration of this case, BellSouth was ordered to file its proposed revision to its federal ADSL tariff along with "supporting cost information for all rates." BellSouth refused to comply with this mandate by the Commission. To this date, even after repeated requests by IgLou and this Commission for such substantiating cost information, BellSouth still has not complied with the January 11, 2001, Order. The cost information submitted by BellSouth on March 21, 2001, in response to the informal conference, is not relevant to the current proposal by BellSouth due to its age, and it appears incomplete.

IgLou stands by the assertions it made at the informal conference memorialized in the well-written staff memorandum dated March 20, 2001. BellSouth has affirmatively stated that the only justification for its tiered structure is to offer large non-Kentucky-based ISPs preferential and discriminatory pricing. This was, of course, determined by the Commission to be in violation of K.R.S 278.170. This practice is detrimental to Kentucky ISPs and broadband deployment in the Commonwealth. Nothing has changed since November 30, 2000.

IgLou respectfully requests this Commission to render its decision forthwith. BellSouth's proposal does not change the fact that BS could provide itself a better rate than ISPs such as IgLou could hope to attain. It is also important to note that BellSouth is able to change or modify this tariff with only "one days notice." The Commission should carefully consider this fact in consideration of this Federal-level only proposal.

Respectfully submitted,



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Joan A. Coleman
Director - Regulatory

Attachment (A)

October 8, 1999

Dannie J. Gregorie
IgLou Internet Services, Inc.
PO BOX 33187
Louisville, Ky. 40232-3187

Re: BellSouth.net Internet Services

Dear Mr. Gregorie:

This is in response to your recent email regarding BellSouth's Internet service and ADSL product. Your concerns appear to relate to how BellSouth markets its Internet product and the structure of the BellSouth Telecommunications, Inc. (BST) ADSL product.

In your email, you express concern that BellSouth is "commingling" regulated and unregulated services. It appears from many of your statements that IgLou may not fully understand BellSouth's provision of its Internet access service. BellSouth.net Internet access is not provided, nor is it required to be provided, by a separate company. Rather, the FCC rules contemplate that a regulated local exchange company can provide an unregulated service, such as Internet access. This is what occurs with BellSouth.net Internet access service. BST provides, on an integrated basis, BellSouth.net Internet access as an unregulated service. The Company properly allocates costs associated with the provision of BellSouth.net service between the regulated and unregulated portions of the service in accordance with applicable FCC accounting rules. The Company provides competing Internet Service Providers comparably efficient interconnection as required by the FCC and consistent with BellSouth's CEI plan.

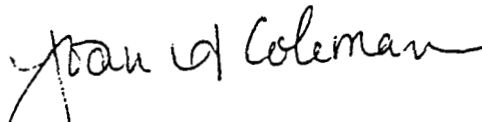
Your electronic message contains several inaccuracies. For example, ADSL service was available in Louisville in May of this year. Local television commercials promoting BellSouth.net FastAccess service began airing in the Louisville market in September 1999, not November 1998 as you indicated in your email.

In addition, the minimum period for 256Kbps x 1.5Mbps data rate virtual channel is 6 months not the 12 months indicated in your email. As stated in the tariff, if a virtual channel is terminated prior to the 6 month minimum period, a termination liability charge of \$50 will be assessed to the ISP. There is no continued monthly billing for the remaining months on a virtual channel that is terminated prior to the minimum period.

The BST ADSL product was correctly placed in the FCC tariff due to the interstate nature of Internet traffic. Purchase of this service from the FCC tariff is made available on an equal basis to all ISPs. There currently are no plans to change the present structure of the ADSL service model as described in the FCC tariff.

Your BellSouth Account Team is your best resource for answers to your questions specifically about the BST ADSL product. Your Account Team is Tamera Anderson – Account Executive (615-401-4374) and Joyce Heichelbech – System Designer (615-401-4118). I sincerely hope this letter clarifies how BellSouth provides its Internet product and its current policy regarding the BST ADSL product.

Sincerely,



Joan A. Coleman

This News Release: Text | WordPerfect
 Statements: Ness | Powell

Attachment **(B)**



NEWS

Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C. 20554

News media information 202 / 418-0500
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 Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

Report No. CC 99-3

COMMON CARRIER ACTION

February 25, 1999

FCC RELEASES AUDIT REPORTS ON RBOCs' PROPERTY RECORDS

Yesterday, February 24, 1999, the Commission adopted orders to release certain staff-level Audit Reports concerning property records of the Regional Bell Operating Companies (RBOCs). Continuing Property Records (CPRs) are a component of the telephone company's accounting records that provide descriptive inventories and cost documentation of the company's plant, property, and equipment used for providing regulated telecommunications services. Approximately one-half of a telephone company's costs are associated with the capital investment that is recorded in its CPRs.

The Common Carrier Bureau's Accounting Safeguards Division audited the CPRs of the RBOCs to assess the accuracy and reliability of the CPRs and of the companies' regulatory plant accounts. The auditors compared CPR entries to the physical assets in the central offices to verify whether these items were in use.

The audits examined the hard-wired central office equipment of the companies. "Hard-wired" equipment in central offices represents the items generally fixed in place (frames, switches, batteries), as opposed to "plug-ins," which are relatively portable (line cards). The hard-wired investment in central offices represents approximately one-fourth of the total capital investment for a telephone company. For example, for the RBOCs, the total investment in network plant is about \$200 billion; of this, hard-wired central office equipment represents approximately \$47 billion. The audit reports found that the RBOCs' book costs may be overstated by approximately \$5 billion. The RBOCs disagree with these audit reports and have filed their responses with the Division. The RBOCs have waived claims of confidentiality concerning the audit reports and their responses.

The Commission found that release of the audit reports serves the public interest by providing interested State regulatory commissions and ratepayers with information gathered during the audit. In releasing the Division auditors' reports and the companies' responses to the audit reports, the Commission did not pass any judgment on the accuracy of these reports, the reasonableness of their conclusions or recommendations, or the RBOCs' responses. In accordance with generally accepted government auditing standards, the Commission does, however, respect the auditors' independence. The Commission indicated that the next step will be to solicit public comment on the audit reports. It is anticipated that the Commission will shortly take action to seek public comment on the issues raised by the audit reports.

Action by the Commission February 24, 1999, by Orders (FCC 99-29, 99-30, 99-31, 99-32, 99-33, 99-34, and 99-35). Chairman Kennard, Commissioners Ness and Tristani, with Commissioners Furchtgott-Roth and Powell dissenting in part and Commissioners Ness,

Furchtgott-Roth and Powell issuing separate statements.

-FCC-

News Media contact: Emily Hoffnar at (202) 418-0253 or Audrey Spivack at (202) 418-0500

Common Carrier Bureau contact: Ken Moran at (202) 418-0800

Federal Communications Commission
Common Carrier Bureau
Accounting Safeguards Division

DECEMBER 22, 1998

**Audit of the Continuing Property Records of
BellSouth Telecommunications, Inc.
As of July 31, 1997**

**Audit Report of the Continuing Property Records of
BellSouth Telecommunications, Inc. (BST)**

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I. Executive Summary

1. The Audits Branch¹ examined the accounting records of BellSouth Telecommunications, Inc. ("BST") related to central office equipment ("COE")² to determine whether its reported investment in COE represents property used and useful in the provision of telecommunications services. We compared descriptions of equipment in BST's basic property records to its physical equipment to verify the existence of the equipment described in the records and recorded in the plant accounts. The basic property records we audited consist of the carrier's continuing property records ("CPR") and records supplemental thereto.³ The Commission's rules require carriers to maintain updated descriptions and locations of each of their in-service plant assets so that the equipment may be readily spot-checked for proof of physical existence.⁴ Accurate plant account balances are important because policymakers use them, among other things, to evaluate financial results, regulated/nonregulated cost allocations, jurisdictional separations allocations, depreciation rates, initial prices, low-end earnings adjustments, and productivity factors for price cap companies, inputs for forward-looking cost models for calculating universal service support, interconnection agreements, and access charges.

2. We find that BST has not maintained its basic property records and CPR in a manner consistent with the Commission's rules. Our audit found deficiencies in BST's CPR for COE items relating to: (1) Hard-wired Equipment, which consists of permanent equipment requiring complicated installation such as telephone switches and circuit equipment and (2) Undetailed Investment and Unallocated Other Costs, which entail amounts of investment that are not readily associated with specific, identifiable units of equipment. We consider these deficiencies to be substantive in that the carrier's CPR contained inadequate or no asset descriptions, inaccurate quantities, missing and inaccurate location descriptions--errors that clearly violate the requirements specified in the Commission's rules for maintaining property records.⁵ BST's

¹ The Audits Branch is located in the Accounting Safeguards Division of the Common Carrier Bureau. The Audits Branch is responsible for, among other things, conducting field audits and investigations of regulated carriers; reporting results of field audits and investigations; assisting in the evaluation of findings; and recommending follow-up action to correct deficiencies, including changes and improvements in carrier accounting and reporting systems and other related procedures.

² COE generally includes switching and circuit equipment recorded in Part 32 accounts 2211 (Analog electronic switching), 2212 (Digital electronic switching), 2215 (Electro-mechanical switching), 2220 (Operator systems), 2231 (Radio systems), and 2232 (Circuit equipment). 47 C.F.R. §§ 32.2211, 32.2212, 32.2215, 32.2220, 32.2231, 32.2232.

³ See 47 C.F.R. § 32.2000(e)(3).

⁴ 47 C.F.R. § 32.2000(f)(5).

⁵ E.g., Section 32.2000(f)(5) specifically states that "[t]here shall be shown in the

recordkeeping deficiencies raise questions about the integrity of its property records and plant investment balances recorded in its COE accounts.

3. Specifically, in our audit of a random sample of 1,152 line-items⁶ from BST's CPR for Hard-wired Equipment, we found that 18.7 percent of the records that we sampled contained substantive deficiencies and did not comply with the Commission's rules. Of these deficient records, 10.1 percent described equipment that could not be found by the auditors or by company representatives ("not found" equipment). The remaining 8.6 percent could not be verified with certainty because the equipment shown to the auditors could not be matched to the record in some important respect such as location or description. Based on these findings, we estimate that BST's investment related to Hard-wired Equipment is overstated by approximately \$291.7 million. This estimate, however, does not take into consideration the amount of equipment in the 8.6 percent of sampled records that could not be verified definitively.

4. In addition to finding errors in BST's CPR for Hard-wired Equipment, we found that a significant number of line-items in BST's CPR contain the notation "Undetailed Investment" or "Unallocated Other Costs." These items had no description of either the equipment or its location, in apparent violation of the Commission's rules. We found more than 21,800 line-items representing \$138.5 million in Undetailed Investment. BST has not shown any specific physical plant or provided sufficient or convincing cost support data relating to any of the line-items for Undetailed Investment. We also found more than 83,900 line-items representing \$125.4 million in Unallocated Other Costs. We are deferring final determination on the amounts associated with Unallocated Other Costs until we receive sufficient documentation from the company explaining the nature of these costs.

5. The Audits Branch provided its results to BST and requested BST to correct and explain any decision it believed was made in error. Further, we sent a draft audit report to BST with a request for comment on factual errors or omissions. After reviewing BST's responses, we made appropriate adjustments as warranted and provided a revised report to BST for review.⁷

continuing property record or in the record supplements thereof, a *complete description* of the property record units in such detail as to identify such units. The description shall include the identification of the work order under which constructed, the year of installation ... *specific location* of the property within each accounting area in such a manner that it can be readily spot-checked for proof of physical existence ... " (emphasis added).

⁶ A "line-item" or record in the CPR provides information necessary to identify the location, quantity, vintage, account code, and dollar investment for specific equipment.

⁷ The initial draft was sent to Mary Henze on July 27, 1998. BellSouth was allowed 30 days to review the findings and to provide comments. The final report was transmitted to Ms. Henze on December 23, 1998 with a request that BellSouth provide by January 11, 1999 any comments it believes should be released with the audit report.

6. The findings of this audit highlight the significance of our previous concern about the integrity of BST's recordkeeping. In 1994, our audit of BST's CPR relating to COE revealed numerous errors and instances of insufficient information. In addition, our review of BST's CPR recordkeeping procedures, both in 1994 and 1997, found that the procedures were not being followed or were ineffective. We found that these procedures, which have been in place for many years, do not ensure that all investment recorded in the carrier's COE accounts is associated with equipment in service.

7. We recommend that BST write off appropriate amounts from its plant account balances (as discussed in this report) to reflect our audit findings, that it engage an independent firm to conduct a complete inventory of its CPR for its COE, and that it report the results to the Commission so that we can determine whether further accounting adjustments are necessary. We further recommend that BST engage an independent auditor to evaluate the practices, procedures, and controls BST has in place to maintain its CPR, and to recommend improvements to ensure reliable and accurate plant account balances and records. BST should submit the independent auditor's report to the Accounting Safeguards Division.

II. Background

8. In Part 32 of its rules, the Commission prescribes a Uniform System of Accounts ("USOA") for telecommunications carriers. The USOA includes specific details about the property records that carriers must maintain. Taken together, the data contained in the accounts and in the underlying financial and other subsidiary records must "provide the information necessary to support separations, cost of service and management reporting requirements."⁸ As a general rule, the Commission requires that financial records be kept with sufficient particularity to show fully the facts pertaining to all entries in the accounts and in a manner so as to be "readily accessible for examination" by the Commission.⁹

A. Recordkeeping Requirements.

9. The USOA provides specific requirements for recording investment in property, plant, and equipment and for maintaining certain supporting records, including the basic property records that are the subject of this audit.¹⁰ The basic property records consist of the CPR and all supplemental records necessary to provide the property record details required by the

⁸ 47 C.F.R. § 32.2(f).

⁹ 47 C.F.R. § 32.12(b).

¹⁰ Companies are required to account for investment in property, plant, and equipment in the 2000 series of accounts in Part 32. The requirements for maintaining basic property records and CPR are contained in, respectively, 47 C.F.R. §§32.2000(e) and (f).

Commission.¹¹ The CPR contains detailed descriptions as to the location, date of placement into service, and original cost of plant assets.¹² Supplemental records include invoices, work orders, and engineering drawings that support the information in the CPR. These property records are the part of the property accounting system that preserves the identity, vintage, location, and original cost of property, as well as original and ongoing transactional data.¹³ Incumbent local exchange carriers ("LECs") must ensure that their records are auditable, subject to effective internal accounting controls, and "maintained throughout the life of the property."¹⁴ Further, the USOA requires that the basic property records be "equal in the aggregate to the total investment reflected in the financial property control accounts as well as the total of the cost allocations supporting the determination of cost-of-service at any particular point in time."¹⁵

10. Incumbent LECs must maintain their CPR by subaccount for each accounting area¹⁶ of their operations. Incumbent LECs are required to provide "accurate accounting for retirements"¹⁷ and "data for use in connection with depreciation studies."¹⁸ The CPR is intended to support the regulated accounts by providing a link to the physical assets used for regulated service as well as to the underlying work orders and other documentation for related accounting entries.¹⁹ In addition, these records are necessary so that assets can be "readily spot-checked for proof of physical existence."²⁰ By describing the plant's specific locations and providing references to invoices, work orders, and other support documents, the CPR provides a key aspect of the audit trail for the plant accounts and facilitates regulatory review of, among other things, access charges, depreciation rates, and certain jurisdictional separations and other cost allocations.

¹¹ 47 C.F.R. § 32.2000(e)(3).

¹² 47 C.F.R. § 32.2000(f)(2)(iii).

¹³ 47 C.F.R. § 32.2000(e)(1).

¹⁴ 47 C.F.R. § 32.2000(e)(2).

¹⁵ 47 C.F.R. § 32.2000(e)(2).

¹⁶ An accounting area is the smallest territory of the company for which accounting records of investment are maintained for all plant accounts within the area. 47 C.F.R. § 32.2000(f)(1)(i).

¹⁷ 47 C.F.R. § 32.2000(e)(7)(i)(B).

¹⁸ 47 C.F.R. § 32.2000(e)(7)(i)(C).

¹⁹ 47 C.F.R. § 32.2000(f)(8).

²⁰ 47 C.F.R. §§ 32.2000(e)(7)(i)(A) and (f)(5).

B. 1994 Audit.

11. We previously audited BST's CPR in 1994.²¹ We performed procedures to verify the existence of COE plant using a nonstatistical sample²² of items listed on BST's CPR. In that audit, 15 percent of the equipment items contained in the sample could not be found. We also attempted to identify the assets associated with listings that did not contain adequate equipment descriptions. For these items, we found that BST could not locate the assets and, generally, could not support its CPR values. In addition, we found that, contrary to our rules, BST had not reconciled its CPR with its 1993 financial account balances.²³ The audit staff discussed these concerns with BST representatives during the course of the 1994 audit.

III. Purpose and Scope

12. The purpose of our current audit was: to determine whether BST is in compliance with the Commission's requirements regarding basic property records and continuing property records, as set forth in sections 32.2000(e) and (f) of the Commission's rules and to determine whether BST's plant accounts accurately reflect the cost of assets used and useful in the provision of telecommunications services.

²¹ The Audits Branch conducted a series of CPR audits of central office equipment for all the Regional Bell Operating Companies, including BST, with the majority of the field work completed in 1994. The Audits Branch prepared a consolidated audit report, but the report was not released. Informal discussions were held with each carrier regarding the problems found in their respective CPRs. The findings of the 1994 Audit of BST's CPR are detailed in Appendix A.

²² A nonstatistical sample is selected on the basis of judgment derived from experience and knowledge about the subject. Although the results of an audit conducted using a nonstatistical sample can provide sufficient evidential matter for audit conclusions, the data derived from nonstatistical sampling cannot be statistically extrapolated to the entire population, and the evaluation of the reliability and precision of the results are not quantifiable in the manner that statistical sampling allows.

²³ See Appendix A. Section 32.2000(e)(2) of the Commission's rules requires that the basic property records, of which continuing property records are a part, be "equal in the aggregate to the total investment reflected in the financial property control accounts." To reconcile the property records with the financial property control accounts, incumbent LECs typically compare the balance in the financial accounts with the sum of the balances shown in the continuing property records. The carrier then resolves the differences and corrects the records based on analysis of work orders, invoices, and other documents.

13. We reviewed the CPR for all of BST's COE as of July 31, 1997. As of that date, BST had approximately \$17.5 billion of investment in COE. We classified COE into three categories for purposes of this audit: (1) Hard-wired Equipment; (2) Plug-in Equipment; and (3) Unspecified Items. The Hard-wired Equipment category contains permanent equipment requiring complicated installation such as telephone switches and circuit equipment. The Plug-in Equipment contains modular items designed to be installed readily by simply plugging them in where needed and thus are more easily moved from place to place. The category described as Unspecified Items includes significant amounts of investment that are not readily associated with specific, identifiable units of equipment. The Unspecified Items consisted of four groups: Undetailed Investment, Unallocated Other Costs, Plug-in Other Costs, and Right-to-use Fees.²⁴ The following table²⁵ summarizes BST's total COE investment.

Table 1

Type of COE Investment	Investment (\$ millions)	% of Total Investment
Hard-wired Equipment	\$8,778	50%
Plug-ins Equipment	\$8,182	47%
Unspecified Items	\$536	3%
Total Investment	\$17,496	100%

²⁴ BST describes the Undetailed Investment as material and other costs associated with plant in service and Unallocated Other Costs as unassigned labor and overhead costs that are associated with installation of equipment, both of which did not get assigned to specific units of equipment. Further, BST describes Plug-in Other Costs as those labor and other costs related to Plug-in Equipment. Right-to-use Fees are described as charges incurred for the purchase or lease of software programs necessary to operate the stored program control central office switching equipment. As noted, these four types of investment costs were not assigned to specific units of equipment in apparent violation of our rules. See 47 C.F.R. §§ 32.2000(f)(2)(iii) and (f)(3)(i) ("cost shall be identified and maintained by specific location for property record units").

²⁵ The table is based upon BST's July 31, 1997 CPR.

14. This audit report focuses primarily on the Hard-wired Equipment category and two groups in the Unspecified Items category: Undetailed Investment and Unallocated Other Costs. We did not focus our efforts on the Plug-in Equipment category or on the other groups in the Unspecified Items category (*i.e.*, Right-to-use Fees, or Plug-in Other Costs), because of the nature of these items and the manner in which BST maintains its CPR for them. For example, Plug-in Equipment consists of units that are very portable and their locations are not individually identified in BST's CPR. Consequently, an audit based upon the physical inspection of such items requires a different approach than was used for Hard-wired Equipment.²⁶

IV. Results for Hard-Wired Equipment

15. On February 12, 1998, BST presented, at our request, an overview of the company's system for maintaining basic property records and continuing property records. BST also described the audit procedures and reconciliations that it performs periodically to ensure the accuracy of those records. Following BST's presentation, we began our detailed examination of the records described in this report. BST's CPR for its COE consists of a total of 859,800 records. Of this total, 754,100 records related to Hard-wired Equipment.

16. Generally, our audit of BST's Hard-wired Equipment records consisted of a statistical sampling of equipment items (1,152 records randomly selected) from BST's CPR. We travelled to each location specified in the sampled CPR, and determined, through a physical inspection, whether the equipment was installed and whether the CPR description, location, and quantity were accurate and complete. We also requested cost support documentation to determine whether the costs stated in BST's CPR were recorded accurately and in accordance with the Commission's rules. These efforts and results are discussed in the following paragraphs.

A. Verification Process

17. In order to verify the existence of equipment listed on the CPR, we selected 32 different central office locations. Prior to visiting the selected offices, we notified BST and requested the assistance of technical staff familiar with the COE in these offices. Generally, three or more company employees accompanied us during the verification process. Upon arrival at the central office location each morning, the selected sample was presented to BST's technical staff. With BST's technical staff, we then jointly attempted to locate the sampled equipment. When the equipment was not found in the location specified in the CPR or when the CPR did not contain a specific equipment location, we provided company personnel an opportunity to locate

²⁶ In this audit, we conducted a limited review of Plug-in Equipment, Plug-in Other Costs, and Right-to-use Fees in an attempt to have a better understanding of the practices, procedures, and controls associated with the maintenance of the basic property records and CPR for these items. After further review of documentation from the carrier, we may decide to perform future audit work for these categories.

the equipment elsewhere within the office. In the course of this process, we were often taken to other locations in the office and shown items on different frames than those listed in the CPR. Items were considered not found only when the sampled equipment could not be located anywhere in the central office.

B. Records Examined

18. A sample of 1,152 records was randomly selected²⁷ for audit from Hard-wired Equipment items listed on BST's CPR for its COE. The 1,152 line-items consisted of 36 randomly-selected items from each of the 32 selected central office locations we visited. With assistance from BST personnel as described above, we attempted to verify the existence of the property recorded in the 1,152 line-items. We encountered numerous problems in our attempts to verify the sample. These problems were sometimes the result of deficiencies in the records, such as a lack of specificity as to location, description, or quantity, and sometimes the result of discrepancies between the record and the equipment we were shown. Of the 1,152 line-items, 215 line-items (18.7 percent of the sampled items) were found to be seriously deficient in that we were shown no equipment, were shown equipment of less quantity than the records indicated, or were shown equipment that we could not verify with certainty due to discrepancies between the record and the equipment shown. Although less serious, we also encountered problems with some of the other 937 line-items that we marked as found. In some instances there were misleading or inconsistent floor indications in these records. In other instances, descriptions of the items were incomplete. The problems encountered in the verification process are discussed in greater detail in Appendix C.

²⁷ The statistical sampling plan for randomly selecting the 1,152 line-items is discussed in detail in Appendix B. The 1,152 line-items were selected from 32 BST offices, and were expected to be representative of the entire BST operating area covering the states of Georgia, Alabama, North Carolina, South Carolina, Mississippi, Kentucky, Tennessee, Louisiana and Florida. (See Appendix B for an overview of the statistical sampling plan and audit sample selection process.)

19. Upon completion of the physical inspection for the Hard-wired Equipment sampled from the CPR, we provided BST with the verification results and requested explanations or corrections to our findings that the equipment could not be found.²⁸ We reviewed BST's explanatory material and adjusted our original results when we were convinced by the explanation and supporting documentation that the missing plant was actually in service. On July 27, 1998, we provided BST with a draft audit report and requested that it provide comment on any factual errors or omissions contained in the draft audit report. On August 26, 1998, BST submitted its response to the draft audit report. We reviewed BST's response and made appropriate adjustments as warranted.

C. Verification Results.

20. The following table summarizes the results of our sample:

Table 2

Hard-wired Equipment Category	No. of Line-Items	Percent of Total Line-Items	Recorded Value	Percent of Total Value
Assets Found	937	81.3%	\$13,337,871	86.2%
Assets Partially Found:	20	1.8%		
Value of found portion			\$209,414	1.3%
Value of missing portion			\$135,663	.8%
No Assets Found	96	8.3%	\$257,170	1.7%
Unverifiable Assets	99	8.6%	\$1,527,928	10.0%
Total	1,152	100%	\$15,468,046	100.0%

Assets Found: We found all of the equipment in this category. For 904 of these line-items, equipment was found that matched description and location information in the CPR. For the remaining 33 line-items in this category, the CPR did not indicate a specific location in the

²⁸ The results of the physical inspection were sent to BST in a letter dated March 2, 1998, with requests for explanation of the missing equipment by March 27, 1998. For the sampled equipment that the auditors could not find, the auditors requested the company to provide explanatory documentation as to the missing equipment or, whether the equipment was retired, and if so, documentation of the retirement.

building, but we were satisfied that the equipment observed was the equipment described in the record.

Assets Partially Found: We found some of the equipment in this category but the quantity found was less than the quantity specified in the record. For each record, we prorated the cost of the equipment between the equipment found and the equipment not found based on the relative quantity of each group.

No Assets Found: Neither we nor the company personnel could find the equipment in this category.

Unverifiable Assets: We were shown equipment but were unable to determine with certainty that it was the equipment described in the CPR because of either deficiencies in the CPR or discrepancies between the CPR and equipment shown. This category included equipment that could not be matched with the CPR as to location, description, or identification number because of incomplete or missing information.

D. Statistical Estimates Based on Sample.

21. Because of the challenges presented in this audit, *i.e.*, over 754,100 records relating to Hard-wired Equipment located in over a thousand central offices in nine states, we selected a random sampling plan to estimate the total cost associated with amounts of Hard-wired Equipment not found.²⁹ This enabled us to maximize the precision of our audit results within our resource constraints. Our sampling plan is described in detail in Appendix B.

22. Generally, our random sampling plan consisted of the following steps: (1) for each sampled office we computed the cost of not found Hard-wired Equipment per sampled line-item; (2) for each stratum³⁰ we computed the average cost not found Hard-wired Equipment by weighting the average cost of not found items for each office with the relative number of records in the office; (3) for each stratum we calculated the total cost of not found items by multiplying the average cost of not found items by the number of records in the stratum; and (4) for each stratum we determined BST's total cost of not found items by summing the cost of not found items.³¹ Based on our sample findings, we project that 19.5 percent of BST's entire CPR for its

²⁹ Hard-wired Equipment not found includes equipment in the categories Assets Partially Found and No Assets Found (*see* Table 2).

³⁰ For purposes of our sample, we categorized BST's central offices into eleven strata depending on their size. This process is discussed on pages 6 and 7 of Appendix B.

³¹ A more complete explanation of these calculations is contained on pages 12-14 of Appendix B.

Hard-wired Equipment, or approximately 147,000 line-items, contain substantive errors or omissions and do not comply with our recordkeeping requirements.³² From this analysis, we estimate that \$291.7 million of the cost recorded in BST's COE accounts represents not found Hard-wired Equipment.³³

E. Examination of Cost Support Documents.

23. The USOA requires that the CPR include the original cost of all property record units.³⁴ Further, the rules require that "[a]ll drawings, computations, and other detailed records which support quantities and costs or estimated costs shall be retained as part of or in support of the continuing property record."³⁵ To confirm that BST's practices, procedures, and controls are effective in ensuring that accurate costs and quantities are recorded in the CPR, we requested the supporting invoices, work orders, and other construction documentation for the material and in-place costs.³⁶

24. By letter dated March 2, 1998, we requested the cost documentation for a sample of 50 randomly selected hard-wire COE line-items to be provided by March 27, 1998.³⁷ BST made

³² In our statistical analysis, we estimated that 80.50% of BST's line-items were correct. (See pages 8 and 9 of Appendix B). By taking the complement of this percentage, we computed an error rate for BST's CPR of 19.50 percent (1-.8050). Multiplying BST's population of 754,100 line-items of hard-wired equipment by the estimated error rate, we estimated that 147,000 line-items on BST's hard-wired CPR were incorrect. Using similar reasoning and a 95% confidence interval, we estimated the number of incorrect line-items on BST's CPR lies between 124,500 and 169,600 line-items, with the most likely value centered around our best estimate of 147,000 line-items.

³³ Based on our statistical analysis, our best estimate of the total cost of BST's missing plant was \$291.7 million. Using a 95% confidence interval, we estimated the total missing plant cost to lie between \$148.8 million and \$434.6 million, with the most likely value for this cost centered around our best estimate of \$291.7 million. (See pages 12 through 14 of Appendix B).

³⁴ 47 C.F.R. § 32.2000(f)(2)(iii).

³⁵ 47 C.F.R. § 32.2000(f)(8).

³⁶ The in-place cost includes the material cost of the equipment as well as the cost to install and put the equipment into service.

³⁷ Letter from Kenneth Ackerman, FCC, to Mary L. Henze, BST, dated March 2, 1998.

its cost submission in response to the request. Upon completion of an examination of the cost support provided, additional items will be requested if necessary.

25. Since we have not completed our examination of the cost support, we have decided to suspend judgment temporarily on the accuracy of the original costs recorded on BST's CPR. For the purposes of this report, we assume the original costs recorded on its CPR are correct. At a later date, we will investigate these costs and determine their validity. After we receive and analyze the cost support, we intend to issue a separate report on the matter of cost support.

V. Results for Unspecified Costs

26. BST's CPR for its COE consists of a total of 859,800 records. Of this total, we found a large number of BST's CPR records contained neither equipment descriptions nor location descriptions. In its CPR, BST refers to many of these items as Undetailed Investment (21,800 records) or Unallocated Other Costs (83,900 records). Because there were no equipment or location descriptions in these records, we were unable to locate physically the assets relating to these records.

A. Undetailed Investment

27. We identified approximately 21,800 records representing \$138.5 million of Undetailed Investment. BST stated that these records represent costs associated with assets that for some reason it did not identify in its CPR. The only specific explanation that BST offered for these records is that they represent a portion of the investment installed prior to the implementation of its mechanized CPR in 1973.

28. Because of the lack of specificity in these records, we adopted a number of steps in our audit procedure to determine what type of equipment was represented by the Undetailed Investment and whether the investment amounts contained in BST's CPR were legitimate. First, we requested that BST representatives identify the equipment associated with all of the Undetailed Investment at three of the sampled central office locations. For these central offices, the company was unable to locate any of the Undetailed Investment entries during our on-site visits. In addition, in a letter dated February 27, 1998, we requested, among other things, that BST provide the cost support for 25 of the Undetailed Investment entries listed in its CPR.³⁸

29. We examined the cost support submitted by BST and did not find that BST provided sufficient and convincing support for the Undetailed Investment or otherwise provided sufficient

³⁸ Letter from Kenneth Ackerman, FCC, to Mary L. Henze, BST, dated February 27, 1998. An initial sample of 25 items was requested so that we could review the results and determine whether more extensive cost support data would be necessary.

indication of what items of plant investment support the entries in the CPR for Undetailed Investment. In summary, BST failed to substantiate the physical existence of equipment associated with the Undetailed Investment line-items or provide sufficient and convincing cost support for the related investment amounts shown in the CPR, as required by Part 32 of the Commission's rules.³⁹ We gave BST the opportunity either to show us the equipment associated with an Undetailed Investment entry or to provide sufficient and convincing documentation supporting it. In each instance, BST failed to satisfy our request and the requirements of Part 32.

In conclusion, we find, based on our audit work, that the existence of the plant related to Undetailed Investment cannot be substantiated, and the costs related to the Undetailed Investment should be removed from BST's CPR and its plant accounts.⁴⁰

B. Unallocated Other Costs

30. BST's CPR contains another type of entry with no equipment or location description, called "Unallocated Other Costs." We found more than 83,900 such entries representing \$125.4 million in investment. According to BST, Unallocated Other Costs represent hard-wired related costs that are not properly includable as in-place costs because they are "in excess of those reasonably includable in the item in-place cost."⁴¹ We have requested information from BST to verify the validity of these entries.⁴² After reviewing BST's cost documentation, we intend to issue a further report on the matter of Unallocated Other Costs.

VI. Duration and Extent of the Problem

³⁹ 47 C.F.R. §§ 32.2000(e)(2)(iv), 32.2000(f)(5), and 32.2000(f)(8).

⁴⁰ BST contends that the line-items of Undetailed Investment reflects hardwired equipment-in-service installed before implementation of its mechanized system in 1973. This assertion does not mitigate the apparent violation of our rules, nor does it adequately explain the large amount of Undetailed Investment currently on the carrier's CPR. According to BST's CPR, Undetailed Investment with vintage years prior to 1973 totaled to \$33.8 million, which represents only 24 percent of BST's total Undetailed Investment of \$138.5 million.

⁴¹ This characterization of Unallocated Other Costs is found in BST's data filing with the Commission in connection with the 1994 CPR audit.

⁴² As with the Undetailed Investment, we requested (in letter of February 27, 1998, from Kenneth Ackerman to Mary Henze) that BST provide cost support by March 27, 1998, for a sample of 25 Unallocated Other Costs listings. To date, we do not have sufficient documentation to determine the nature of the costs described in BST's CPR as Unallocated Other Costs.

31. We have found numerous substantive deficiencies in BST's CPR and associated plant balances contain very large and serious errors. We first became aware of the nature and scope of this problem during our 1994 audit of BST's CPR. That audit demonstrated that the problems were so pronounced and prevalent as to make it highly unlikely that the errors had developed in a relatively short period of time.

32. Our current audit findings make it even clearer that BST's CPR problems are longstanding. Based on our current audit we estimate, as detailed in Appendix B, that over 252,700 records, or nearly 29 percent of the records within the scope of this audit, are inaccurate or deficient in some important respect.⁴³ It is unlikely that such a large number of errors in BST's CPR occurred over a short span of years. It is much more likely that BST has been recording a substantial percentage of its entries inaccurately for many years. For example, in a typical year, BST generates approximately 66,000 new CPR line-items. If BST would have recorded all new entries incorrectly in recent years, it would have taken more than two years to create 141,000 inaccurate records. This would require, however, that every recent entry was inaccurate, and we do not believe that is the case. On the other hand, if we assume a more likely error rate, e.g., 20 percent a year, BST would have recorded approximately 13,200 of its new line-items each year incorrectly. It would take BST more than 10 years to generate a total of 141,000 incorrect records (141,000 divided by 13,200). Based upon our understanding of BST's procedures and their limitations, this would appear to be the likely case.

33. Nor do we believe the CPR problem accelerated in recent years. Recording items as Undetailed Investment, in particular, has been a serious problem for many years. Of the 21,800 Undetailed Investment records, representing \$138.5 million of plant investment, over 15,400 line-items representing \$91.6 million, are pre-1990 vintage entries.

VII. Conclusions and Corrective Actions

34. We conclude that BST has not maintained its basic property records and its CPR in a manner consistent with the Commission's rules. We base this conclusion on the statistical sampling of Hard-wired Equipment and actual records of Undetailed Investment and Unallocated Other Costs that show a high percentage of records with substantive deficiencies such as

⁴³ The scope of the audit included approximately 859,800 records, of which 754,100 records represented hard-wired central office equipment, 21,800 records reflected Undetailed Investment, and 83,900 records represented Unallocated Other Costs. Of these records, we estimate based upon our statistical sample that about 252,700 were inadequate or contained serious errors, including 147,000 Hard-wired equipment line-items, all 21,800 Undetailed Investment line-items, and all 83,900 Unallocated Other Costs investment line-items. Thus, 252,700 of 859,800 records under review, or 29 percent of the reviewed records, contained serious errors.

inadequate or no asset descriptions, inaccurate quantities, missing and inaccurate location descriptions, and the high percentage of assets that could not be found by either our auditors or BST's technical staff. We also base this conclusion on BST's inability to provide supporting cost information and other data to substantiate the existence of a large number of entries in its CPR.

35. We believe the problems revealed in this audit are longstanding and unlikely to self-correct. This is indicated by the fact that similar problems were found in our 1994 audit of BST's records.

36. The inability of the company to demonstrate the existence of such a high percentage of the equipment contained in its records raises significant questions about the valuation of BST's plant accounts, its depreciation rates, and its past and present prices. At its worst, failure to provide sufficient and convincing documentation for the acquisition of the assets in question and for their placement into regulated accounts raises doubts about whether policymakers can rely on these records.

37. We believe corrective action concerning the accounting treatment of the overstated amounts is necessary to address the deficiencies found in our audit. We believe that the amounts associated with Hard-wired Equipment that was not found (\$291.7 million) and Undetailed Investment that could not be substantiated (\$138.5 million) should be written-off BST's plant accounts.

38. In addition, we believe further corrective action involving a complete inventory and audit of BST's CPR, practices, procedures, and controls are necessary to bring BST into compliance with the Commission's rules. A carrier's CPR consists of a large number of individual line-items, each of which represents one or more specific items of equipment. The only way to ensure a CPR line-item is correct is to examine the corresponding equipment items. The only way to validate all of the line-items in a CPR is to conduct an inventory of the entire CPR. The current audit findings demonstrate that BST's CPR for its COE has serious and numerous deficiencies. Because its CPR contains thousands of records that are apparently not associated with plant used and useful in the provision of telecommunications services,⁴⁴ we conclude that the only practical way to resolve all of these deficiencies is for BST to engage an independent firm to perform an inventory of its entire COE and provide the results to the Commission. In addition, BST should engage an independent firm to review its practices, procedures, and controls for maintaining its CPR and to make recommendations for improving these systems so that BST's CPR and plant balances can be maintained in compliance with the Commission's rules.

⁴⁴ We estimate that 84,600 line-items for Hard-wired Equipment are inaccurate. In addition, 12,600 items reflect Undetailed Investment and another 34,000 records reflect Unallocated Other Costs.

39. Finally, we identified an additional \$125.4 million of Unallocated Other Costs investment for which the carrier apparently has not kept sufficient records. These records contain no asset descriptions and no specific locations. We have serious concerns about the proper accounting treatment of much of this cost, including whether these line-items should remain on the carrier's CPR and plant account balances. We are still considering this issue, however, and will make a decision upon further review of the carrier's documentation for this type of investment.

VIII. Recommendations

40. We recommend the following actions:

41. BST should write off \$430.2 million from its central office equipment to remove the estimated cost of its missing Hard-wired Equipment (\$291.7 million) and Undetailed Investment (\$138.5 million) from its central office equipment accounts.

42. The accounting recommendation in paragraph 42 above requires BST to write off an amount based on statistical inferences drawn from the current audit. In order to correct its CPR, BST should be required to engage an independent firm to perform an inventory of its entire COE and provide the results to the Commission. We recommend that the Commission analyze the results of this inventory and direct BST to make all entries necessary to correct further its CPR and account balances.

43. In order to improve the likelihood that its CPR will be maintained correctly in the future, BST should be required to engage an independent auditor to review its practices, procedures, and controls for maintaining its CPR and to make recommendations for improving these systems so that BST's CPR and plant balances can be maintained in compliance with the Commission's rules. Based on the audit, BST should develop and submit to the Commission for approval a plan of corrective action for maintenance of its CPR. At a minimum, the scope of the independent audit should include a review of: (1) the existing internal controls related to prevention, detection, and correction of errors on a timely basis; (2) existing automated systems that serve to eliminate or reduce the potential for errors and that provide an appropriate audit trail for verification of the CPR; and (3) the controls and processes necessary to comply with the Commission's rules pertaining to the CPR.

Summary of the 1994 BST CPR Audit

In 1994 the Commission audit staff conducted an audit of BST's continuing property records ("CPR") for its central office equipment ("COE"). This equipment was broken into three categories for the audit: hard-wired equipment; plug-in equipment; and unspecified items.

Hard-Wired Inventory

We examined a sample of 130 judgmentally-selected central office items, from 6 central offices in Atlanta, Ga. area. We attempted to sample items from a) different COE accounts, b) different manufacturers, and c) different installation dates. We excluded from our sample plug-ins, unspecified items, and any non-COE maintained in BST's CPR system. After making our selections, we physically inventoried all the selected items with the assistance of BST's technical personnel. We also gave BST an opportunity, after we finished our on-site inventory, to provide any documentation to prove the existence of items that we were not able to find. In the end, we determined that 61 items had record problems, or 48 percent of our sample. Of these, 20 items (15% of the sample) represented equipment that could not be found. We found that equipment not manufactured by AT&T was particularly difficult to locate. This was so because BST's CPR was designed by AT&T at a time when almost all of BST's equipment was AT&T-manufactured.

Plug-Ins

We found that the CPR for BST's plug-in investment did not allow the tracking of the location of individual plug-in equipment items. Plug-ins are portable items that are frequently moved within and between central offices. Auditing plug-ins was therefore very difficult because of the limits of BST's CPR system. We concluded that the accuracy of its CPR may not be determinable without a complete inventory of all plug-ins at each accounting location (building).

Unspecified Items

We found that BST had listed assets in its CPR that could not readily be spot checked because the CPR did not provide adequate information to allow its identification. In addition, some of these unspecified items were so old that they likely were no longer in service.⁴⁵

⁴⁵ For example, we found undetailed items in the CPR with vintages as early as 1927, 1928, and 1935.

Bell South CPR Statistical Audit Plan Overview

Objectives:

The objectives of the audit were: to determine the extent to which Bell South (BST's) continuing property records ("CPR") reflect the assets it uses in the provision of telecommunications services; to substantiate the investment recorded in BST's plant accounts; and, in general, to determine the extent to which BST is in compliance with the Commission's property record requirements.

Population:

The "population" is the entire group of individual units about which statistical inferences are to be drawn based on a sample of individual units chosen randomly from the group.⁴⁶ In the CPR audit, the population is all of the line-items representing BST's hard-wired central office equipment ("COE") in its CPR.⁴⁷ Each line-item in this population represents one or more items of hard-wired COE.⁴⁸

Sampling Units:

We divided the population into sampling units. These units cover the entire population and do not overlap. The sampling units in the CPR audit are the individual CPR records, *i.e.*, the line-items in the CPR for hard-wired COE.

Data to be Collected:

The plan was to verify the accuracy of each line-item in the sample by making an on-site inspection of the hard-wired COE described in the individual records. The auditors, first, verified the physical existence of the unit of COE. The auditors then verified the accuracy of the information contained in the record regarding the description, quantity, and location of the COE item.

⁴⁶ Christopher Clapham, THE CONCISE OXFORD DICTIONARY OF MATHEMATICS 215 (2nd ed. 1996).

⁴⁷ Hard-wired equipment is large, permanent equipment requiring complicated installation such as telephone switches and circuit equipment. Approximately 50 percent of BST's COE investment is in hard-wired equipment.

⁴⁸ A "line-item" is a line in the CPR that identifies the equipment and its description, the location, quantity, vintage, account code, and dollar investment.

Degree of Precision Desired:

A primary goal was to determine the percentage of BST's CPR records that comply with our rules, *i.e.*, the percentage of records that correctly reflect the existence, quantity, description, location, and cost of the COE equipment. We used random sampling techniques in order to achieve a precise estimate based on mathematical principles and statistical reasoning that would provide a valid conclusion about BST's CPR records. We selected a sample size so that, with a 90 percent confidence level, our percentage estimate would be within 2.5 percent of the actual percentage of records that are in compliance with our rules.

Sample Design:

We considered two basic sampling designs: simple random sampling and random two-stage stratified sampling. Simple random sampling requires that the sample be selected by a random process so that each member of the population has an equal probability of being included in the sample. Simple random sampling has the advantage of simplicity. Once a listing of the population is assembled, no other information is necessary to select the sample. Furthermore, the calculations necessary to derive the statistical inferences are relatively simple.

In random two-stage stratified sampling, each unit of the population is assigned to one of several groups and each group is assigned to one stratum. Then, groups are selected randomly from each stratum and population units are selected randomly from each selected group. In this application, the CPR line-items are the basic units of the population and the central offices are the groups that are stratified by size of office, *i.e.*, how many line-items there are in each central office. This sampling design requires prior knowledge of the population characteristics so that each member of the population can be assigned to one and only one stratum.

Random two-stage stratified sampling has a number of advantages. First, it can be used to ensure representation of groups that are important for policy reasons to be included in the sampling process.⁴⁹ Second, in cases where the population is clustered in different locations, it allows concentration of the sampling in those areas that contain most of the population, thus reducing the travel and labor costs.⁵⁰ Finally, it can be used to increase the precision of the sample estimators, *i.e.*, reduce their variability.⁵¹

⁴⁹ William G. Cochran, *SAMPLING TECHNIQUES* 89-90 (3d ed. 1977).

⁵⁰ *Id.* Also see Steven K. Thompson and George A. F. Seber, *ADAPTIVE SAMPLING* 152 (1996).

⁵¹ An estimator derived from a sample is precise or efficient, if it has a small variance, *i.e.*, the distribution of the estimator is highly concentrated. See Thomas H. Wonnacott and Ronald J. Wonnacott, *INTRODUCTORY STATISTICS FOR BUSINESS AND ECONOMICS* 235-236,

Because of these advantages, we selected a random two-stage stratified sampling plan. We stratified the equipment by central office size, as indicated by number of records per office. Our decision was based on the following factors. The hard-wired COE equipment listed in the CPR is located in central offices of various sizes located throughout the BST's region that encompasses nine states. The majority of the equipment is concentrated in the larger central offices in large metropolitan areas such as Miami and Atlanta. To verify the accuracy of the line-items included in a sample, our auditors travelled to the various central offices and actually observed the physical pieces of equipment listed in the CPR. By employing a random two-stage stratified sampling plan using strata based on office size, we could ensure that all office sizes are represented in the sampling process. In addition, by stratifying, we could ensure that small, remote central offices would not be over-represented which could increase the cost of the audit without a corresponding improvement in precision.

Sample Size:

We used the following formula to determine the sample size, n , necessary to reach our precision goal.⁵²

Install Equation Editor and double-click here to view equation.

1

where A is the desired degree of precision.

N is the population size.

n is the sample size.

P is the proportion of correct line items in the population, or the compliance proportion.

t is the abscissa of the normal curve that cuts off an area x at the tails.

x is a function of the confidence interval.⁵³

Solving for n , we find

678-687 (4th ed. 1990).

⁵² The formulas in this appendix have been adapted from SAMPLING TECHNIQUES (3d ed. 1977) by William G. Cochran.

⁵³ $x = (1 - \text{confidence interval}) \div 2$. For example, when a 90 percent confidence interval is required, $x = (1 - .90) \div 2 = .05$.

Install Equation Editor and double-click here to view equation.

2

For practical use an estimate p of P is substituted in the formula.⁵⁴ Also, if N is large, the denominator of formula # 2 approaches unity, and the formula reduces to:⁵⁵

Install Equation Editor and double-click here to view equation.

3

where the desired variance of the sample proportion, p , is
Install Equation Editor and double-click here to view equation.

4

Our procedure was first to calculate n using formula #3. We then determined whether n divided by N is negligible. If so, we would use n derived from formula # 3. If n divided by N is not negligible, n must be recalculated using the more complex formula # 2.

We selected a precision goal of .025, that is, for a given confidence level, we want our maximum error to be .025 or less. As can be seen in formula # 3, the sample size is a function of the compliance proportion p ; and the sample size is maximized when the numerator, $p(1-p)$, is maximized, or when $p = .5$.⁵⁶ By selecting a sample size using the maximum value for $p(1-p)$, we are assured the maximum sample size necessary to assure the desired degree of precision. If the actual P value is not .5, then the sample size will yield estimates more precise than our original goal.

⁵⁴ In practice, p , which is determined by the sample data, is an estimate of P , the population proportion.

⁵⁵ In any case, we note that equation # 3 is the upper bound for equation # 2. In other words, equation #2 approaches equation # 3 as N increases, because equation # 2 has a slightly larger denominator that approaches 1 as N increases.

⁵⁶ The maximum value of the function , $p(1-p)$, occurs when its first derivative is equal to 0. This occurs at $p = .5$.

Install Equation Editor and double-click here to view equation.

(4)

where $A = .025$.
 $t = 1.645$, the student-T value when $x = .05$.
 $p = .50$.

Therefore, our initial sample size calculation was 1,082.

We then tested to see if n divided by N is negligible.

Install Equation Editor and double-click here to view equation.

(5)

We concluded that this ratio is negligible and that our initial estimate of $n = 1,082$ has adequate precision.

As noted above, we assured ourselves that the actual precision of our estimate p would exceed our precision goal by calculating a sample size using the maximum value for the product $p(1-p)$, *i.e.*, when $p = .5$. Our actual sample size after making certain adjustments was 1,152 line-items.⁵⁷ After selecting our sample and evaluating it, we found the actual sample proportion p to be .8050.⁵⁸ If we substitute this proportion into equation # 3, we find that a sample size of 680 line-items would have achieved our precision goal of .025 with a 90 percent confidence level. Even more to our advantage, we find that a sample size of 965 line-items would have achieved our precision goal of .025 with a 95 percent confidence level. By using an even larger sample size, we have increased the accuracy with which the sample proportion p estimates the population proportion P .⁵⁹ Although we initially planned for a 90 percent confidence interval, we

⁵⁷ See *infra* Sample Selection.

⁵⁸ See *infra* Estimating the proportion of correct CPR line items.

⁵⁹ As the sample size, n , increases, the sampling distribution of p concentrates more and more around the population proportion P and assume the shape of a normal curve. See Thomas H. Wonnacott and Ronald W. Wonnacott, *INTRODUCTORY STATISTICS FOR BUSINESS AND ECONOMICS* 197, 207 (4th ed. 1990).

can now compute our statistical estimators with a 95 percent confidence level without sacrificing our precision goal.⁶⁰

Stratification Procedures:

To determine the specifications of the stratified sample, we first calculated a sample size of 1,082 line-items as explained above. Based on our audit experience, we then determined that a reasonable work load for an auditor would be to verify 36 line-items in one central office each day. To calculate the number of central office for our stratification procedure, we divided the sample size of 1,082 line-items by the 36 line-items to determine that approximately 30 central offices would need to be selected.

To provide a broad representation based by office size and location, we partitioned the BST's CPR into 11 strata. We then determined the number of central offices to be selected

from each stratum based on the following allocation that is sometimes called the Neyman Allocation process. It specifies the optimal allocation for selecting units (in this case, central offices) from the strata to reduce sample variance.

Install Equation Editor and double-click here to view equation.

(6)

where L is the number of strata.

n_h is the number of central offices to be selected from the h th stratum.

n is the total sample size, i.e., total number of central offices to be selected from all strata, about 30.

S_h is the standard deviation of the h th stratum.

w_h is the weighting factor for the h th stratum. w_h is computed as shown below:

Install Equation Editor and double-click here to view equation.

7

where M_h is the total number of records in the h th stratum.

Sample Selection:

To select the actual sample, we performed a two-stage procedure. First, we randomly selected 31 central office locations based on our 11 strata.⁶¹ We noted that all of the states in

⁶⁰ See *infra* Computation of Statistical Estimators.

⁶¹ For each stratum, selection of central office locations was based on computer generation of n number of random numbers between 1 and N , where n is the number of locations determined to be required for each stratum and N is the number of locations in the stratum. The random numbers were applied to the list of locations in the strata, sorted by number of records (in descending order) and numbered from 1 to N . A minimum of two central offices locations was selected per strata.

which BST operates were represented in the sample of 31 offices except North Carolina. In order to ensure that every state was represented, we randomly selected a location in North Carolina as the 32st sample location. We further expanded our sample to include three more offices so that each stratum was represented by at least two central offices. For each of the 32 locations in the sample, we selected 36 CPR line items at random.⁶² Thus, the sample consists of 1,152 line-items, *i.e.*, 32 central offices × 36 line-items per central office. Because we audited more COE line-items than our sample plan required (*i.e.*, 1,152 line-items v. 1,082 line-items), we expected our precision to be better than our goal of being 90 percent certain

that the actual compliance proportion would be within 2.5 percent of our estimated compliance proportion. In fact, our actual sampling results allowed us to compute our statistical estimators using a 95 percent confidence level.⁶³

In some instances, the location initially selected was impractical to audit, because the equipment items were spread widely over the territory served by the central office in huts or cabinets or on customer premises. In such cases, another location was randomly selected from that stratum. The following table shows by stratum the number of central offices and records as well as the number of each selected for audit.

Stratum	Number of Records per Central Office Location in Stratum		Number of Central Office Locations in Stratum	Number of Central Office Locations Selected for Audit	No. of Records per Stratum	No. of Records Audited in Stratum
	Hi	Low				
1	5,185	2,005	29	4	86,772	144
2	1,994	1,014	110	6	149,554	216
3	993	900	37	2	35,042	72

⁶² For each location selected for audit, 36 random numbers between 1 and *N* were computer generated, where *N* is the number of COE line-items for each location selected for audit. The 36 random numbers generated were applied to the unsorted COE CPR listing for each location. In instances when we determined that verification of a selected item would not be possible for reasons beyond the control of the company, we selected the CPR item immediately preceding the selected item as its replacement.

⁶³ See *infra* Computation of Statistical Estimators.

4	899	801	47	2	40,150	72
5	797	705	55	2	41,286	72
6	699	610	63	2	41,407	72
7	598	500	91	2	49,904	72
8	493	401	128	2	56,336	72
9	399	300	188	3	65,569	108
10	299	200	337	3	83,396	108
11	199	100	746	4	104,765	144
Total			1,831	32	754,181	1,152

CPR Verification Procedures:

The audit was conducted by three two-person audit teams. The teams were generally comprised of the same members throughout the audit, although substitute auditors were used when individuals could not be on location on the assigned day. At most locations, BST assigned two engineers to assist the Commission auditors.

CPR inventory forms were prepared to assist the auditors in recording their observations. The forms allowed auditors to specify whether the units of equipment were found and whether the CPR description and location were correct. The auditors made further notations in the comment section of the form to record any unusual or important observations not specified elsewhere on the form. The CPR inventory forms, including the comment section, were reviewed by the audit supervisor and were revised as necessary for consistency with the audit criteria. The results were then counted and tabulated.

Computation of Statistical Estimators:

From the sample audit observations, we made statistical inferences about the CPR for BST's entire hard-wired COE investment. We drew statistical inferences regarding the proportion of correct CPR records, the proportion of incorrect CPR records, and the book cost of equipment listed on the CPR that could not be found. The calculations that we used to derive these inferences are shown on the following pages. The complexity of these calculations reflect the two-stage stratified sampling plan we used to conduct the audit.

1. Estimating the proportion of correct CPR line-items:

First, we computed the proportion, p_i' , of line-items that were verified by our auditors as correct in the each central office selected for audit. Because there were 36 line-items sampled at each selected office, the p_i' value was calculated as shown below:

$$\text{Install Equation Editor and double-} \\ \text{click here to view equation.} \quad (7)$$

where x_i is the number of correct items in the sample of 36 line-items for the i th central office.
 p_i' is the proportion of correct items in the sample of 36 line-item for the i th central office.

Next, for each stratum, h , we computed a representative proportion, p_h , based upon the proportions, p_i' , from the central offices sampled in that stratum. To arrive at a representative proportion for a stratum, we weighted the sample proportions, p_i' , based on the total number of line-items recorded for the central offices selected from the stratum.

$$\text{Install Equation Editor and double-} \\ \text{click here to view equation.} \quad (8)$$

where h denotes the stratum.

p_h is the representative proportion for stratum h .

p_i' is the proportion of correct items in the sample of 36 line-items for the i th central office.

n is the number of central offices sampled in stratum h .

w_i' is the weighting factor. w_i' is computed as follows:

Install Equation Editor and double-

click here to view equation.

where M_i' is the total number of records in the i th central office sampled in

stratum h .

In this step, the weighting factor, w_i' , for the proportion of correct items in a particular central office is the total number of line-items recorded for that central office divided by the total number of line-items recorded for all of the central offices sampled from the strata.

Finally, to calculate statistical estimator, \hat{p}_h , for the population proportion, P , we computed a weighted average of the representative proportions for the 11 strata based on the total number of line-items recorded for the strata.

Install Equation Editor and double-
click here to view equation.

(9)

where \hat{p}_h is the statistical estimator for the population proportion, P .

h denotes the stratum.

p_h is the representative proportion for each stratum h .

w_h is the weighting factor for the h th stratum. w_h is computed as shown below:

Install Equation Editor and double-

click here to view equation.

10

where M_h is the total number of records in the h th stratum.

Using the formula shown above, we estimate that the proportion of correct line-items in the population was 80.50 percent.

2. Estimating the variance for the proportion of correct line-items:

First, we computed the variance, $VAR(p_i')$, for the proportion, p_i' , for each sample of 36 line-items taken from the central offices. This variance measures the variability of the observations within the central office.

Install Equation Editor and double-click here to view equation.

(10)

Second, for each stratum h , we computed a weighted average, VAR_h' , for the individual variances using the following formula.

Install Equation Editor and double-click here to view equation.

(11)

where h denotes the stratum.

VAR_h' is the variance within the central offices for stratum h .

$VAR(p_{ih}')$ is the variance for the proportion of correct items in the sample of 36 line-items for the i th central office in stratum h computed in equation # 10.

f_{ih}' is the sampling fraction $36/M_{ih}'$.

N_h is the total number of central offices in stratum h .

n' is the number of items sampled in each central office, *i.e.*, 36.

n_h is the number of central offices sampled in stratum h .

w_{ih}' is the weighting factor. w_{ih}' was computed as shown below:

Install Equation Editor and double-

click here to view equation.

12

where M_{ih}' is the total number of records in the i th central office

sampled in stratum h .

In this step, we also computed a variance, VAR_h'' , measuring the variability between central offices in stratum h .

Install Equation Editor and double-click here to view equation.

(12)

where h denotes the stratum.

VAR_h'' is the variance among the central offices for stratum h

n_h is the number of central offices sampled in stratum h .

N_h is the total number of central offices in stratum h .

f_h is the sampling fraction n_h/N_h .

p_h is the representative proportion for stratum h .

p_{ih}' is the proportion of correct items in the sample of 36 line-items for the i th central office.

w_{ih}' is the weighting factor. w_{ih}' was computed as shown below:

Install Equation Editor and double-click here to view equation.

13

where M_{ih}' is the total number of records in the i th central office sampled in stratum h .

The variances, VAR_h' and VAR_h'' are additive and give the overall variance, VAR_h , for stratum h .

Install Equation Editor and double-click here to view equation.

(13)

Finally, to calculate the variance for \hat{P} , the estimator for the population proportion, P , we computed a weighted average of the VAR_h for the 11 strata based on the number of line-items recorded for the strata.

Install Equation Editor and double-click here to view equation.

(14)

where h denotes the stratum.

$VAR(\hat{P})$ is the variance for the population proportion, P .

VAR_h is the overall variance for each stratum h .

w_h is the weighting factor. w_h was calculated as shown below:

Install Equation Editor and double-click here to view equation.

15

where M_h is the total number of records in the h th stratum.

To compute the standard deviation for \hat{P} , we took the square root of the variance.

Install Equation Editor and double-click here to view equation.

(15)

Using the formulas shown above, we estimate that the variance for the population proportion, P , is .0002 and that the standard deviation, σ , is .0153. Assuming a normal distribution, the 95 percent confidence interval is $\pm 1.96\sigma$, 80.50 percent ± 2.99 percent, or the interval from 77.51 percent to 83.49 percent.

3. Estimating the cost of the hard-wired COE not found:

First, we computed a dollar amount per line-item representing the cost of the COE that could not be found in the 36 line-items sampled at each central office.⁶⁴

Install Equation Editor and double-click here to view equation.

(16)

where c_i is the total cost of missing equipment in central office i as specified in the CPR.

Next, for each stratum, h , we computed the weighted average cost per line-item of COE not found.

Install Equation Editor and double-click here to view equation.

(17)

where Y_h is the weighted average cost per line-item of COE not found for the stratum h .

y_i is the cost per line-item of COE not found for the central office i in stratum h .

n is the number of central offices sampled in stratum h .

w_i' is the weighting factor. w_i' was computed as shown below:

Install Equation Editor and double-click here to view equation.

18

where M_i' is the total number of records in the i th central office sampled in stratum h .

For each stratum h , we multiplied Y_h by the total number of line-items in the stratum, M_h , to determine the total cost of missing items, C_h , for the stratum.

Install Equation Editor and double-click here to view equation.

(18)

⁶⁴ We have been unable to verify the accuracy of the original costs shown for the individual line-items listed on BST's CPR, because BST has not provided sufficient documentation for us to make such a determination. For the purposes of our statistical analysis, we have given BST the benefit of the doubt and assumed that the original costs shown on its CPR are correct. At some latter date, we intend to investigate these costs and determine their validity. See Section V-E of the Audit Report.

To find the total cost of the missing COE for NYNEX, we summed the C_h for the 11

strata.

Install Equation Editor and double-click here to view equation.

(19)

Based on our computations, we estimate the cost of the missing hard-wired COE for the entire region of BST to be \$291.7 million.

4. Estimating the variance of the cost of missing COE.

For each stratum h , we computed the variance of the cost of missing COE using the following formula.⁶⁵

Install Equation Editor and double-click here to view equation.

(20)

where $\text{VAR}(Y_h)$ is the variance of the missing COE for stratum h .

Y_h is the cost per line-item of COE not found for the stratum h .

y_{ih} is the cost per line-item of COE not found for the central office i in stratum h .

n_h is the number of central offices sampled in stratum h .

⁶⁵ The complete formula for the variance of a stratum contains one set of terms to calculate the variance among the central offices and another set of terms to calculate the variance within the central offices. A review of the formula revealed that variance among the central offices exceeds the variance within the central offices by an order of N , which is the number of central offices in a stratum. This number ranges from 29 to 745 for the various strata. We, therefore, concluded that, as a component of $\text{VAR}(Y_h)$, the variance within the central offices is negligible and we did not use it. We only used the terms for the variance among the central offices. Thus, we underestimated the variance by a negligible amount.

N_h is the number of central offices in stratum h .
 f_h is the sampling fraction n_h/N_h .
 M_{ih}' is the total number of records in the i th central office sampled in stratum h .

To find the variance for the entire population, we summed the $VAR(Y_h)$ for the 11 strata.

Install Equation Editor and double-
click here to view equation. (21)

To compute the standard deviation for C_T , we took the square root of the variance.

Install Equation Editor and double-
click here to view equation. (22)

Using the formulas shown above, we estimate the standard deviation to be \$72.9 million. Assuming a normal distribution, the 95 percent confidence interval is $C_T \pm 1.96\sigma$, \$291.7 million \pm \$142.9 million, or the interval from \$148.8 million to \$434.6 million.

Summary of Findings:

1. Of the 1,152 CPR line-items included in the sample, 937 were correct. From this sample, we estimate by inference, using a 95 percent confidence interval, that 80.50 percent \pm 2.99 percent of BST's line-items for its hard-wired COE is accurate. In other words, as a result of the audit we estimate, with 95 percent certainty, that at least 77.51 percent, but no more than 83.49 percent, of the hard-wired COE listings in BST's CPR are accurate. Thus, 16.51 percent to 22.49 percent of the listings are expected to be inaccurate.
2. Furthermore, from our sample, we estimate by inference, using a confidence interval of 95 percent, that \$291.7 million \pm \$142.9 million of BST's hard-wired COE cannot be found. Thus, as a result of the audit we expect, with 95 percent certainty, that the costs for hard-wired COE recorded in BST's CPR is overstated by an amount between \$148.8 million and \$434.6 million.

The following tables summarize our findings:

*Results of Random Two-Stage Stratified Sampling Analysis
Using a 95 Percent Confidence Interval*

Range for deficient "not found"

Range for Estimated

plant costs (in \$ millions)

Low	Mean	High
148.8	291.7	434.6

Deficient Record Ratios

Low	Mean	High
.1651	.1950	.2249

Additional Analysis Using a Bayesian Approach

To corroborate our statistical findings, which were based upon classical statistical analysis using random sampling, we also performed analysis on the sample using Bayesian

statistical theory. Bayesian analysis provides a number of attractive features that complement our classical statistical analysis. For example, under the Bayesian approach, the estimate of the population mean is independent of the choice of sample weights or choice of stratification.⁶⁶ Since the Bayesian method is design free, the estimator is unbiased.⁶⁷ An additional advantage is that the Bayesian framework explicitly models the probability distribution of the parameter being estimated, for example, the mean of the population. This feature of the Bayesian method provides a rigorous justification for claiming that the sample mean is the most likely estimate of the population mean.⁶⁸ This contrasts with classical statistics which uses no probability model for the parameter being estimated. Therefore nothing is known concerning where in the range of the confidence interval the population mean will most likely fall. Under the Bayesian framework, the sample mean represents the most likely value of the actual population mean.

The tables below show sample mean estimates for the total amount of plant equipment not found and the percent of deficient records using the Bayesian approach.⁶⁹ These estimates are \$257.2 million and 18.69 percent, respectively.

Results of Bayesian Statistical Analysis

⁶⁶ See Andrew Gelman, John B. Carlin, Hal S. Stern, and Donald B. Rubin, *BAYESIAN DATA ANALYSIS*, Chapman and Hall, 1997, pp. 199-205; and Steven K. Thompson and George A. F. Seber, *ADAPTIVE SAMPLING*, John Wiley and Sons, Inc., p. 66.

⁶⁷ Lack of bias means an estimator will estimate the population parameter correctly on the average and, thus, will not systematically overestimate or underestimate the desired population parameter.

⁶⁸ See S. James Press, *BAYESIAN STATISTICS: PRINCIPLES, MODELS, AND APPLICATIONS*, John Wiley and Sons, 1989, p.29-32.

⁶⁹ The high and low figures in the tables represent the range of a 95% credibility interval. A credibility interval is the Bayesian version of a confidence interval.

Range for deficient "not found"
plant costs (in \$millions)

Low	Mean	High
156.8	257.2	357.6

Range for Estimated
Deficient Record Ratios

Low	Mean	High
.1644	.1869	.2094

The results achieved under the Bayesian analysis are very close to our findings and conclusions derived from using classical statistical analysis under our random two-stage stratified sampling plan. Using our random two-stage stratified sampling plan, we estimate that \$291.7 million of BST's hard-wired COE cannot be found; using the Bayesian analysis, we estimate that \$257.2 million cannot be found. Using our random two-stage stratified sampling plan, we estimate that 19.50 percent of BST's COE CPR are deficient; using the Bayesian analysis, we estimate that 18.69 percent its COE CPR are deficient.

Cost Verification Procedure:

We requested that BST supply documentation to validate the costs shown in the CPR for the sampled items. We have since modified our data request for cost support to a sample of 50 line-items from the sampled items of 1,152. BST has provided cost support for 24 , or 48 percent, of the 50 items listed in this new data request. When all of the data becomes available and has been analyzed, we will determine whether there are additional problems with BST's CPR.

Problems Encountered In the Verification Process

In our attempt to verify that equipment recorded in the hard-wired COE accounts actually existed, we encountered numerous deficiencies in BST's recordkeeping practices. Of the 1,152 line items included in the sample, 937 (81.3 percent) could be physically verified in sufficient quantity in the locations specified on the CPR. By statistical inference from these results it is estimated, with a 95 percent confidence level, that 80.50 percent, ± 2.99 percent, (*see* Appendix B, p.12) of the hard-wired equipment could be physically verified in the locations listed on BST's CPR. Thus, the audit indicates that at least 77.51 percent, but no more than 83.49 percent, of BST's hard-wired COE equipment is expected to be located in sufficient quantity in the locations listed on the CPR. Considering this, we expect that there would be a problem with about one in five of the items listed in BST's CPR.

Items without location identifiers. More than seven percent of items in the sample did not have specific location identifiers. In such cases, the CPR contained a general description in the "Frame Identification" field of the CPR. As a result, these items could not always be located and verified with certainty.

Nevertheless, these items were not included among the items not-found in every instance. For some items, additional audit work allowed auditors to reasonably conclude that the item shown was the item listed on the CPR. This additional work consisted of the auditor conducting an office count of like items to account for all such items in the central office or on the floor where the item was expected to be found. If the total number of such items at the location equaled the total number on the CPR for the office or floor, the auditor concluded that the item was found.

Items not found. Equipment items were not found for 96 of the line-item listings (8.3 percent) in the CPR. In addition, for 20 listings (1.8 percent) we found some but not all of the equipment listed.

Unverified items. For 52 lines or 4.5 percent of the sampled listings, auditors were taken to other locations in the office and shown items on different frames than those listed in the CPR. These were not included in the "items-not-found" category when additional work allowed auditors to reasonably conclude that the items shown had a significant possibility of being the ones listed. Although these items were not included in the "not-found" category, neither were they included in the "found" category because the incorrect location in the CPR left some degree of uncertainty whether the items shown to the auditors were the actual items listed on the CPR.

Appendix C

An additional 47 line-items or 4.1 percent of the items in the sampled listings could not be verified for various other reasons. The possibility exists, however, that the sampled listings in this group may be somewhere in the office. In some instances the items could not be physically located because they might be components of larger pieces of equipment. Sufficient documentation, however, was not available to prove this contention. In other instances equipment is not listed in the CPR to be in specific locations in the office. In such cases equipment was shown to the auditors in various places throughout the office. In several of these instances the auditors could not distinguish the items shown from other listings for the same types of equipment and therefore could not be certain that the equipment items shown were the ones listed in the CPR. In addition, there were instances in which the auditors could not determine whether the items shown were the correct ones for other reasons--sometimes because they were not adequately described in the CPR and sometimes because no identification numbers appeared on the items. More than half of these items were included in the unverified category because of a quantity-related problem. The auditors were shown sufficient quantities on the frame to verify the line item in the sample, but not to satisfy additional listings of similar equipment on the CPR that should also be on the same frame. Thus, either the line item equipment in the sample was missing or the other items listed on the CPR were missing. The auditor could not determine which alternative was true. In either case, there was a definite shortage on the frame.



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March 26, 2001

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PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Per the conference memo dated March 20, 2001, summarizing the informal conference that occurred in the Commission's offices on March 7, 2001, BellSouth has the following comments.

With regard to paragraph 2 at page 1, BellSouth notes that the examples provided in this paragraph are not entirely accurate. In BellSouth's March 21, 2001 filing, BellSouth provided, under confidential cover to the Commission, a list of the entities that have committed to purchase more than 40,000 DSL lines. See Response to Data Request No. 3.

With regard to paragraph 3 at page 1, BellSouth notes that there are some discrepancies in the names of the entities identified as utilizing the Florida aggregator. Again, those entities that have committed to volumes of greater than 40,000, either individually or through the Federation of Internet Solution Providers of the Americas (FISPA), are listed under confidential cover in BellSouth's Response of March 21.

With regard to paragraph 3 at page 2, the last two sentences should read that the investment community closely watches BellSouth's revenue commitments. Since BellSouth's tariff at the FCC for DSL is a region-wide tariff, changes in rates and revenue projections can have implications with respect to the financial market.

Mr. Thomas M. Dorn

March 26, 2001

Page 2

With respect to the remainder of the informal conference memorandum, BellSouth believes the Commission has correctly summarized IgLou's comments. However, many of IgLou's statements were made without citation to any sources. A closer look at some of those statements indicates incorrect or incomplete information. For example, at page 2, item number 3, IgLou neglected to mention that a number of other ISP's have committed to the volume levels required for the lowest DSL price. As illustrated in item number 3 of BellSouth's data responses of March 21, 61 other ISPs, either individually or through FISPA, have committed to the volume level permitting the lowest price. At page 2, item number 3, reference is made to IgLou's statement of concern about the possibility of FISPA going out of business. FISPA, which stands for Federation of Internet Solution Providers of the Americas (previously known as Florida Internet Service Provider Association), has been in existence for approximately 5 years. FISPA has 157 member ISPs. At pages 2-3, item number 5, IgLou "reiterated that BellSouth has no significant competitors for its DSL service." However, on the contrary, BellSouth has demonstrated the other competitors who provide DSL service. Taylor Direct Testimony, May 11, 2000, Page 8, Line 7. At Page 3, item number 6, IgLou has stated that Rhythms is the third largest ISP in the country, and only currently has 67,000 DSL lines in the whole nation. Rhythms NetConnection ("Rhythms") is a large **Data** Competitive Local Exchange Carrier (DCLEC) focused on broadband, but they are certainly not the third largest Internet Service Provider (ISP) and Rhythms is concentrating on their Top 40 markets across the nation. (http://www.rhythms.net/news/pr/qtr4_results.cfm). See attached. Further, in IgLou's next statement that "BellSouth, on the other hand, currently has 215,000 in nine states" fails to give the full picture. That figure of 215,000 includes all DSL wholesale ports provided by BellSouth, including ISPs that order wholesale DSL from BellSouth.

On page 3, at the fourth full paragraph, line 2, it appears there is a typographical error. BellSouth committed to, and now has provided, a list of those entities that currently have committed to the 40,000 plus buying level for the lowest rate for DSL.

Mr. Thomas M. Doran

March 26, 2001

Page 3

BellSouth appreciates the Commission's efforts at the informal conference and the opportunity provided to comment on the very thorough conference memorandum memorializing that meeting.

Very truly yours,



Dorothy J. Chambers

Attachment

cc: Parties of Record

219013



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ATTACHMENT

RHYTHMS NETCONNECTIONS ANNOUNCES FOURTH QUARTER RESULTS

Subscriber Lines Increase by 43 Percent to 67,000

ENGLEWOOD, Colo., February 22, 2001 — Rhythms NetConnections Inc.™ (Nasdaq: RTHM), an international provider of broadband communication services, today announced operating results for its fourth quarter ended December 31, 2000.

Fourth quarter revenue, before the implementation of SAB 101, increased 23 percent, to \$21.1 million, as compared to 2000 third quarter revenue of \$17.2 million. This is a significant increase over revenue of \$5.5 million for the fourth quarter ended December 31, 1999. Fourth quarter revenue, after the implementation of SAB 101, was \$17.2 million, as compared to 2000 third quarter revenue of \$13.6 million, after the implementation of SAB 101.

Revenue for the year ended December 31, 2000, was \$58.6 million, before the implementation of SAB 101, as compared to \$11.1 million for the year ended December 31, 1999. Revenue for the year ended December 31, 2000, after the \$12.4 million implementation of SAB 101, was \$46.1 million.

Reflecting the continued deployment of Rhythms' national network, earnings before interest, taxes, depreciation and amortization of deferred expenses (EBITDA) for the 2000 fourth quarter was a loss of \$118.1 million. This compares to an EBITDA loss of \$116.8 million for the 2000 third quarter. Included in the 2000 fourth quarter EBITDA results is \$20.6 million in operating lease expense versus \$18.5 million of operating lease expense in the 2000 third quarter. After reducing the 2000 third and fourth quarter EBITDA loss for operating lease expense, Rhythms' EBITDA loss was essentially flat at approximately \$98 million from the 2000 third quarter to the 2000 fourth quarter.

EBITDA for the year ended December 31, 2000, was a loss of \$432.5 million versus a loss of \$167.9 million for the previous year. Included in the 2000 EBITDA results is \$63.9 million of operating lease expense.

As of December 31, 2000, Rhythms had 67,000 digital subscriber lines (DSL) in service, representing a 43 percent increase over the 47,000 DSL lines in service at the end of the 2000 third quarter and a significant increase over the 12,500 DSL lines in service as of December 31, 1999. Of the 20,000 lines installed during the 2000 fourth quarter, 20 percent, or 4,000, of these lines were "consumer self-installed, no truck-roll," line-shared lines.

The increase to 67,000 lines at the end of 2000 was accomplished despite Rhythms' decision to stop processing orders from Flashcom, Inc. during the last 45 days of the quarter due to Flashcom's deteriorating financial situation. In an unprecedented four-week timeframe, Rhythms successfully transitioned the majority of its 7,000 former Flashcom residential and business customers to more financially stable partners.

Cash, investments and restricted cash as of December 31, 2000 were \$569 million. These monies, along with available vendor equipment financing are expected to finance Rhythms' operational needs into the first quarter of 2002.

"Despite rapidly changing market and sector dynamics, we have adapted quickly," said Catherine Hapka, Chairman and Chief Executive Officer of Rhythms. "The year 2000 was one of tremendous accomplishment for Rhythms. We raised nearly \$1 billion in funding; completed our U.S. network build; fought for and won several regulatory victories, the most significant being the right to implement line sharing; expanded into Canada and formed a joint venture in Japan. We expect continued subscriber growth in 2001, and we are leveraging productivity improvements and reductions in cost structure to achieve our financial and operating goals."

Business Outlook

In 2001, Rhythms will concentrate on serving its 40 top markets. The following statements are based on current expectations. These statements are forward-looking, and actual results may differ materially. The company expects:

- Its cumulative subscriber base to be approximately 175,000 lines in service by December 31, 2001.
- Net revenue to exceed \$125 million for the year ending December 31, 2001, after adjustment for SAB 101 of approximately \$20 to \$25 million.
- EBITDA loss to approximate \$395 million for the year ending December 31, 2001, before a first quarter restructuring charge estimated to be \$15 to \$17 million. The EBITDA loss includes approximately \$100 million in operating lease expense.
- As a result of its focus on its 40 top markets, the company will take a one-time, 2001 first quarter restructuring charge estimated to be \$15 and \$17 million.

Future "Business Outlook" Publication Procedures

In connection with the adoption of the SEC's Regulation FD, which became effective October 23, 2000, Rhythms has adopted the following procedures for publishing and updating its Business Outlook. Following the publication of Rhythms' Business Outlook in its quarterly release of financial results, Rhythms will continue its current practice of having certain corporate representatives meet with investors, the media, investment analysts and others when requested to do so.

At these meetings, Rhythms may reiterate the Business Outlook published in its quarterly release of financial results. At the same time, Rhythms will keep its quarterly release of financial results and Business Outlook available on its Web site (www.rhythms.com). Prior to the start of the Quiet Period (described below), the public can continue to rely on the Business Outlook on the Web site as still being Rhythms' current expectations on matters covered therein, unless Rhythms publishes a notice stating otherwise.

Toward the end of each fiscal quarter, Rhythms will have a "Quiet Period" and, absent a material development, it will no longer publish or update the Business Outlook as its current expectations and Rhythms representatives will not comment concerning the Business Outlook or Rhythms' financial results or expectations. The Quiet Period will extend until the day when Rhythms releases its next quarterly financial results. For the 2001 first quarter, the Quiet Period will be March 16, 2001 through April 26, 2001.

About Rhythms

Based in Englewood, Colo., Rhythms NetConnections Inc. (Nasdaq: RTHM) provides DSL-based, broadband communication services to businesses and consumers. Telecommunications services for Rhythms are provided by Rhythms Links Inc., a wholly owned subsidiary of Rhythms. For more information, call 1-800-RHYTHMS (1-800-749-8467), or visit the company's Web site at www.rhythms.com.

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The statements contained in these materials which are not historical facts may contain forward-looking statements with respect to events, the occurrence of which involve risks and uncertainties. Such statements are indicated by words or phrases such as "anticipate," "estimate," "projects," "believes," "intends," "expects" and similar words and phrases. The following are important factors that could cause Rhythms' actual results to differ materially from those expressed or implied by such forward looking statements: the highly competitive nature of the DSL market; the rapid rate of technological change in the telecommunications industry; Rhythms' history of operating losses and the unproven nature of its business model; customer agreements are generally non-exclusive and terminable by the customer on short notice; several customers are young, emerging companies that are not fully funded; Rhythms' existing capital structure may affect its ability to raise additional capital in the future; Rhythms' dependence on incumbent carriers for collocation and transmission facilities and on unrelated strategic third parties for certain sales and marketing services, equipment installation and fiber optic transport facilities; the need to retain and attract key personnel; and other economic, business, competitive and governmental and/or regulatory risks detailed in Rhythms' filings with the Securities and Exchange Commission. Rhythms undertakes no obligation to review or confirm analysts' expectations or estimates or to release publicly any revisions to any forward-looking statements after the date hereof or to reflect the occurrence of unanticipated events.

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Tuesday April 3 4:59 PM ET

DSL Providers Implode, As Stock, Bonds Wither Away

By Jonathan Stempel

NEW YORK (Reuters) - Stock market investors aren't the only ones taking a beating from the implosion of high-speed Internet access companies that desperately need cash but can't get it.

Bonds sold by the companies that promised national digital subscriber line, or DSL, service, have lost more than \$2.3 billion of their value, analysts said.

And what's left is nearly worthless.

Money-losing Covad Communications Group Inc. (NasdaqNM:COVD - news), NorthPoint Communications Inc. and Rhythms NetConnections Inc. (NasdaqNM:RTHM - news), the three companies most reliant on DSL, are either out of business, or may be heading that way, analysts said.

"We have no evidence of a company that can succeed in making a DSL-only strategy successful and profitable," said Goldman Sachs & Co. in a report dated Monday.

Last month, NorthPoint, which had as many as 100,000 business customers, shut down its network, and sold its assets at fire sale prices.

This week, Rhythms warned it may sell itself, and that its auditors are now assessing it by the "going concern" standard used for troubled companies. Late Tuesday, Chairman and Chief Executive Catherine Hapka quit.

Meanwhile, Covad has curtailed its expansion plans.

Share prices have already slid more than 98 percent for Covad and Rhythms, and the Nasdaq has delisted NorthPoint. Covad shares closed Tuesday at \$1-1/32, down 3/16, or 15.4 percent, after a 52-week high of \$49. Rhythms shares lost half their value on Tuesday, closing at 5/32, after a year high of \$35-5/8. Such declines obviously don't bode well for bondholders.

Related Quotes

COVD	11/16	-11/32
PSIX	3/16	0
RTHM	7/32	+1/16
SBC	43.36	+0.24
T	20.08	+0.04
TGNT	3/8	-1/32
VZ	48.43	+0.83

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So what happened?

"It all comes down to funding, funding, funding," said Chris Martinelli, a senior telecommunications analyst for CIBC World Markets Corp.

In other words, there isn't any, at least not any more.

And it's not just the pure DSL providers, but other Internet access providers with more diversified businesses that are being beaten. This week, for example, PSINet Inc. (NasdaqNM:PSIX - news) and Teligent Inc. (NasdaqNM:TGNT - news) warned that their auditors may start assessing them by that same, "going concern" standard.

Markets Clam Up

DSL companies have been battered by the slowing U.S. economy, heavy competition, the inability of many customers to pay their bills, and a marked tightening of capital markets.

The money the companies needed to grow, so easy to get in 1998 and 1999, vanished, years before the companies could have ever hoped to turn profitable.

"It takes four to six years to break even, and when money isn't there to keep you going, you're toast," said Dave Burstein, editor of DSL Prime, an industry newsletter. "No one can raise cash this year. It doesn't mean the original business plans were crazy, but that's what's hitting everybody."

Worse, the "ISPs," or Internet service providers, that did much of the DSL providers' marketing and provided much of their revenue, started going under themselves.

This, analysts said, has proven crippling, if not fatal.

"In retrospect the DSL companies probably should have gone directly to the customer, but they would have had substantially higher marketing costs," said Martinelli. "When the ISPs started going out of business, they got into a jam."

There was yet another problem -- the companies' dependence on former regional Bell phone companies such as SBC Communications Inc. (NYSE:SBC - news) and Verizon Communications Inc. (NYSE:VZ - news) to provide networks to deliver their services. That didn't work, especially because SBC and Verizon were not only partners -- they were competitors.

With a respective 767,000 and 540,000 DSL subscribers at the end of 2000, SBC and Verizon are the two largest U.S. DSL providers. And subscribers often preferred to sign up directly with them, analysts said, in part because they were companies whose names they knew.

"DSL companies were overly reliant on the Bells for the provisioning of services and long-cycle times, which made it more time-consuming and frustrating to sign up customers," said Robert Rock, a fixed-income telecom analyst for John Hancock Funds in Boston. "It created an extra layer of complexity."

In short, "the Bells have won in keeping DSL a monopoly, especially to residential customers," said Goldman Sachs, which helped underwrite some of NorthPoint's bonds. And even there, all is not well; last month SBC hiked its retail rates 25 percent, and slowed its own DSL expansion.

Little Hope For Recovery

Covad's bonds are now trading below 10 cents on the dollar, Rhythms' below 9 cents, and NorthPoint's at about 1.5 cents.

Given this situation, bondholders, who come ahead of shareholders in the pecking order, can hope only that the capital markets turn around fast enough for Covad and Rhythms, an unlikely prospect, or that the companies can get good value for their assets.

Still, as Rock put it, "the future is probably that the assets get sold at distressed prices."

That's what happened to NorthPoint, which sought bankruptcy protection in January. On March 22 a bankruptcy court let AT&T Corp. (NYSE:T - [news](#)) buy its assets for a mere \$135 million.

"The value people put on it gave no value to the customer base," said Burstein. "The difficulty of taking on equipment, other than what your own network is designed for, is severe. There's almost no market for an arbitrary piece of equipment."

And with AT&T presumably now out of the market to buy more DSL assets, it's an open question what Covad and Rhythms could be worth, or how much bondholders could recover.

"All I would say is I'm bearish," said Martinelli.


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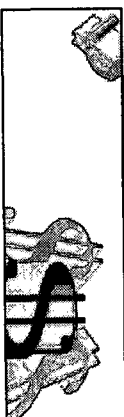


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Rhythms Pursues Exit Strategy

By Jim Wagner



Only days after NorthPoint Communications shut down some of its digital subscriber line operations nationwide, Rhythms NetConnections Inc., is looking for its own exit strategy.

Under fire from auditors to find operational cash, the data competitive local exchange carrier's (DLEC) flagging stock value has put them in danger from another source, its officials announced Monday afternoon.

Rhythms (NASDAQ:RTHM) officials said stock index Nasdaq is getting ready to issue a formal delisting notification, since the nationwide DSL provider has been trading for more than a month under \$1. That's down 99 percent loss from its peak value in the \$90 per share range only two years ago.

At press time, officials haven't said whether they will appeal a decision by Nasdaq to delist them. According to its 10K filing to the Securities and Exchange Commission Monday, if the company doesn't appeal the stock index's decision, officials will try to get listed on the Small Cap Market board.


Listing on the Over The Counter Bulletin Board, the lowest rung on the stock ladder, is considered the death knell for a public company and is the least-favorite option for Rhythms stock, though likely. NorthPoint was put on the OTC board when Nasdaq delisted them.

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It's a bad sign for broadband Internet Service Providers (ISPs) still scrambling to find another DSL provider after AT&T's recent purchase of NorthPoint equipment. The deal stranded more than 100,000 DSL users nationwide and brought the debate of high-speed access to the fore.

A Rhythms spokesperson would not comment on the status of Rhythms operations, and would not speculate on the fate of its customers should the company go out of business.

In its statement, the national broadband provider said it had hired investment banking firm Lazard Freres & Co., LLC, to evaluate its strategic and financial operations.

Lawyers will determine the best course for Rhythms shareholders, not necessarily its DSL customers. Exit options include debt financing or restructuring, asset or equity securities sales, consolidation, or public or private sale.

Rhythms has been busy shoring up its operations the past few months to save money, a result of the economic downturn that's affected the entire high-tech industry.

In January, the company was forced to lay off 450 employees and take a \$15-\$17 million restructuring charge.

Losses are also mounting for the DLEC. In December of 2000, it reported accumulated losses of \$825 million and expects the number to significantly increase in 2001. But officials state the company has enough cash on hand to continue operations to the end of the year.

A look at their 10K filing shows the DLECs situation isn't quite as dire as what happened with NorthPoint.

NorthPoint claimed it didn't have the money to support DSL operations until ISPs could find another provider. Rhythms, in addition to any funds it has in the coffers, sports a stock portfolio that could be cashed in, in the event of an emergency.

The broadband provider has nearly \$15 million invested in @Home Network Solutions, Inc. (an investment Rhythms is currently trying to get back), and \$2.5 million in broadband ISP MegalPath Networks, Inc.

NorthPoint, on the other hand, was cash-strapped and out of options when it was delisted by Nasdaq in February.

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Paul E. Patton, Governor
Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet
Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
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(502) 564-3940
Fax (502) 564-3460

Martin J. Huelsmann
Chairman
Edward J. Holmes
Vice Chairman
Gary W. Gillis
Commissioner

March 21, 2001

PARTIES OF RECORD:

RE: Case No. 99-484
IGLOU INTERNET SERVICES, INC. VS. BELLSOUTH
TELECOMMUNICATIONS, INC.

Attached please find a memorandum that has been filed in the record of the above referenced case. Any comments regarding this memorandum's contents should be submitted to the Commission within five (5) days of receipt of this letter. Any questions regarding this memorandum should be directed to Amy Dougherty at 502-564-3940, extension 257.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman".

Thomas M. Dorman
Executive Director

/AED/cj
Attachments
cc: File



INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC COMMISSION

FILED

MAR 21 2001

**PUBLIC SERVICE
COMMISSION**

TO: Main Case File 99-484

FROM: Amy Dougherty 

DATE: March 20, 2001

RE: IGLOU INTERNET SERVICES, INC. VS. BELLSOUTH
TELECOMMUNICATIONS, INC.

Those persons whose names appear on the attached sign-in sheet gathered for an informal conference in the Commission's offices on March 7, 2001. Initially, BellSouth explained its proposal. BellSouth stated that it believed its proposal filed in its rehearing petition would avoid any jurisdictional confrontation regarding the nature of DSL service. For entities ordering from 51 to 10,000 DSL lines, the rate per line would be \$32 a month. For those ordering from 10,001 to 40,000 DSL lines, the rate would be \$30 a month per line. And for those ordering more than 40,000 lines, the rate would be \$29 a month. These volumes and rate levels would be filed by BellSouth as revisions to its FCC tariff, if the Commission accepts this proposal. These volume levels are based on region-wide ordering.

The Commission's November, 2000 Order in this proceeding required BellSouth to reduce the volumes needed to be eligible for each of the price ranges. Instead, BellSouth has proposed to lower its monthly rate from \$37 maximum to \$32 maximum. BellSouth indicated that Telocity, EarthLink and BellSouth are entities that currently are eligible for the \$29 a month rate because each of them has more than 40,000 DSL lines on a 9 state regional basis. AOL is in negotiations with BellSouth for this rate level.

In addition, Win.Net, BluegrassNet, DC.net, OpenNet utilize the Florida aggregator. Thus, they receive the \$29 rate but they must pay \$2.50 per line per month to the aggregator. These entities receive each DSL line for \$31.50.

BellSouth indicated that there were some DSL data applications that were provided on an instate basis. These could be provided through a special assemblies contract but, according to BellSouth, could not include an ISP gateway application. BellSouth further indicated that the instate data application was not tariffed and only one contract was even in process for this service.

BellSouth's FCC tariff has no current cost support filed with it at the FCC. The only cost study available is 3 years old and was filed initially with the FCC tariff. BellSouth said that it has no long-run cost study to project revenues for this service. Moreover, separations studies are no longer performed. But 25% of the loop is assigned to the interstate jurisdiction and all of the equipment is assigned to the interstate jurisdiction.

BellSouth's proposal in its motion for rehearing contains no changes to the FCC tariff relating to the penalty and shortfall provisions. The highest volume commitment with the best price includes a three year term commitment. A lower volume commitment with a higher price contains a two year commitment.

Iglou requested BellSouth supply cost justification for the tiered demarcations for its volumes. BellSouth indicated that information was not available.

BellSouth did indicate that if the Commission approved its proposal then it would make the FCC revised filing for its DSL service within 15 days of the PSC's approval. BellSouth discussed its process for collapsing the tiers in its proposal. BellSouth argued that if lower volume customers received the same price as higher price volume customers, then the higher volume customers would want a better rate than they currently get. As a "market perception" issue BellSouth contended it is unable to lower the rate for low volume customers. BellSouth further contended that it was constrained by the financial market in its ability to lower its rates. Lower rates would mean BellSouth received lower revenues and if BellSouth received lower revenues then its stock would be downgraded.

Next, the informal conference focused on Iglou's issues. We discussed at length the differences between the Commission's order of a reduction in the volume to 5% of the regional volumes, and BellSouth's proposal of a reduction in the rates. In response to the request to describe why Iglou believed that BellSouth's proposal to alter the prices in BellSouth's FCC tariff was not as appropriate an outcome as the PSC's decision despite the fact that BellSouth's proposal contains a lower base rate, Iglou presented six concerns.

(1) There is lack of legal assurance that BellSouth will not change its federal tariff after the initial change to lower the rate to comply with BellSouth's proposal. There is no legal prohibition that constrains BellSouth's actions to again alter its federal tariff in ways that would be harmful to Iglou.

(2) At the 40,000 volume demarcation point, Iglou would never be able to come close to matching the best price which BellSouth currently provides to itself.

(3) The aggregator issue is still problematic. There is no assurance that the one aggregator will remain in existence. It is an organization, according to Iglou, with 2 or 3 employees. Moreover, Iglou is concerned about the liability issues to its end-user customers if this aggregator were to go out of business. The aggregator's web address is FISPA.org. A copy of the ADSL discount agreement from the Florida aggregator is attached to this memo.

(4) Cost data has still not been supplied by BellSouth. Particularly, Iglou noted that there is no cost support for the tier structure proposed by BellSouth. The DSL service has been rolled out everywhere by BellSouth and the failure to submit cost information should be considered by the PSC, according to Iglou.

(5) The FCC tariff tier quantities are "entirely arbitrary". There is no evidence of economies of scale or any other basis for the consideration of the tier structuring, according to Iglou. Iglou also reiterated that BellSouth has no significant competitors for

its DSL service thus disputing BellSouth's contention that its price structure is market driven.

(6) Iglou supplied an example of why it would not be better with the BellSouth proposal. For 51 DSL lines, under the BellSouth proposal, Iglou would pay \$32 a line per month. For 51 DSL lines, under the PSC's November Order, Iglou would pay \$37 a month. But Iglou argues that it would never be able to obtain the best rate, \$29 a month currently. Rhythms, the third largest ISP in the country, currently has 67,000 DSL lines in the whole nation. BellSouth, on the other hand, currently has 215,000 in nine states. Iglou contends that the pricing differential between \$29 and \$32, a 10% differential, will keep it from functioning in the market.

(7) The termination penalties in the FCC tariff are still in place but will be reduced because of the price changes that BellSouth is proposing. According to Iglou, this amounts to BellSouth not hurting ISP's as badly as it had been before. As an example of the termination penalty, the change in rate ends up calculating a shortfall penalty of three-eighths of what the penalty would be under the current FCC tariff. The tariff, as proposed by BellSouth, still contains a flat rate \$50 per circuit termination penalty. Iglou believes that the termination penalties are still discriminatory as the Commission had originally found.

Iglou also requested changes to BellSouth's script and asked that an automated system, (e.g. press 1 for DSL with your internet provider, press 2 for a DSL with BellSouth Fast Access) be implemented. BellSouth indicated that this automated system would not be appropriate for its business office use. BellSouth did make an offer that when a customer script is not followed, BellSouth will retrain its personnel and take other appropriate action. But, it must have the date, the employee name, and other particulars of the incident. After corrective action has been taken, BellSouth will notify Iglou.

BellSouth agreed to file by no later than March 21, 2001: (1) a list of those entities who currently need the 40,000 demarcation point for the best rate in its service area, (2) the three year old cost study filed in support of its DSL tariff at the FCC with any additional changes or rational, and (3) the federal tariff proceedings and processes regarding effective dates and necessary cost support information.

By April 4, 2001, Iglou should file its response to BellSouth's filing. By way of this memo, Commission staff asks that Iglou indicate in its response its market entry projections for 51 DSL lines, and also for the 2000 DSL lines as described in the November Order.

Unless something unforeseen is filed, all parties have agreed to forego another public hearing and have agreed that the case will be considered submitted to the PSC on April 4, 2001. If this understanding changes the parties must so advise the Commission by no later than April 4, 2001.

/cj
Attachment
cc: file

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
	)	CASE NO
VS.	)	1999-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC		

The following people were in attendance at 9:00 A.M., March 7, 2001, at the informal conference in the above-styled case.

SIGN-IN SHEET	
NAME	REPRESENTING
1. <i>Amy E Donoherty</i>	PSC Legal
2. <i>Tony Taylor</i>	BST
3. <i>Jarothy J. Chambers</i>	"
4. <i>Jim Henny</i>	BST
5. <i>JEFF JOHNSON</i>	PSC
6. <i>Bill Strack</i>	PSC
7. <i>Jonathan W. Ambury</i>	Taylor
8. <i>Thomas Ceregalore</i>	Ig Lou.
9. <i>David [unclear]</i>	Ig Lou
10. <i>Bonnie C. Kittinger</i>	PSC Legal Staff
11. <i>Jean Coleman</i>	BST
12. <i>Phyllis Fannin</i>	ASC
13. <i>Gregory [unclear]</i>	BST
14. <i>Ellen [unclear]</i>	BST

15.	Larry Parley	PSC
16.	Jim Stevens	PSC
17.	Merlyn Smith	BellSouth (via phone)
18.	Jim Johnson	BellSouth (via phone)
19.		
20.		

ADSL DISCOUNT AGREEMENT

Member Name: _____

Agreement No.: _____

Address: _____

Effective Date: _____

This ADSL Discount Agreement ("Agreement") is made and entered into as of the Effective Date shown above, between Florida Internet Services Providers Association, with offices at 1045 East Atlantic Avenue, Delray Beach, FL 33483 ("FISPA"), and the vendor member company of FISPA whose name and address are set forth above ("Member").

1. Pursuant to the "ADSL Letter Of Election" entered into by and between FISPA and BellSouth Telecommunications, Inc. ("BellSouth") on 12/13/99 ("BellSouth Agreement"), FISPA has arranged for its Members to purchase asymmetric digital subscriber lines (ADSL) from BellSouth at a discounted monthly rate ("Discount") as specified in Exhibit A, attached hereto. Subject to the terms and conditions of this Agreement, Member may use its FISPA membership designation to take advantage of the Discount when placing an order with BellSouth for the provisioning of ADSL lines and services (collectively the "ADSL Services").

2. In order to obtain the Discount, Member must (i) be a FISPA member in "good standing", such that all of its outstanding FISPA charges and dues have been paid in full and it is in compliance with all applicable FISPA rules and regulations; (ii) agree to notify FISPA in writing each time it orders lines from BellSouth for the provisioning of ADSL Services, specifying the number of lines for each order; and (iii) provide to BellSouth its FISPA member designation in the Procurement Agreement (defined below). Member shall be exclusively responsible for the procurement of ADSL Services from BellSouth and the applicable fees charged therefor, under a separate written purchase order, agreement or similar instrument between BellSouth and Member ("Procurement Agreement").

3. In consideration of the Discount offered to Member hereunder, Member shall pay to FISPA a monthly surcharge fee ("Surcharge Fee") based upon the number of ADSL lines Member orders from BellSouth in accordance with the Surcharge Fee rate card set forth in Exhibit A attached hereto. Member shall provide such payments to FISPA on or before

the first day of each calendar month during the term of this Agreement together with a statement indicating the number of ADSL lines ordered to date. The fees and charges set forth herein do not include and Member agrees to pay all taxes levied against or upon the ADSL Services and/or Member's use thereof. If any tax for which Member is responsible hereunder is paid by FISPA, Member will reimburse FISPA upon Member's receipt of an invoice therefor.

4. Member shall maintain complete and accurate books and records to substantiate and document the amounts due to FISPA hereunder. FISPA is entitled to audit Member's books and records which relate to the calculation of payments due to FISPA hereunder, during the term of this Agreement on reasonable advance notice to Member. Any such audit will be conducted during Member's normal business hours and at Member's location where such records are kept in the normal course of business and shall be conducted to minimize any disruption to Member's business activities. In the event the audit reveals any discrepancy in the amount due to FISPA and the amount actually paid by Member, Member will immediately pay the difference (required payment minus actual payment) to FISPA.

Member shall allow FISPA to access and/or obtain a copy of all correspondence to the Member from Bell South relative to the ADSL Services including, but not limited to, copies of all invoices for ADSL Services.

5. This Agreement will commence as of the Effective Date and shall continue thereafter unless terminated earlier in accordance with the provisions hereunder. Either party may terminate this

Agreement immediately if the other materially breaches this Agreement and, on at least five (5) days' notice, fails to cure the breach in the specified notice. This Agreement, and Member's right to purchase discounted ADSL Services from BellSouth shall automatically terminate in the event (i) Member resigns from FISPA; (ii) Member is suspended or expelled from FISPA for any reason in accordance with the terms and conditions contained in the FISPA by-laws; (iii) Member is in default of any material obligation contained in the Procurement Agreement including, without limitation, any payment obligation thereunder; and/or (iv) either party becomes bankrupt or insolvent within the meaning of the United States Bankruptcy Code or any substantial and relevant portion of its assets are included in any arrangement with its creditors, an order to windup or submission to control by a receiver, assignee or trustee for the purpose of preserving the assets, whether by the voluntary act of the affected party or otherwise.

Upon the expiration or termination of this Agreement for any reason, Member will relinquish its rights to use all ADSL lines to FISPA which it has ordered pursuant to the Procurement Agreement for which such Member has received the Discount, such that FISPA may reassign said lines as it deems necessary, in its sole discretion.

6. Member represents and warrants to FISPA that: (i) it has the right to enter into and perform its obligations under this Agreement; and (ii) neither entering into this Agreement, nor performance of its obligations violates or infringes on the rights of any other party or any applicable laws or regulations

7. Member agrees to defend and handle, at its own

expense, any claim or action against FISPA arising from (i) any breach of any of the representations, warranties or agreements made by it under this Agreement and/or (ii) its procurement and use (and its customers' use) of the ADSL Services. Member agrees to indemnify and hold FISPA harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) associated with any such claim or action. Member shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise; provided, however, that FISPA may, at its own expense, participate in such defense to protect its own interests.

8. In no event will either party be liable for indirect, incidental, or consequential damages in connection with or arising out of this Agreement.

9. Notices must be in writing and delivered personally, mailed, first class mail or delivered by confirmed electronic means to the undersigned at the addresses set forth above. Notices shall be deemed given on the date personally delivered, when placed in the mail as specified or when electronic or digital confirmation is received. This Agreement shall be construed and enforced under Florida law without regard to its conflicts of laws principles. Unless in writing and signed by the parties, no modification, course of conduct, amendment, failure to enforce any term, or require performance shall be binding or construed as a waiver. This Agreement contains the entire agreement between the parties and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral.

Florida Internet Service Providers Association

Member:

By: _____

By: _____

Name: _____
[Type or Print]

Name: _____
[Type or Print]

Title: _____

Title: _____

EXHIBIT A TO FISPA MEMBER ADSL DISCOUNT AGREEMENTSURCHARGE FEE RATE CARD

<u>Number of ADSL lines</u>	<u>Surcharge Fee</u>
1-100	\$2.50 per line
101-500	\$2.25 per line
500-5000	\$2.00 per line
5001-9999	\$1.00 per line
10000-39999	\$0.50 per line
40000 or greater	\$0.05 per line

DISCOUNTED MONTHLY RATE
FROM BELL SOUTH: \$29.00 per line

BellSouth Telecommunications, Inc.
P.O. Box 32410
Louisville, KY 40232

or
BellSouth Telecommunications, Inc.
601 West Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582-1475
Fax 502 582-1573

RECEIVED

MAR 21 2001

PUBLIC SERVICE
COMMISSION

March 21, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

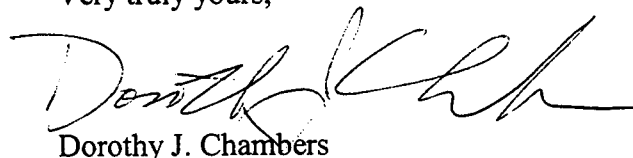
Dear Mr. Dorman:

Enclosed for filing in this case are copies of BellSouth Telecommunications, Inc.'s Responses to the Commission requests at the Informal Conference on March 7, 2001.

Portions of the Response to Items Nos. 1 and 3 contain confidential, commercial, or proprietary information. Pursuant to 807 KAR 5:001, Section 7, enclosed is BellSouth's Petition for Confidentiality.

One copy of the proprietary information is provided to the Commission. A copy of the proprietary information is provided to IgLou and its counsel pursuant to the previously executed Protective Agreement in this case. Please note that the proprietary cost study filed herewith was prepared to comply with the FCC's requirements for new service introductions as they existed when ADSL was filed. Requisite edited copies are provided for the public record and parties of record.

Very truly yours,



Dorothy J. Chambers

Enclosures

cc: Parties of Record
251722

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 21 2001

PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)	
)	
Complainant)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Defendant)	

CONFIDENTIALITY PETITION
PURSUANT TO 807 KAR 5:001, SECTION 7

Petitioner, BellSouth Telecommunications, Inc., ("BellSouth" or the "Company"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to 807 KAR 5:001, Section 7, to treat BellSouth's Response to the Commission request for cost support associated with BellSouth's August 18, 1998, and July 9, 1999, FCC filings for ADSL service (see Response to Item No. 1) and also to treat the names of specific customers that qualify for volume discounts (see Response to Item No. 3) as confidential (those portions highlighted or copied in yellow) in accordance with the Commission's guidelines.

The Kentucky Open Records Act exempts certain commercial information from the public disclosure requirements of the Act. KRS 61.878(1)(b). The Open Records Act also exempts information of a personal nature where the disclosure would constitute a

clearly unwarranted invasion of personal privacy. KRS 61.878(1)(a). To qualify for the commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality if openly discussed. KRS 61.878(1)(b); 807 KAR 5:001, § 7. The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and a likelihood of competitive injury if the information is disclosed.

The material which BellSouth seeks to protect contains confidential cost and/or customer specific information that is considered proprietary to BellSouth. Public disclosure of this information would provide BellSouth's competitors with an unfair advantage. The data is valuable to competitors and potential competitors in formulating strategic plans for entry, pricing, marketing and overall business strategies. This information relates to the competitive interests of BellSouth and disclosure would impair the competitive business of BellSouth as well as the third party vendors. This type of information has been held confidential by the Commission in previous dockets. In addition, public release of specific customer names of the entities that qualify for volume discounts could constitute a clearly unwarranted invasion of those customers' privacy. For example, in some cases, the ISPs may not yet have made a public announcement that they intend to enter DSL in a particular

market. Not only would release of such information be an unwarranted invasion of those customers' privacy, but it would be valuable to the competitors of those customers and also to BellSouth's competitors with respect to the competitors' strategic plans and business strategies. For these reasons, the above-identified information is considered proprietary.

Several of BellSouth's current competitors, including Petitioner, Covad, and Rhythms NetConnection, have publicly announced their intention to enter, or in fact have entered, the market to provide DSL services. Additionally, several potential competitors have likewise indicated their intention to enter the DSL market to compete with BellSouth. Business information such as that requested here would be extremely valuable to competitors in developing competitive business strategies, networks and operations, designing their service offerings and, marketing plans for those services.

As further grounds for this Petition, BellSouth states as follows:

(1) The information as to which BellSouth is requesting confidential treatment is not known outside of BellSouth;

(2) The information is not disseminated within BellSouth and is known only by those BellSouth's employees who have a legitimate business need to know and act upon the information;

(3) BellSouth seeks to preserve the confidentiality of this information through all appropriate means, including the maintenance of appropriate security at its offices;

(4) The disclosure of this information would cause competitive injury to BellSouth in that it would provide BellSouth's competitors with sensitive financial data with respect to certain of BellSouth's services; and

(5) By granting BellSouth's Petition there would be no damage to any public interest in disclosure. In fact, the public would be best served by non-disclosure because competition would thereby be promoted.

For the foregoing reasons, BellSouth asks that its petition for confidential treatment of cost support associated with BellSouth's August 18, 1998, and July 9, 1999, FCC filings for ADSL service (Response to Item No. 1) and specific names of customers that qualify for volume discounts (Response to Item No. 3) (the confidential portions highlighted or copied in yellow) be granted.

Respectfully submitted,



Creighton E. Mershon, Sr.
Dorothy J. Chambers
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

R. Douglas Lackey
J. Phillip Carver
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 21st day of March 2001.


Dorothy J. Chambers

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220

BellSouth Telecommunications, Inc.
KY PSC Case No. 1999-484
KY PSC March 5, 2001 Informal Conference Request
Item No. 1
Page 1

REQUEST: Please provide a copy of BellSouth's ADSL cost support used in BellSouth's FCC ADSL service filings at the time this service was introduced.

RESPONSE: Please see attached Exhibit 1 and Exhibit 2.

BELLSOUTH TELECOMMUNICATIONS, INC.

DESCRIPTION AND JUSTIFICATION

BELLSOUTH ADSL SERVICE

TRANSMITTAL NO. 476

AUGUST 18, 1998

1.0 INTRODUCTION

With this filing, BellSouth Telecommunications, Inc., hereinafter referred to as "BellSouth," is revising its F.C.C. Tariff No. 1 to introduce BellSouth ADSL Service. BellSouth ADSL Service is an interstate data transport service providing high-speed connection between an end-user premises and a Network Service Provider utilizing an overlay of existing in-service Telephone Exchange service and BellSouth Exchange Access Asynchronous Transfer Mode Service (XAATMS).

2.0 DESCRIPTION OF SERVICE

2.1 BellSouth ADSL Service

BellSouth ADSL service is an access data service at peak data rates of up to 1.5 Mbps downstream and 256 Kbps upstream, offered at month-to-month rates under different volume of service levels. Actual speeds may be impacted by factors such as facility lengths, customer backbone network speed and other technical factors. Movement of data in the downstream direction is toward the end-user, while movement of data in the upstream direction is away from the end-user.

2.1.1 Service Components

BellSouth ADSL service is a transmission and transport service only. The end-user's modem is connected with a 10BaseT connection to the network interface at the end-user premises. BellSouth ADSL service consists of Virtual Circuit (VC) connection from the Network Interface Device (NID) over an existing facility to a splitter, modem and BellSouth ADSL service equipment combination referred to herein as the Digital Subscriber Loop Access Multiplexer (DSLAM). The BellSouth ADSL service DSLAM is connected with BellSouth Exchange Access Asynchronous Transfer Mode Service (XAATMS) using frame relay interface capabilities. BellSouth ADSL service customers can connect multiple BellSouth ADSL service capable SWCs with one single data

connection to BellSouth XAATMS. To complete the BellSouth ADSL service VC path, the Network Service Providers can connect their network to the BellSouth XAATMS using Special Access services located in Section 7 of BellSouth's Tariff F.C.C. No 1. BellSouth ADSL service Central Office availability will be as listed in the National Exchange Carriers Association F.C.C. tariff No. 4.

2.1.2 Volume Of Service Levels

Monthly rates with volume pricing are proposed for BellSouth ADSL service. BellSouth will provide BellSouth ADSL service at rates determined by the volume of BellSouth ADSL service Virtual Circuits (VC) specified by the customer at the establishment of the BellSouth ADSL service account. The volume component of the rate design is intended to encourage utilization of BellSouth ADSL service and increase the service's penetration in the marketplace.

2.1.2.1 Changes to Volume of Service Level

Changes to the Volume of Service level specified at the establishment of the BellSouth ADSL service account will not be allowed.

2.1.3 Initial Service Period

When a customer first orders BellSouth ADSL service the customer will be allowed up to twenty-four months in which to reach his volume commitment, for volumes up to 40,000 VCs, without incurring shortfall charges. For volume commitments in excess of 40,000, the customer will be given up to thirty-six months to attain its volume commitment. This provision will facilitate the introduction of this new high speed data service. It provides customers with flexibility so that each can integrate this new telecommunications service into its information services in a manner consistent with its market plans.

2.1.4 Minimum Service Period

The minimum service period for BellSouth ADSL service VCs is twelve months per end-user premises.

3.0 RATES and ECONOMIC INFORMATION

Consistent with the Commission's Price Cap rules for new services, BellSouth provides with this filing the documentation to show that rates established herein are at levels that will not recover more than a just and reasonable portion of overhead costs. The following discussion of the development of rates, demand, costs, and revenue, together with the workpapers and additional documentation provided in Appendices A and B, show that the requirements under the Commission's rules have been met.

3.1.1 Recurring Rates

Recurring monthly rates apply for BellSouth ADSL service VCs. Rates are based on VC volume of service level quantities of; 1) 51-500, 2) 501-2500, 3) 2501-5000, 4) 5001-7500, 5) 7501-10000, 6) 10001-40000, and 7) greater than 40000.

3.1.2 Nonrecurring Charges

Nonrecurring charges apply for each VC established between an end-user premises designated by the customer and the customer's designated location, on a per-occurrence basis.

3.1.2.1 Shortfall Charges

If appropriate, a Shortfall Charge is assessed the month following completion of the initial service period. The Shortfall Charge is assessed when the NSP does not attain the volume of service level specified at the establishment of the account, and is an amount equal to the in-service quantity for

each month multiplied times the difference between the rate appropriate for the committed volume of service and the rate appropriate for the in-service quantity, for each month of the initial period. When, prior to the completion of the initial service period, customers attain the volume of service level specified at the establishment of the BellSouth ADSL service account, the rates appropriate for the current months quantity will be applied in succeeding bills.

Regional shortfall amounts will be distributed to billing areas based on each billing area's portion of a customer's regional in-service VC quantity.

3.1.2.2 Service Rearrangement Charge

A Service Rearrangement Charge is applicable for grooming/rearranging of VCs. This charge would apply when a NSP requests a VC be redirected from one BellSouth XAATMS port to another BellSouth XAATMS port.

3.1.2.3 Move Charge

A move charge applies for each BellSouth ADSL service moved to an end-user's new premises as designated by the customer. This charge is equal to the sum of all nonrecurring charges applicable for a new installation of BellSouth ADSL service. Moves of BellSouth ADSL service from one end-user premises to another end-user premises, where BellSouth ADSL service is available, will be treated as a continuance of service and will not require a new minimum period commitment at the end-user's new premises or application of Termination Liability Charges at the end-user's old premises. Moves of BellSouth ADSL service from one end-user premises to another end-user premises, where BellSouth ADSL service is not available, will be treated as a discontinuance of service at the end-user's old premises, and Termination Liability Charges will apply.

3.1.2.4 Termination Liability Charges

Termination liability charges are applicable for disconnection of BellSouth ADSL service VCs prior to completion of the minimum service period of twelve months, per end-user premises. However, termination liability charges are not applicable; 1) for moves of BellSouth ADSL service when BellSouth ADSL service is reestablished at the end-user's new premises, or 2) when a customer cannot synchronize its terminal equipment with BellSouth ADSL service equipment after being informed that BellSouth ADSL service is available at the designated end-user premises.

3.2 DEMAND

In order to estimate the demand for the BellSouth ADSL service, a baseline forecast was developed and then adjusted based on market expectations. Work paper 1, Page 3, in Appendix A, reflects BellSouth's demand projections for the VC service elements provided under a BellSouth ADSL service arrangement.

3.3 COSTS

Cost studies were performed to determine the incremental costs to provide a BellSouth ADSL service arrangement. The cost studies identified both recurring and nonrecurring elements. A description of these studies is set forth below.

The recurring and nonrecurring unit costs are shown on Workpaper 1 in Appendix B. Associated workpapers are also provided in Appendix B.

3.3.1 Recurring Cost Development

Recurring costs are the annual costs to the Company resulting from the capital investments necessary to provide the service. The recurring costs represent a forward-looking view of technology and deployment. Recurring costs consist of capital costs and operating costs. Capital

costs include depreciation, cost of money, and income tax. Operating costs consist of plant specific and other expenses and ad valorem taxes. These expenses contribute to the ongoing cost to the firm associated with the initial capital investment for the proposed BellSouth ADSL service.

3.3.1.1 Description of Procedures

The procedure for developing recurring costs as shown in Appendix B on Workpaper 2 is described below.

The first step in developing recurring costs for BellSouth ADSL service is to determine the forward-looking network architecture consisting of facilities and equipment at the central office. Material prices for the various cost components are multiplied by inplant factors, which cover the capitalized installation and engineering costs, to develop installed investments. Plant account specific levelized inflation factors are applied to the installed investments to trend the base year, or study year, investments to a levelized amount that is valid for the three year planning period. Equipment utilization and capacity requirements are accounted for in the levelized investments. Loadings are applied to the investments, where appropriate, for land, building, and supporting common equipment and power to capture these support items. Levelized investments by rate element are shown in Appendix B, Workpaper 2.

Next, annual cost factors are used to calculate the direct cost of capital, plant specific expenses, and taxes. Using the levelized investments per plant account code, the annual cost factor specific to each code is applied. This calculation results in a recurring cost per account code for the investments under study. These annual costs are then summed and divided by twelve to arrive at a monthly cost. The monthly costs are shown by rate element in Appendix B, Workpaper 2.

The ratio of the unit monthly cost to investment for each rate element is developed on Appendix B, Workpaper 2. The ratio is equal to the total unit monthly cost divided by the total unit investment. Rate element specific monthly costs are summarized in Appendix B, Workpaper 1.

Workpaper 1.1 shows a summary of the service specific costs. These annual expenses are for the general support of this offering and cannot be directly assigned on a rate element basis.

3.3.2 Nonrecurring Cost Development

Nonrecurring costs are one-time costs and are incurred as a result of work activities associated with the provisioning, installing and completing of orders initiated by customer requests for BellSouth ADSL service. Calculations for the nonrecurring costs are shown in Appendix B, Workpaper 3, and summarized in Appendix B, Workpaper 1.

3.3.2.1 Description of Procedures

The first step in developing nonrecurring costs is to determine the cost elements related to the service offering. These cost elements are then described by all of the individual work functions required to provision the service. The work functions required to provide the service can be grouped into two categories: service order and connect and test.

The next step in developing nonrecurring costs requires that individuals knowledgeable about and or responsible for performing these functions identify the work item for each work function associated with the nonrecurring costs of the service. These work functions are then used to describe the flow of work within the various work centers involved in provisioning the service.

In order to determine the total nonrecurring cost for this offering, the work times for each work function required to provide the service are multiplied by the levelized directly assigned labor rate. These individual work function costs are accumulated into the total nonrecurring costs for each element studied.

Utilizing work functions, work times and labor rates, disconnect costs are calculated in the same manner as the installation costs. Since the labor costs will occur in the future, the labor rates are inflated to that future period in time and then discounted to the present. The discounted cost is then added to the installation cost to develop the total nonrecurring cost.

3.4 REVENUES

Projected revenues for service elements provided under a BellSouth ADSL service arrangement are shown on Workpaper 1, page 2, in Appendix A.

BELLSOUTH TELECOMMUNICATIONS, INC

TRANSMITTAL 476

AUGUST 18, 1998

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APPENDIX A

This workpaper displays the revenues, demand, cost, and cost to rate ratio for BellSouth ADSL service. Page 2 displays the revenue and cost for twelve months, and the unit cost to rate ratio. Pages 3 through 5 display the individual element demand, cost, and rate, respectively.

1 BELLSOUTH ADSL SERVICE
2 SUMMARY

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All Volumes

Annual Revenue	Annual Cost	Unit Cost/ Unit Price Ratio
\$3,033,829		

1 BELLSOUTH ADSL SERVICE
2 DEMAND SUMMARY

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Virtual Circuits

Volume of Service Level

51-500 VCs
501-2,500 VCs
2,501-5,000 VCs
5,001-7,500 VCs
7,501-10,000 VCs
10,001-40,000 VCs
40,001 and more VCs

Recurring
Demand

718
1,580
765
987
1,842
2,768
2,768

1 BELLSOUTH ADSL SERVICE
2 COST SUMMARY

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Virtual Circuits

- Volume of Service Level
- 51-500 VCs
- 501-2,500 VCs
- 2,501-5,000 VCs
- 5,001-7,500 VCs
- 7,501-10,000 VCs
- 10,001-40,000 VCs
- 40,001 and more VCs

Service Rearrangement Charge

NonRecurring Cost Recurring Cost

NonRecurring Cost	Recurring Cost

1 BELLSOUTH ADSL SERVICE
2 RATE SUMMARY

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	NonRecurring Charge	Recurring Rate
<u>Virtual Circuits</u>		
Volume of Service Level		
51-500 VCs	\$100.00	\$45.00
501-2,500 VCs	\$100.00	\$42.00
2,501-5,000 VCs	\$100.00	\$37.00
5,001-7,500 VCs	\$100.00	\$34.00
7,501-10,000 VCs	\$100.00	\$32.00
10,001-40,000 VCs	\$100.00	\$30.00
40,001 and more VCs	\$100.00	\$29.00
Service Rearrangement Charge	\$10.00	-

APPENDIX B

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BELLSOUTH TELECOMMUNICATIONS, INC.

1 UNIT COST SUMMARY - RECURRING AND NONRECURRING
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE:

BellSouth ADSL Service

RATE ELEMENTS

USOC

Nonrecurring
Costs
per VC

Monthly
Costs
per VC

Virtual Circuit (VC) Quantity
Minimum - Maximum

51 - 500

ADF11

501 - 2,500

ADF12

2,501 - 5,000

ADF13

5,001 - 7,500

ADF14

7,501 - 10,000

ADF15

10,001 - 40,000

ADF16

40,000+

ADF17

Service Rearrangement Cost
(per each VC)

ADR

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BELLSOUTH TELECOMMUNICATIONS, INC.

1 COST SUMMARY -
2 SERVICE SPECIFIC COSTS

APPENDIX B
WORKPAPER 1.1
PAGE 1 OF 1

SERVICE:

BellSouth ADSL Service

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9 ITEM

DESCRIPTION

COST

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11 Product Specific Cost

Annual

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BELLSOUTH TELECOMMUNICATIONS, INC.

1 RECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

USOC: ADF11

Per Virtual Circuit
1.5 Mbps Downstream
& 256 Kbps Upstream

14 TOTAL UNIT INVESTMENT

17 INVESTMENT RELATED CAPITAL COSTS

18 Depreciation Expense
19 Cost of Money (11.25%)
20 Income Tax Expense
21 Total (Ln18 + Ln19 + Ln20).....

23 INVESTMENT RELATED OPERATING EXPENSES

24 Maintenance Expense
25 Other Expense
26 Ad Valorem and Other Taxes
27 Total (Ln24 + Ln25 + Ln26).....

31 TOTAL INVESTMENT RELATED UNIT COSTS (Ln21 + Ln27).....

33 NON-INVESTMENT RELATED UNIT COSTS.....

35 TOTAL UNIT ANNUAL COSTS (Ln31 + Ln33).....

37 TOTAL UNIT MONTHLY COSTS (Ln35 / 12).....

39 RATIO OF UNIT MONTHLY COSTS

40 TO INVESTMENT (Ln37 / Ln14).....

0.0209

BELLSOUTH TELECOMMUNICATIONS, INC.

1 RECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

USOC: ADF12

Per Virtual Circuit
1.5 Mbps Downstream
& 256 Kbps Upstream

14 TOTAL UNIT INVESTMENT

17 INVESTMENT RELATED CAPITAL COSTS

18 Depreciation Expense
19 Cost of Money (11.25%)
20 Income Tax Expense
21 Total (Ln18 + Ln19 + Ln20).....

23 INVESTMENT RELATED OPERATING EXPENSES

24 Maintenance Expense
25 Other Expense
26 Ad Valorem and Other Taxes
27 Total (Ln24 + Ln25 + Ln26).....

31 TOTAL INVESTMENT RELATED UNIT COSTS (Ln21 + Ln27).....

33 NON-INVESTMENT RELATED UNIT COSTS.....

35 TOTAL UNIT ANNUAL COSTS (Ln31 + Ln33).....

37 TOTAL UNIT MONTHLY COSTS (Ln35 / 12).....

39 RATIO OF UNIT MONTHLY COSTS

40 TO INVESTMENT (Ln37 / Ln14)..... 0.0209

BELLSOUTH TELECOMMUNICATIONS, INC.

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2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

USOC: ADF13

Per Virtual Circuit
1.5 Mbps Downstream
& 256 Kbps Upstream

TOTAL UNIT INVESTMENT

INVESTMENT RELATED CAPITAL COSTS

Depreciation Expense
Cost of Money (11.25%)
Income Tax Expense
Total (Ln18 + Ln19 + Ln20).....

INVESTMENT RELATED OPERATING EXPENSES

Maintenance Expense
Other Expense
Ad Valorem and Other Taxes
Total (Ln24 + Ln25 + Ln26).....

TOTAL INVESTMENT RELATED UNIT COSTS (Ln21 + Ln27).....

NON-INVESTMENT RELATED UNIT COSTS.....

TOTAL UNIT ANNUAL COSTS (Ln31 + Ln33).....

TOTAL UNIT MONTHLY COSTS (Ln35 / 12).....

RATIO OF UNIT MONTHLY COSTS

TO INVESTMENT (Ln37 / Ln14).....

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BELLSOUTH TELECOMMUNICATIONS, INC.

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2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

USOC: ADF14

Per Virtual Circuit
1.5 Mbps Downstream
& 256 Kbps Upstream

14 TOTAL UNIT INVESTMENT

17 INVESTMENT RELATED CAPITAL COSTS

18 Depreciation Expense
19 Cost of Money (11.25%)
20 Income Tax Expense
21 Total (Ln18 + Ln19 + Ln20).....

23 INVESTMENT RELATED OPERATING EXPENSES

24 Maintenance Expense
25 Other Expense
26 Ad Valorem and Other Taxes
27 Total (Ln24 + Ln25 + Ln26).....

31 TOTAL INVESTMENT RELATED UNIT COSTS (Ln21 + Ln27).....

33 NON-INVESTMENT RELATED UNIT COSTS.....

35 TOTAL UNIT ANNUAL COSTS (Ln31 + Ln33).....

37 TOTAL UNIT MONTHLY COSTS (Ln35 / 12).....

39 RATIO OF UNIT MONTHLY COSTS

40 TO INVESTMENT (Ln37 / Ln14).....

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BELLSOUTH TELECOMMUNICATIONS, INC.

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2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

USOC: ADF15

Per Virtual Circuit
1.5 Mbps Downstream
& 256 Kbps Upstream

TOTAL UNIT INVESTMENT

INVESTMENT RELATED CAPITAL COSTS

Depreciation Expense
Cost of Money (11.25%)
Income Tax Expense
Total (Ln18 + Ln19 + Ln20).....

INVESTMENT RELATED OPERATING EXPENSES

Maintenance Expense
Other Expense
Ad Valorem and Other Taxes
Total (Ln24 + Ln25 + Ln26).....

TOTAL INVESTMENT RELATED UNIT COSTS (Ln21 + Ln27).....

NON-INVESTMENT RELATED UNIT COSTS.....

TOTAL UNIT ANNUAL COSTS (Ln31 + Ln33).....

TOTAL UNIT MONTHLY COSTS (Ln35 / 12).....

RATIO OF UNIT MONTHLY COSTS

TO INVESTMENT (Ln37 / Ln14).....

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2 RATE ELEMENT SPECIFIC COSTS
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14 TOTAL UNIT INVESTMENT
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17 INVESTMENT RELATED CAPITAL COSTS
18 Depreciation Expense
19 Cost of Money (11.25%)
20 Income Tax Expense
21 Total (Ln18 + Ln19 + Ln20).....
22
23 INVESTMENT RELATED OPERATING EXPENSES
24 Maintenance Expense
25 Other Expense
26 Ad Valorem and Other Taxes
27 Total (Ln24 + Ln25 + Ln26).....
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31 TOTAL INVESTMENT RELATED UNIT COSTS (Ln21 + Ln27).....
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33 NON-INVESTMENT RELATED UNIT COSTS.....
34
35 TOTAL UNIT ANNUAL COSTS (Ln31 + Ln33).....
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37 TOTAL UNIT MONTHLY COSTS (Ln35 / 12).....
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39 RATIO OF UNIT MONTHLY COSTS
40 TO INVESTMENT (Ln37 / Ln14).....
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SERVICE NAME: BellSouth ADSL Service

USOC: ADF16

Per Virtual Circuit
1.5 Mbps Downstream
& 256 Kbps Upstream

0.0210

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1 RECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

USOC: ADF17

Per Virtual Circuit
1.5 Mbps Downstream
& 256 Kbps Upstream

14 TOTAL UNIT INVESTMENT

17 INVESTMENT RELATED CAPITAL COSTS

18 Depreciation Expense
19 Cost of Money (11.25%)
20 Income Tax Expense
21 Total (Ln18 + Ln19 + Ln20).....

23 INVESTMENT RELATED OPERATING EXPENSES

24 Maintenance Expense
25 Other Expense
26 Ad Valorem and Other Taxes
27 Total (Ln24 + Ln25 + Ln26).....

31 TOTAL INVESTMENT RELATED UNIT COSTS (Ln21 + Ln27).....

33 NON-INVESTMENT RELATED UNIT COSTS.....

35 TOTAL UNIT ANNUAL COSTS (Ln31 + Ln33).....

37 TOTAL UNIT MONTHLY COSTS (Ln35 / 12).....

39 RATIO OF UNIT MONTHLY COSTS

40 TO INVESTMENT (Ln37 / Ln14).....

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BELLSOUTH TELECOMMUNICATIONS, INC.

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NONRECURRING UNIT COST DEVELOPMENT
ADSL - ASYMMETRICAL DIGITAL SUBSCRIBER LINE
VIRTUAL CIRCUITS (PER VIRTUAL CIRCUIT)

SERVICE NAME: BellSouth
ADSL Service

USOC: ADF11 - ADF17

Ln	Description	(a) Install Work Time (hours)	(b) Disconnect Work Time (hours)	(c) Install Cost	(d) Disconnect Cost	(e) Discounted Disconnect Cost	(f) Total Cost
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Nonrecurring Cost:

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BELLSOUTH TELECOMMUNICATIONS, INC.

WORKPAPER 3
PAGE 2 OF 2

NONRECURRING UNIT COST DEVELOPMENT
ADSL - ASYMMETRICAL DIGITAL SUBSCRIBER LINE
SERVICE REARRANGEMENT CHARGE (PER EACH VC)

SERVICE NAME: BellSouth
ADSL Service

USOC: ADR

Ln	Description	(a) Install Work Time (hours)	(b) Disconnect Work Time (hours)	(c) Install Cost	(d) Disconnect Cost	(e) Discounted Disconnect Cost	(f) Total Cost
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Service Order:

Nonrecurring Cost:

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BELLSOUTH TELECOMMUNICATIONS, INC.

DESCRIPTION AND JUSTIFICATION

BELLSOUTH ADSL SERVICE

TRANSMITTAL NO. 513

JULY 9, 1999

1.0 INTRODUCTION

With this filing, BellSouth Telecommunications, Inc., hereinafter referred to as "BellSouth," is revising its F.C.C. Tariff No. 1, to introduce new data rate and pricing options to its BellSouth ADSL service. BellSouth ADSL service is an interstate data transport service providing high-speed connection between an end-user premises and a Network Service Provider (NSP) utilizing an overlay of existing Telephone Exchange service and BellSouth Exchange Access Asynchronous Transfer Mode service (XAATMS).

2.0 DESCRIPTION OF SERVICE

2.1 Current Low Speed Service

BellSouth ADSL service is a data transport service currently providing peak data rates of up to 1.5 Mbps downstream, and 256 Kbps upstream, and offered at month-to-month rates under different volume of service levels. This service provides a basic level of service to its customer(s), with which to market high speed access to the broad spectrum of its customer base. Demand for this service has been strongest in the internet service sector. This service includes no exchange facility rearrangements to accommodate conditions that might disqualify an end-user premises for the purpose of BellSouth ADSL service as requested by the NSP.

2.2 Proposed Low Speed Service

With this filing BellSouth introduces an additional data rate option that provides a minimum data rate of at least 768 Kbps downstream and 512 Kbps upstream. In addition to internet/intranet access, this proposed new data rate is in response to customer requests for better availability and higher transport speeds, with specified minimum data rates, for applications such as Small Office, Home Office (SOHO), Remote Training and Electronic Commerce.

2.2.1 Volume of Service Levels

Currently, BellSouth ADSL service rate elements are provided at monthly rates under volume pricing arrangements. That is to say that BellSouth provides BellSouth ADSL service at rates determined by the volume of BellSouth ADSL service Virtual Circuits (VC) specified by the customer at the establishment of the BellSouth ADSL service account. The additional low speed data rate option proposed herein is to be offered under the same volume pricing arrangement available for the other low speed service.

2.2.2 Changes To Volume Of Service Level

Changes to the Volume of Service level specified at the establishment of the BellSouth ADSL service account will not be allowed.

2.2.3 Initial Service Period

When a customer first orders a BellSouth ADSL service low speed data rate, the customer will be allowed up to twenty-four months in which to reach their volume commitment, for volumes up to 40,000 VCs, without incurring shortfall charges. For volume commitments in excess of 40,000, the customer will be given up to thirty-six months to attain their volume commitment. This provision provides customers with flexibility so that each can integrate these new data rate options into their information services in a manner consistent with their market plans. The minimum service period for low speed BellSouth ADSL service is twelve months per end-user premises

2.3 Proposed High Speed Services

With this filing BellSouth also proposes three specialized, high speed (above 1.5 Mbps downstream) services, requested by NSPs in order to meet the needs of their highly sophisticated customers. The high speed services include data rates of; 1) from 1.5 Mbps to 1.8 Mbps downstream and from 512 Kbps to 768 Kbps upstream, 2) from 2.0 to 4.0 Mbps downstream and

from 640 Kbps to 896 Kbps upstream and 3) from 4.0 Mbps to 6.0 Mbps downstream and from 640 Kbps to 896 Kbps upstream.

In addition to those applications mentioned above for lesser data rates, these services are targeted for applications such as video on demand, video conferencing, and gaming. At the higher data rates proposed, Asymmetric Digital Subscriber Line (ADSL) technology supports high quality video image delivery including MPEG2 video. Because the end-users of these high speed services are in more of a "niche" market, customers of BellSouth's ADSL service have requested a different rate structure than that associated with the other ADSL services.

The minimum service period for high speed BellSouth ADSL service on a Month To Month (MTM) basis is three months per end-user premises. The minimum service period for high speed BellSouth ADSL service, having payment periods in excess of twelve months, is either thirteen or twenty-five months, dependant upon the payment period subscribed to on a per end-user premises basis. The minimum quantity is one. When a high speed BellSouth ADSL service is requested, the customer will be billed the appropriate monthly rate for each Virtual Circuit (VC), each month.

2.4 Symmetric Digital Subscriber Line Service

With this filing, BellSouth also proposes the addition of a symmetric Digital Subscriber Line (DSL) service. The term "Symmetric," when referenced in association with BellSouth's ADSL service(s), refers to the condition of having the same data transmission rate in both the downstream and upstream directions. The proposed constant data rate of 384 Kbps downstream and 384 Kbps upstream provides a stable, relatively low speed, platform for video conferencing. This data rate provides customers an option to the higher priced, higher speed service(s), for their specific video conferencing needs. As with the high speed ADSL services, customers of

BellSouth have requested a different rate structure than that associated with the other, low speed, ADSL services.

The minimum service period for symmetric BellSouth ADSL service on a MTM basis is three months per end-user premises. The minimum service period for symmetric BellSouth ADSL service, having payment periods in excess of twelve months, is either thirteen or twenty-five months, dependant upon the payment period subscribed to on a per end-user premises basis. The minimum quantity is one. When a symmetric BellSouth ADSL service is requested, the customer will be billed the appropriate monthly rate for each Virtual Circuit (VC), each month.

2.5 Achieved Peak Data Rates

Achieved peak data rates may be impacted by factors such as facility length, customer backbone data rate and other technical factors. Movement of data in the downstream direction is toward the end-user, while movement of data in the upstream direction is away from the end-user.

3.0 RATES AND ECONOMIC INFORMATION

Consistent with the Commission's Price Cap rules for new services, BellSouth provides with this filing the documentation to show that rates established herein are at levels that will not recover more than a just and reasonable portion of overhead costs. The following discussion of the development of rates, demand, costs and revenue, together with the requirements under the Commission's rules have been met.

3.1 Recurring Rates

Recurring monthly rates apply for BellSouth ADSL service VCs. Rates specified in 7.5.21(A) for the existing data rate option specified in 7.2.17(C)(1), and the proposed data rate option specified in 7.2.17(C)(2), are based on VC volume of service level quantities of 1) 51-500, 2) 501-2500, 3)

2501-5000, 4) 5001-7500, 5) 7501-10000, 6) 10001-40000, and 7) greater than 40000. In addition to the Month-To-Month (MTM) option, rates for the data rate options specified in 7.2.17(C)(3) through (6) are based on customer specified optional payment periods of 13-24 months and 25 months or greater.

3.1.2 Nonrecurring Charges

Unless the customer cannot synchronize its terminal equipment with BellSouth ADSL service equipment after being informed that BellSouth ADSL service is available at the designated end-user premises, nonrecurring charges apply for each VC established between an end-user premises designated by the customer and the customer's designated location, on a per-occurrence basis.

3.1.2.1 Shortfall Charges

If appropriate, a Shortfall Charge is assessed the month following completion of the initial service period. The Shortfall Charge is assessed when the NSP does not attain the volume of service level specified at the establishment of the account, and is an amount equal to the in-service quantity for each month multiplied times the difference between the rate appropriate for the committed volume of service and the rate appropriate for the in-service quantity, for each month of the initial period. When, prior to the completion of the initial service period, customers attain the volume of service level specified at the establishment of the BellSouth ADSL service account, the rates appropriate for the current months quantity will be applied to succeeding bills.

Regional shortfall amounts will be distributed to billing areas based on each billing area's portion of a customer's regional in-service VC quantity.

3.1.2.2 Service Rearrangement Charge

A Service Rearrangement Charge is applicable for grooming/rearranging of VCs. This charge would apply when a NSP requests a VC be redirected from one BellSouth XAATMS port to another BellSouth XAATMS port.

3.1.2.3 Move Charge

A move charge applies for each BellSouth ADSL service moved to an end-user's new premises as designated by the customer. This charge is equal to the sum of all nonrecurring charges applicable for a new installation of BellSouth ADSL service. Moves of BellSouth ADSL service, from one end-user's premises to another end-user premises, where BellSouth ADSL service is available, will be treated as a continuance of service and, unless a data rate change is requested by the customer, will not require a new minimum period commitment at the end-user's new premises, or application of Termination Liability Charges at the end-user's old premises. Moves from an end-user premises where BellSouth ADSL service is available to another end-user premises where BellSouth ADSL service is not available will be treated as a discontinuance of service at the end-user's old premises and Termination Liability Charges will apply. Customer requested changes to a higher or lower peak data rate will require a new minimum period commitment.

3.1.2.4 Termination Liability Charges

A Termination Liability Charge (TLC) is applicable for disconnection of BellSouth ADSL service VCs prior to completion of the minimum service period. However, TLCs are not applicable; 1) for moves of BellSouth ADSL service when BellSouth ADSL service is reestablished at the end-user's new premises, 2) when a customer cannot synchronize its terminal equipment with BellSouth ADSL service equipment after being informed, by BellSouth, that BellSouth ADSL service is available at the designated end-user premises, or 3) when a customer

upgrades or downgrades to a VC having a higher or lower upstream or downstream peak data rate upon completion of the specified minimum service period.

3.1.2.5 Upgrades and Downgrades

After completion of the minimum service period appropriate for the customer designated peak data rate, the customer may request a change to a higher or lower upstream or downstream peak data rate. The charge appropriate for this change is the sum of all nonrecurring charges appropriate for provisioning of new service for the new peak data rate.

3.2 Demand

In order to estimate the demand for BellSouth ADSL service, a baseline forecast was developed and then adjusted based on market expectations. Workpaper 1, Page 3, in Appendix A, reflects BellSouth's demand projections for the VC service elements under a BellSouth ADSL service arrangement.

3.3 Costs

This section describes the development of the recurring and nonrecurring costs for new virtual circuit data rates for BellSouth ADSL service. This service provides for the establishment of a point-to-point Virtual Circuit (VC) between two customer-designated locations. Workpapers are identified as Appendix B, Workpaper 1, Workpaper 1.1, Workpaper 2, and Workpaper 3.

Workpaper 1 contains a summary of rate element specific costs. Workpaper 1.1 contains a summary of shared costs. Workpaper 2 contains recurring unit cost development details.

Workpaper 3 contains the nonrecurring unit cost development details.

3.3.1 Recurring Cost Development

Recurring costs are the annual costs to the Company resulting from the capital investments necessary to provide the service. The recurring costs represent a forward-looking view of technology and deployment. Recurring costs consist of capital costs and operating costs. Capital costs include depreciation, cost of money, and income tax. Operating costs consist of plant specific and other expenses and ad valorem taxes. These expenses contribute to the ongoing cost to the firm associated with the capital investment for this offering.

3.3.1.1 Description of Procedures

The procedure for developing recurring costs as shown in Appendix B on Workpaper 2 is described below.

The first step in developing recurring costs for virtual circuits at new data speeds for BellSouth ADSL service is to determine the forward-looking network architecture consisting of facilities and network equipment. Material prices for the various cost components are multiplied by inplant factors, which cover the capitalized installation and engineering costs, to develop installed investments. Plant account specific levelized inflation factors are applied to the installed investments to trend the base year, or study year, investments to a levelized amount that is valid for the three year planning period. Equipment utilization and capacity requirements are accounted for in the levelized investments. Loadings are applied to the investments, where appropriate, for land, building, and supporting common equipment and power to capture these support items. Levelized investments by rate element are shown in Appendix B, Workpaper 2.

Next, annual cost factors are used to calculate the direct cost of capital, plant specific expenses, and taxes. Using the levelized investments per plant account code, the annual cost factor specific to each code is applied. This calculation results in a recurring cost per account code for the

investments under study. These annual costs are then summed and divided by twelve to arrive at a monthly cost. The monthly costs are shown by rate element in Appendix B, Workpaper 2.

The ratio of the unit monthly cost to investment for each rate element is developed on Appendix B, Workpaper 2. The ratio is equal to the total unit monthly cost divided by the total unit investment. Rate element specific monthly costs are summarized in Appendix B, Workpaper 1.

Workpaper 1.1 shows a summary of the service specific shared costs consisting of expenses for product support. These shared expenses are for general support of the offering and cannot be directly assigned to a specific rate element.

3.3.2 Nonrecurring Cost Development

Nonrecurring costs are one-time costs and are incurred as a result of work activities associated with the provisioning, installing and completing of orders initiated by customer requests for BellSouth ADSL service. Calculations for the nonrecurring costs are shown in Appendix B, Workpaper 3, and summarized in Appendix B, Workpaper 1.

3.3.2.1 Description of Procedures

The first step in developing nonrecurring costs is to determine the cost elements related to the service offering. These cost elements are then described by all of the individual work functions required to provision the service.

The next step in developing nonrecurring costs requires that individuals knowledgeable about and or responsible for performing these functions identify the work item for each work function associated with the nonrecurring costs of the service. These work functions are then used to describe the flow of work within the various work centers involved in provisioning the service.

In order to determine the total nonrecurring cost for this offering, the work times for each work function required to provide the service are multiplied by the levelized directly assigned labor rate. These individual work function costs are accumulated into the total nonrecurring costs for each element studied.

Utilizing work functions, work times and labor rates, disconnect costs are calculated in the same manner as the installation costs. Since the labor costs will occur in the future, the labor rates are inflated to that future period in time and then discounted to the present. The discounted cost is then added to the installation cost to develop the total nonrecurring cost.

3.4 Revenues

Projected revenues for service elements added to BellSouth ADSL service are shown on Workpaper 1, page 2, in Appendix A.

ATTACHMENT A

This workpaper displays the revenues, demand, cost, and cost to rate ratio for BellSouth ADSL service. Page 2 displays the revenue and cost for twelve months, and the unit cost to rate ratio. Pages 3 through 5 display the individual element demand, cost, and rate, respectively.

1 BELLSOUTH ADSL SERVICE
2 SUMMARY

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	<u>Annual Revenue</u>	<u>Annual Cost</u>	<u>Unit Cost/ Unit Price Ratio</u>
RATE ELEMENT			
Downstream data rate of at least 768 Kbps			
Upstream data rate of at least 512 Kbps			
All Volumes	\$332,073		
Downstream data rate of from 1.5 Mbps to 1.8 Mbps	\$633,225		
Upstream data rate of from 512 Kbps to 768 Kbps			
Downstream data rate of from 2.0 Mbps to 4.0 Mbps	\$108,625		
Upstream data rate of from 640 Kbps to 896 Kbps			
Downstream data rate of from 4.0 Mbps to 6.0 Mbps	\$358,850		
Upstream data rate of from 640 Kbps to 896 Kbps			
Downstream data rate of at least 384 Kbps	\$854,412		
Upstream data rate of at least 384 Kbps			
Shared Cost	NA		
Total	\$2,287,185		

1 BELLSOUTH ADSL SERVICE
2 DEMAND SUMMARY

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	Nonrecurring <u>Demand</u>	MTM Recurring <u>Demand</u>	13-24 Months Recurring <u>Demand</u>	>24 Months Recurring <u>Demand</u>
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Virtual Circuits

Downstream data rate of at least 768 Kbps

Upstream data rate of at least 512 Kbps

Volume of Service Level

51-500 VCs

501-2,500 VCs

2,501-5,000 VCs

5,001-7,500 VCs

7,501-10,000 VCs

10,001-40,000 VCs

40,001 and more VCs

Downstream data rate of from 1.5 Mbps to 1.8 Mbps

Upstream data rate of from 512 Kbps to 768 Kbps

Downstream data rate of from 2.0 Mbps to 4.0 Mbps

Upstream data rate of from 640 Kbps to 896 Kbps

Downstream data rate of from 4.0 Mbps to 6.0 Mbps

Upstream data rate of from 640 Kbps to 896 Kbps

Downstream data rate of at least 384 Kbps

Upstream data rate of at least 384 Kbps

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APPENDIX A
WORKPAPER 1
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1 BELLSOUTH ADSL SERVICE
2 COST SUMMARY

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Virtual Circuits

<u>Nonrecurring</u> <u>Cost</u>	<u>MTM</u> <u>Recurring</u> <u>Cost</u>	<u>13-24 Months</u> <u>Recurring</u> <u>Cost</u>	<u>>24 Months</u> <u>Recurring</u> <u>Cost</u>
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- Downstream data rate of at least 768 Kbps
- Upstream data rate of at least 512 Kbps
- Downstream data rate of from 1.5 Mbps to 1.8 Mbps
- Upstream data rate of from 512 Kbps to 768 Kbps
- Downstream data rate of from 2.0 Mbps to 4.0 Mbps
- Upstream data rate of from 640 Kbps to 896 Kbps
- Downstream data rate of from 4.0 Mbps to 6.0 Mbps
- Upstream data rate of from 640 Kbps to 896 Kbps
- Downstream data rate of at least 384 Kbps
- Upstream data rate of at least 384 Kbps

1 BELLSOUTH ADSL SERVICE
2 RATE SUMMARY

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<u>Virtual Circuits</u>	<u>Nonrecurring Charge</u>	<u>MTM Recurring Rate</u>	<u>13-24 Months Recurring Rate</u>	<u>>24 Months Recurring Rate</u>
Downstream data rate of at least 768 Kbps				
Upstream data rate of at least 512 Kbps				
Volume of Service Level				
51-500 VCs	\$300.00	\$134.00	NA	NA
501-2,500 VCs	\$300.00	\$125.00	NA	NA
2,501-5,000 VCs	\$300.00	\$116.00	NA	NA
5,001-7,500 VCs	\$300.00	\$108.00	NA	NA
7,501-10,000 VCs	\$300.00	\$101.00	NA	NA
10,001-40,000 VCs	\$300.00	\$94.00	NA	NA
40,001 and more VCs	\$300.00	\$85.00	NA	NA
Downstream data rate of from 1.5 Mbps to 1.8 Mbps	\$300.00	\$195.00	\$175.00	\$150.00
Upstream data rate of from 512 Kbps to 768 Kbps				
Downstream data rate of from 2.0 Mbps to 4.0 Mbps	\$300.00	\$450.00	\$400.00	\$335.00
Upstream data rate of from 640 Kbps to 896 Kbps				
Downstream data rate of from 4.0 Mbps to 6.0 Mbps	\$300.00	\$850.00	\$800.00	\$725.00
Upstream data rate of from 640 Kbps to 896 Kbps				
Downstream data rate of at least 384 Kbps	\$300.00	\$140.00	\$120.00	\$99.00
Upstream data rate of at least 384 Kbps				

Attachment B

ATTACHMENT B

BELLSOUTH TELECOMMUNICATIONS, INC.

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APPENDIX B
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1 UNIT COST SUMMARY - RECURRING and NONRECURRING
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

Per Virtual Circuit
- each

USOC	MONTHLY COST	NONRECURRING COST
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RATE ELEMENT

Per Virtual Circuit

Downstream data rate of at least 384 Kbps

Upstream data rate of at least 384 Kbps

- each

ADF21

Per Virtual Circuit

Downstream data rate of at least 768 Kbps

Upstream data rate of at least 512 Kbps

- each

ADF61 thru ADF67

Per Virtual Circuit

Downstream data rate of from 1.5 Mbps to 1.8 Mbps

Upstream data rate of from 512 Kbps to 768 Kbps

- each

ADF31

Per Virtual Circuit

Downstream data rate of from 2.0 Mbps to 4.0 Mbps

Upstream data rate of from 640 Kbps to 896 Kbps

- each

ADF41

Per Virtual Circuit

Downstream data rate of from 4.0 Mbps to 6.0 Mbps

Upstream data rate of from 640 Kbps to 896 Kbps

- each

ADF51

1 COST SUMMARY -
2 SHARED COSTS

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SERVICE NAME: BellSouth ADSL Service

Description

Monthly Costs

Product Support

1 RECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service
USOC: ADF21
Per Virtual Circuit - each
Downstream data rate of at least
384 Kbps
Upstream data rate of at least
384 Kbps

TOTAL UNIT INVESTMENT

INVESTMENT RELATED CAPITAL COSTS

Depreciation Expense
Cost of Money (11.25%)
Income Tax Expense
Total (LN18 + LN19 + LN20).....

INVESTMENT RELATED OPERATING EXPENSES

Maintenance Expense
Other Expense
Ad Valorem and Other Taxes
Total (LN24 + LN25 + LN26).....

TOTAL INVESTMENT RELATED UNIT COSTS (LN21 + LN27).....

NON-INVESTMENT RELATED UNIT COSTS.....

TOTAL UNIT ANNUAL COSTS (LN31 + LN33).....

TOTAL UNIT MONTHLY COSTS (LN35 / 12).....

RATIO OF UNIT MONTHLY COSTS

TO INVESTMENT (LN37 / LN14)..... 0.0211

1 RECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service
USOC: ADF61 thru ADF67
Per Virtual Circuit - each
Downstream data rate of at least
768 Kbps
Upstream data rate of at least
512 Kbps

14 TOTAL UNIT INVESTMENT

17 INVESTMENT RELATED CAPITAL COSTS

18 Depreciation Expense
19 Cost of Money (11.25%)
20 Income Tax Expense
21 Total (LN18 + LN19 + LN20).....

23 INVESTMENT RELATED OPERATING EXPENSES

24 Maintenance Expense
25 Other Expense
26 Ad Valorem and Other Taxes
27 Total (LN24 + LN25 + LN26).....

31 TOTAL INVESTMENT RELATED UNIT COSTS (LN21 + LN27).....

33 NON-INVESTMENT RELATED UNIT COSTS.....

35 TOTAL UNIT ANNUAL COSTS (LN31 + LN33).....

37 TOTAL UNIT MONTHLY COSTS (LN35 / 12).....

39 RATIO OF UNIT MONTHLY COSTS

40 TO INVESTMENT (LN37 / LN14)..... 0.0209

1 RECURRING UNIT COST DEVELOPMENT -
 2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service
 USOC: ADF31
 Per Virtual Circuit - each
 Downstream data rate of from
 1.5 Mbps to 1.8 Mbps
 Upstream data rate of from
 512 Kbps to 768 Kbps

TOTAL UNIT INVESTMENT

INVESTMENT RELATED CAPITAL COSTS

Depreciation Expense
 Cost of Money (11.25%)
 Income Tax Expense
 Total (LN18 + LN19 + LN20).....

INVESTMENT RELATED OPERATING EXPENSES

Maintenance Expense
 Other Expense
 Ad Valorem and Other Taxes
 Total (LN24 + LN25 + LN26).....

TOTAL INVESTMENT RELATED UNIT COSTS (LN21 + LN27).....

NON-INVESTMENT RELATED UNIT COSTS.....

TOTAL UNIT ANNUAL COSTS (LN31 + LN33).....

TOTAL UNIT MONTHLY COSTS (LN35 / 12).....

RATIO OF UNIT MONTHLY COSTS

TO INVESTMENT (LN37 / LN14)..... 0.0205

1 RECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service

USOC: ADF41
Per Virtual Circuit - each
Downstream data rate of from
2.0 Mbps to 4.0 Mbps
Upstream data rate of from
640 Kbps to 896 Kbps

TOTAL UNIT INVESTMENT

INVESTMENT RELATED CAPITAL COSTS

Depreciation Expense
Cost of Money (11.25%)
Income Tax Expense
Total (LN18 + LN19 + LN20).....

INVESTMENT RELATED OPERATING EXPENSES

Maintenance Expense
Other Expense
Ad Valorem and Other Taxes
Total (LN24 + LN25 + LN26).....

TOTAL INVESTMENT RELATED UNIT COSTS (LN21 + LN27)...

NON-INVESTMENT RELATED UNIT COSTS.....

TOTAL UNIT ANNUAL COSTS (LN31 + LN33).....

TOTAL UNIT MONTHLY COSTS (LN35 / 12).....

RATIO OF UNIT MONTHLY COSTS

TO INVESTMENT (LN37 / LN14)..... 0.0204

1 RECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

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SERVICE NAME: BellSouth ADSL Service
USOC: ADF51
Per Virtual Circuit - each
Downstream data rate of from
4.0 Mbps to 6.0 Mbps
Upstream data rate of from
640 Kbps to 896 Kbps

TOTAL UNIT INVESTMENT

INVESTMENT RELATED CAPITAL COSTS

Depreciation Expense
Cost of Money (11.25%)
Income Tax Expense
Total (LN18 + LN19 + LN20).....

INVESTMENT RELATED OPERATING EXPENSES

Maintenance Expense
Other Expense
Ad Valorem and Other Taxes
Total (LN24 + LN25 + LN26).....

TOTAL INVESTMENT RELATED UNIT COSTS (LN21 + LN27).....

NON-INVESTMENT RELATED UNIT COSTS.....

TOTAL UNIT ANNUAL COSTS (LN31 + LN33).....

TOTAL UNIT MONTHLY COSTS (LN35 / 12).....

RATIO OF UNIT MONTHLY COSTS

TO INVESTMENT (LN37 / LN14)..... 0.0202

APPENDIX B
WORKPAPER 3
PAGE 1 OF 2

SERVICE NAME: BellSouth ADSL SERVICE

USOC: ADF21, 31, 41, 51, ADF61...67
Per Virtual Circuit
each

1 NONRECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

Workgroups	Install Worktimes (minutes)	Disconnect Worktimes (minutes)	Directly Assigned Labor Rate	Install Cost	Disconnect Cost	Discounted Disconnect Cost	Total Cost
15							
16							
17			\$37.39				
18			\$33.90				
19			\$37.19				
20			\$38.31				
21			\$44.88				
22			\$34.37				
23			\$41.00				
24			\$41.00				
25			\$73.78				
26			\$67.26				
27			\$47.97				
28			\$56.20				
29							
30							
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							
41							
42							
43							
44							
45							

Exchange Line Facility Conditioning (from wp3, page 2, line 41)

Total Nonrecurring Cost Per Virtual Circuit (line 41 + line 43)

APPENDIX B
WORKPAPER 3
PAGE 2 OF 2

SERVICE NAME: BellSouth ADSL SERVICE

USOC: ADF21, 31, 41, 51, ADF61...67
Exchange Line Facility Conditioning

1 NONRECURRING UNIT COST DEVELOPMENT -
2 RATE ELEMENT SPECIFIC COSTS

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14 Workgroups
- 15
- 16
- 17 COWKGRP
- 18
- 19 LCM
- 20
- 21 OSPE
- 22
- 23 AFIG
- 24
- 25 I&M
- 26
- 27 Contractor
- 28
- 29 OSPC
- 30
- 31 AE
- 32
- 33 CCM
- 34
- 35 OSPE
- 36
- 37 Total
- 38
- 39 Probability of Occurrence
- 40
- 41 Total
- 42
- 43
- 44
- 45

Worktimes (minutes)	Install Worktimes (minutes)	Disconnect Worktimes (minutes)	Directly Assigned Labor Rate	Install Cost	Disconnect Cost	Discounted Disconnect Cost	Total Cost
			\$42.88				
			\$53.15				
			\$47.97				
			\$33.90				
			\$41.00				
			\$75.00				
			\$45.05				
			\$73.78				
			\$56.20				
			\$47.97				

Item 2

REQUEST: Please provide further information regarding the period of time before BellSouth could file any change in the proposed FCC ADSL tariff filing once it has been filed and also to provide an explanation of the procedures before the FCC if BellSouth were to subsequently file for a price increase in this tariff.

RESPONSE: BellSouth can adjust its existing tariff rates with the following notice periods:

- For interstate rates in MSAs not subject to the FCC's Phase II pricing flexibility rules (all MSAs in Kentucky except Louisville):
 - Rate Increases can be made on 15 days notice and Rate Decreases can be made on 7 days notice (47 C.F.R. §61.58(a)(2)). In accordance with the FCC's price cap rules (47 C.F.R. §61.49), the carrier must calculate new price cap indices reflecting the rate change and show that all relevant indices remain within price cap limits.
- For interstate rates subject to Phase II pricing flexibility (dedicated switched transport and special access (including ADSL)), rate changes (increases or decreases) may be made on 1 days notice. (47 C.F.R. §69.727) BellSouth has Phase II pricing flexibility in the Louisville MSA.¹
- Once a rate is changed, it must remain in effect for a 30 day period before it can be changed again unless the FCC grants a carrier special permission to change the rate at an earlier date. (47 C.F.R. §61.59(a))

Intervention Procedures--any interested party can file a petition to suspend, reject or investigate a tariff filing in accordance with Section 1.773 of the FCC's rules:

- For tariff filings made on 7 days notice, petitions to suspend, reject, or investigate a tariff filing must be filed and served on the filing carrier within three calendar days of the tariff filing. (47 C.F.R. §1.773(a)(2)(i))
- BellSouth Telecommunications, Inc.

¹ Section 24 of BellSouth's Tariff FCC No. 1 lists all the wire centers for which BellSouth received Phase II pricing flexibility.

KY PSC Case No. 1999-484
KY PSC March 5, 2001 Informal Conference Request
Item No. 2
Page 2 of 2

RESPONSE: (Cont'd)

- For tariff filings made on 15 days notice, petitions to suspend, reject or investigate shall be filed and served on the filing carrier within 7 days following the tariff filing. (47 C.F.R. § 1.773(a)(2)(iii))

Item 3

BellSouth Telecommunications, Inc.
KY PSC Case No. 1999-484
KY PSC March 5, 2001 Informal Conference Request
Item No. 3
Page 1

REQUEST: Please provide the names of Internet Service Providers (ISPs)
purchasing BellSouth's ADSL service at the 40,000+ volume level.

RESPONSE: Please see the attached Exhibit 3.



Paul E. Patton, Governor
Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet
Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
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www.psc.state.ky.us
(502) 564-3940
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Martin J. Huelsmann
Chairman
Edward J. Holmes
Vice Chairman
Gary W. Gillis
Commissioner

March 21, 2001

PARTIES OF RECORD:

RE: Case No. 99-484
IGLOU INTERNET SERVICES, INC. VS. BELLSOUTH
TELECOMMUNICATIONS, INC.

Attached please find a memorandum that has been filed in the record of the above referenced case. Any comments regarding this memorandum's contents should be submitted to the Commission within five (5) days of receipt of this letter. Any questions regarding this memorandum should be directed to Amy Dougherty at 502-564-3940, extension 257.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman".

Thomas M. Dorman
Executive Director

/AED/cj
Attachments
cc: File



INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC COMMISSION

FILED

MAR 21 2001

**PUBLIC SERVICE
COMMISSION**

TO: Main Case File 99-484

FROM: Amy Dougherty 

DATE: March 20, 2001

RE: IGLOU INTERNET SERVICES, INC. VS. BELLSOUTH
TELECOMMUNICATIONS, INC.

Those persons whose names appear on the attached sign-in sheet gathered for an informal conference in the Commission's offices on March 7, 2001. Initially, BellSouth explained its proposal. BellSouth stated that it believed its proposal filed in its rehearing petition would avoid any jurisdictional confrontation regarding the nature of DSL service. For entities ordering from 51 to 10,000 DSL lines, the rate per line would be \$32 a month. For those ordering from 10,001 to 40,000 DSL lines, the rate would be \$30 a month per line. And for those ordering more than 40,000 lines, the rate would be \$29 a month. These volumes and rate levels would be filed by BellSouth as revisions to its FCC tariff, if the Commission accepts this proposal. These volume levels are based on region-wide ordering.

The Commission's November, 2000 Order in this proceeding required BellSouth to reduce the volumes needed to be eligible for each of the price ranges. Instead, BellSouth has proposed to lower its monthly rate from \$37 maximum to \$32 maximum. BellSouth indicated that Telocity, EarthLink and BellSouth are entities that currently are eligible for the \$29 a month rate because each of them has more than 40,000 DSL lines on a 9 state regional basis. AOL is in negotiations with BellSouth for this rate level.

In addition, Win.Net, BluegrassNet, DC.net, OpenNet utilize the Florida aggregator. Thus, they receive the \$29 rate but they must pay \$2.50 per line per month to the aggregator. These entities receive each DSL line for \$31.50.

BellSouth indicated that there were some DSL data applications that were provided on an instate basis. These could be provided through a special assemblies contract but, according to BellSouth, could not include an ISP gateway application. BellSouth further indicated that the instate data application was not tariffed and only one contract was even in process for this service.

BellSouth's FCC tariff has no current cost support filed with it at the FCC. The only cost study available is 3 years old and was filed initially with the FCC tariff. BellSouth said that it has no long-run cost study to project revenues for this service. Moreover, separations studies are no longer performed. But 25% of the loop is assigned to the interstate jurisdiction and all of the equipment is assigned to the interstate jurisdiction.

BellSouth's proposal in its motion for rehearing contains no changes to the FCC tariff relating to the penalty and shortfall provisions. The highest volume commitment with the best price includes a three year term commitment. A lower volume commitment with a higher price contains a two year commitment.

Iglou requested BellSouth supply cost justification for the tiered demarcations for its volumes. BellSouth indicated that information was not available.

BellSouth did indicate that if the Commission approved its proposal then it would make the FCC revised filing for its DSL service within 15 days of the PSC's approval. BellSouth discussed its process for collapsing the tiers in its proposal. BellSouth argued that if lower volume customers received the same price as higher price volume customers, then the higher volume customers would want a better rate than they currently get. As a "market perception" issue BellSouth contended it is unable to lower the rate for low volume customers. BellSouth further contended that it was constrained by the financial market in its ability to lower its rates. Lower rates would mean BellSouth received lower revenues and if BellSouth received lower revenues then its stock would be downgraded.

Next, the informal conference focused on Iglou's issues. We discussed at length the differences between the Commission's order of a reduction in the volume to 5% of the regional volumes, and BellSouth's proposal of a reduction in the rates. In response to the request to describe why Iglou believed that BellSouth's proposal to alter the prices in BellSouth's FCC tariff was not as appropriate an outcome as the PSC's decision despite the fact that BellSouth's proposal contains a lower base rate, Iglou presented six concerns.

(1) There is lack of legal assurance that BellSouth will not change its federal tariff after the initial change to lower the rate to comply with BellSouth's proposal. There is no legal prohibition that constrains BellSouth's actions to again alter its federal tariff in ways that would be harmful to Iglou.

(2) At the 40,000 volume demarcation point, Iglou would never be able to come close to matching the best price which BellSouth currently provides to itself.

(3) The aggregator issue is still problematic. There is no assurance that the one aggregator will remain in existence. It is an organization, according to Iglou, with 2 or 3 employees. Moreover, Iglou is concerned about the liability issues to its end-user customers if this aggregator were to go out of business. The aggregator's web address is FISPA.org. A copy of the ADSL discount agreement from the Florida aggregator is attached to this memo.

(4) Cost data has still not been supplied by BellSouth. Particularly, Iglou noted that there is no cost support for the tier structure proposed by BellSouth. The DSL service has been rolled out everywhere by BellSouth and the failure to submit cost information should be considered by the PSC, according to Iglou.

(5) The FCC tariff tier quantities are "entirely arbitrary". There is no evidence of economies of scale or any other basis for the consideration of the tier structuring, according to Iglou. Iglou also reiterated that BellSouth has no significant competitors for

its DSL service thus disputing BellSouth's contention that its price structure is market driven.

(6) Iglou supplied an example of why it would not be better with the BellSouth proposal. For 51 DSL lines, under the BellSouth proposal, Iglou would pay \$32 a line per month. For 51 DSL lines, under the PSC's November Order, Iglou would pay \$37 a month. But Iglou argues that it would never be able to obtain the best rate, \$29 a month currently. Rhythms, the third largest ISP in the country, currently has 67,000 DSL lines in the whole nation. BellSouth, on the other hand, currently has 215,000 in nine states. Iglou contends that the pricing differential between \$29 and \$32, a 10% differential, will keep it from functioning in the market.

(7) The termination penalties in the FCC tariff are still in place but will be reduced because of the price changes that BellSouth is proposing. According to Iglou, this amounts to BellSouth not hurting ISP's as badly as it had been before. As an example of the termination penalty, the change in rate ends up calculating a shortfall penalty of three-eighths of what the penalty would be under the current FCC tariff. The tariff, as proposed by BellSouth, still contains a flat rate \$50 per circuit termination penalty. Iglou believes that the termination penalties are still discriminatory as the Commission had originally found.

Iglou also requested changes to BellSouth's script and asked that an automated system, (e.g. press 1 for DSL with your internet provider, press 2 for a DSL with BellSouth Fast Access) be implemented. BellSouth indicated that this automated system would not be appropriate for its business office use. BellSouth did make an offer that when a customer script is not followed, BellSouth will retrain its personnel and take other appropriate action. But, it must have the date, the employee name, and other particulars of the incident. After corrective action has been taken, BellSouth will notify Iglou.

BellSouth agreed to file by no later than March 21, 2001: (1) a list of those entities who currently need the 40,000 demarcation point for the best rate in its service area, (2) the three year old cost study filed in support of its DSL tariff at the FCC with any additional changes or rational, and (3) the federal tariff proceedings and processes regarding effective dates and necessary cost support information.

By April 4, 2001, Iglou should file its response to BellSouth's filing. By way of this memo, Commission staff asks that Iglou indicate in its response its market entry projections for 51 DSL lines, and also for the 2000 DSL lines as described in the November Order.

Unless something unforeseen is filed, all parties have agreed to forego another public hearing and have agreed that the case will be considered submitted to the PSC on April 4, 2001. If this understanding changes the parties must so advise the Commission by no later than April 4, 2001.

/cj
Attachment
cc: file

15.	Larry Rarby	PSC
16.	Jim Stevens	PSC
17.	Merlyn Smith	BellSouth (via phone)
18.	Jim Johnson	BellSouth (via phone)
19.		
20.		

ADSL DISCOUNT AGREEMENT

Member Name: _____

Agreement No.: _____

Address: _____

Effective Date: _____

This ADSL Discount Agreement ("Agreement") is made and entered into as of the Effective Date shown above, between Florida Internet Services Providers Association, with offices at 1045 East Atlantic Avenue, Delray Beach, FL 33483 ("FISPA"), and the vendor member company of FISPA whose name and address are set forth above ("Member").

1. Pursuant to the "ADSL Letter Of Election" entered into by and between FISPA and BellSouth Telecommunications, Inc. ("BellSouth") on 12/13/99 ("BellSouth Agreement"), FISPA has arranged for its Members to purchase asymmetric digital subscriber lines (ADSL) from BellSouth at a discounted monthly rate ("Discount") as specified in Exhibit A, attached hereto. Subject to the terms and conditions of this Agreement, Member may use its FISPA membership designation to take advantage of the Discount when placing an order with BellSouth for the provisioning of ADSL lines and services (collectively the "ADSL Services").

2. In order to obtain the Discount, Member must (i) be a FISPA member in "good standing", such that all of its outstanding FISPA charges and dues have been paid in full and it is in compliance with all applicable FISPA rules and regulations; (ii) agree to notify FISPA in writing each time it orders lines from BellSouth for the provisioning of ADSL Services, specifying the number of lines for each order; and (iii) provide to BellSouth its FISPA member designation in the Procurement Agreement (defined below). Member shall be exclusively responsible for the procurement of ADSL Services from BellSouth and the applicable fees charged therefor, under a separate written purchase order, agreement or similar instrument between BellSouth and Member ("Procurement Agreement").

3. In consideration of the Discount offered to Member hereunder, Member shall pay to FISPA a monthly surcharge fee ("Surcharge Fee") based upon the number of ADSL lines Member orders from BellSouth in accordance with the Surcharge Fee rate card set forth in Exhibit A attached hereto. Member shall provide such payments to FISPA on or before

the first day of each calendar month during the term of this Agreement together with a statement indicating the number of ADSL lines ordered to date. The fees and charges set forth herein do not include and Member agrees to pay all taxes levied against or upon the ADSL Services and/or Member's use thereof. If any tax for which Member is responsible hereunder is paid by FISPA, Member will reimburse FISPA upon Member's receipt of an invoice therefor.

4. Member shall maintain complete and accurate books and records to substantiate and document the amounts due to FISPA hereunder. FISPA is entitled to audit Member's books and records which relate to the calculation of payments due to FISPA hereunder, during the term of this Agreement on reasonable advance notice to Member. Any such audit will be conducted during Member's normal business hours and at Member's location where such records are kept in the normal course of business and shall be conducted to minimize any disruption to Member's business activities. In the event the audit reveals any discrepancy in the amount due to FISPA and the amount actually paid by Member, Member will immediately pay the difference (required payment minus actual payment) to FISPA.

Member shall allow FISPA to access and/or obtain a copy of all correspondence to the Member from Bell South relative to the ADSL Services including, but not limited to, copies of all invoices for ADSL Services.

5. This Agreement will commence as of the Effective Date and shall continue thereafter unless terminated earlier in accordance with the provisions hereunder. Either party may terminate this

Agreement immediately if the other materially breaches this Agreement and, on at least five (5) days' notice, fails to cure the breach in the specified notice. This Agreement, and Member's right to purchase discounted ADSL Services from BellSouth shall automatically terminate in the event (i) Member resigns from FISPA; (ii) Member is suspended or expelled from FISPA for any reason in accordance with the terms and conditions contained in the FISPA by-laws; (iii) Member is in default of any material obligation contained in the Procurement Agreement including, without limitation, any payment obligation thereunder; and/or (iv) either party becomes bankrupt or insolvent within the meaning of the United States Bankruptcy Code or any substantial and relevant portion of its assets are included in any arrangement with its creditors, an order to windup or submission to control by a receiver, assignee or trustee for the purpose of preserving the assets, whether by the voluntary act of the affected party or otherwise.

Upon the expiration or termination of this Agreement for any reason, Member will relinquish its rights to use all ADSL lines to FISPA which it has ordered pursuant to the Procurement Agreement for which such Member has received the Discount, such that FISPA may reassign said lines as it deems necessary, in its sole discretion.

6. Member represents and warrants to FISPA that: (i) it has the right to enter into and perform its obligations under this Agreement; and (ii) neither entering into this Agreement, nor performance of its obligations violates or infringes on the rights of any other party or any applicable laws or regulations

7. Member agrees to defend and handle, at its own

expense, any claim or action against FISPA arising from (i) any breach of any of the representations, warranties or agreements made by it under this Agreement and/or (ii) its procurement and use (and its customers' use) of the ADSL Services. Member agrees to indemnify and hold FISPA harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) associated with any such claim or action. Member shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise; provided, however, that FISPA may, at its own expense, participate in such defense to protect its own interests.

8. In no event will either party be liable for indirect, incidental, or consequential damages in connection with or arising out of this Agreement.

9. Notices must be in writing and delivered personally, mailed, first class mail or delivered by confirmed electronic means to the undersigned at the addresses set forth above. Notices shall be deemed given on the date personally delivered, when placed in the mail as specified or when electronic or digital confirmation is received. This Agreement shall be construed and enforced under Florida law without regard to its conflicts of laws principles. Unless in writing and signed by the parties, no modification, course of conduct, amendment, failure to enforce any term, or require performance shall be binding or construed as a waiver. This Agreement contains the entire agreement between the parties and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral.

Florida Internet Service Providers Association

Member:

By: _____

By: _____

Name: _____
[Type or Print]

Name: _____
[Type or Print]

Title: _____

Title: _____

EXHIBIT A TO FISPA MEMBER ADSL DISCOUNT AGREEMENTSURCHARGE FEE RATE CARD

<u>Number of ADSL lines</u>	<u>Surcharge Fee</u>
1-100	\$2.50 per line
101-500	\$2.25 per line
500-5000	\$2.00 per line
5001-9999	\$1.00 per line
10000-39999	\$0.50 per line
40000 or greater	\$0.05 per line

DISCOUNTED MONTHLY RATEFROM BELL SOUTH: \$29.00 per line



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Creighton.Mershon@BellSouth.com

Creighton E. Mershon, Sr.
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

March 2, 2001

RECEIVED

MAR 05 2001

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

BellSouth and IgLou participated in a conference call on February 26, 2001, to discuss the possibility of settlement. BellSouth requested that IgLou consider the proposed resolution that is before the Commission which includes a substantial collapse of the volume tiers in BellSouth's current FCC ADSL wholesale tariff. The proposed resolution effectively decreases tariff prices for the lowest volume levels.

As BellSouth has noted, it does not challenge this Commission's jurisdiction over intrastate DSL services for intrastate data applications. But BellSouth believes that its proposed resolution is in keeping with the intent of this Commission and would be a more effective way to meet that intent. Even if BellSouth were to file an intrastate DSL tariff, attempted usage of such a tariff for interstate DSL access would raise serious jurisdictional issues that would need to be resolved by the FCC. The proposed resolution also would result in pricing for smaller ISPs in Kentucky lower than the volume pricing structure contained in the Commission's November 30, 2000 order. In addition, the proposed FCC tariff would apply across the entire nine-state region in which BellSouth operates.

BellSouth believes that the tiered structure (i.e., one that provides volume discounts) in the wholesale tariff proposal is necessary to respond to the market pressure from large ISPs that

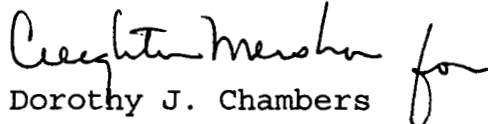
Mr. Thomas M. Dorman
March 2, 2001
Page 2

order DSL in substantial quantity.¹ These large ISP customers recognize the efficiencies associated with large volumes of DSL lines. As a result, these large ISPs demand discounted pricing and are willing to consider competitive alternatives if such volume discounting is not available. Such volume discounts are well accepted marketing practices demanded by BellSouth's largest customers.

From the conference call that occurred on February 26 and the response filed by IgLou on that same date, BellSouth understands IgLou to have taken the position that it "agrees to disagree" with BellSouth's proposed resolution because of the tiered structure.

BellSouth remains willing to meet and talk with IgLou further if there is some resolution that can resolve this matter on terms agreeable to both parties.

Very truly yours,


Dorothy J. Chambers

cc: Parties of Record

249234

¹Of course, as this Commission already has determined, BellSouth, in providing its own retail Internet service, follows all of the applicable FCC accounting rules and other safeguards.



BellSouth Telecommunications, Inc.

601 W. Chestnut Street
Room 407
Louisville, KY 40203

Creighton.Mershon@BellSouth.com

Creighton E. Mershon, Sr.
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

March 2, 2001

RECEIVED

MAR 6 2001

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

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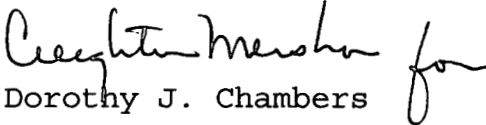
Mr. Thomas M. Dorman
March 2, 2001
Page 2

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Very truly yours,


Dorothy J. Chambers

cc: Parties of Record

249234

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JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

J.D./M.B.A.
LICENSED IN KENTUCKY AND OHIO

TELEPHONE: (502) 587-6838
FACSIMILE: (502) 584-0439
E-MAIL: jonathon@amlung.com

March 1, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED
MAR 2 2001
PUBLIC SERVICE
COMMISSION

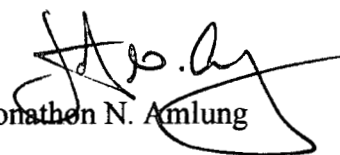
RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.
Case No. 99-484

Dear Mr. Dorman:

Please find enclosed for filing in the above-referenced case an original and ten (10) copies of IgLou's Status Report from its telephone conference with BellSouth on February 26, 2001.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,


Jonathon N. Amlung

Enclosures

cc: Parties of record

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 2 2001

PUBLIC SERVICE
COMMISSION

IGLOU INTERNET SERVICES, INC.,)
Complainant,)
v.) No. 1999-484
BELLSOUTH TELECOMMUNICATIONS, INC.,)
Defendant.)

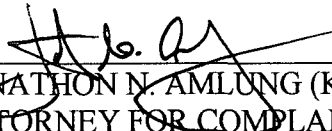
**IGLOU'S STATUS REPORT PURSUANT TO COMMISSION'S
ORDER DATED JANUARY 11, 2001**

Comes now IgLou Internet Services, Inc. ("IgLou"), by and through counsel, and hereby submits its Status Report pursuant to the Item #5 of the Commission Order dated January 11, 2001.

On February 26, 2001, at the time of approximately 2:00 p.m. ET, IgLou representatives Dean Brooks, Dannie Gregoire and Jonathon N. Amlung took part in a conference call with BellSouth representatives Dorothy Chambers and Tony Taylor. During the conference call, the parties discussed primarily the pricing structure and the tiered volume structure of BellSouth's proposed revision to its Federal ADSL tariff. The dialogue, although constructive, did not lead to a resolution of the issues in this case. It is the understanding of the counsel for IgLou in this case that an impasse has been reached that may only be resolved by Commission Order. As IgLou has stated in previous filings, its position is simply to request that the Commission enforce its November 30, 2000, Order in this case. That Order has not been vacated.

At the informal conference scheduled for March 7, 2001, IgLou anticipates several issues for discussion including the tiered volume structure, the pricing structure, cost, BellSouth's script revision and the BellSouth brief describing the requirements of a retail ADSL model.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was mailed and/or faxed to the parties of record this the 2nd day of March, 2001.



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February 26, 2001

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FEB 27 2001

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
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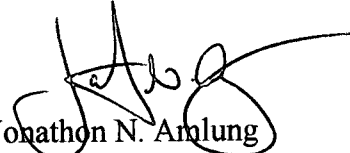
RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.,
Case No. 99-484

Dear Mr. Dorman:

Please find enclosed for filing an original and ten (10) copies of IgLou's Response to BellSouth's proposed revision to its Federal ADSL tariff in the above-referenced case.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,



Jonathon N. Amlung

Enclosures

cc: Parties of record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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FEB 27 2001

PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)
)
 Complainant)
 v.) CASE NO. 99-484
)
 BELLSOUTH TELECOMMUNICATIONS, INC.)
)
 Defendant)

**IGLOU'S RESPONSE TO BELLSOUTH'S FILING PURSUANT TO
THE COMMISSION'S JANUARY 11, 2001, ORDER**

Comes now IgLou Internet Services, Inc. ("IgLou") by and through counsel, and hereby submits its response, pursuant to the Commission's Order, to BellSouth's Proposed Tariff Revision filed with the Commission on February 12, 2001.

**I. BELLSOUTH'S FEBRUARY 12, 2001, FILING FAILS TO
COMPLY WITH THE COMMISSION'S ORDER**

IgLou objects to BellSouth's most recent filing as it fails to comply with the Order of the Commission granting reconsideration of this matter. In its decision, the Commission instructed BellSouth as follows:

2. Within 30 days of the date of this Order, BellSouth shall file a copy of the complete revised interstate wholesale tariff it proposes to file in lieu of filing a state tariff, *along with supporting cost information for all rates*. The proposal shall address all levels of service which are included in the FCC tariff.¹

(Emphasis supplied)

¹ Kentucky Public Service Commission, Case No. 1999-484, Order dated January 11, 2001, p. 5.

At the last possible moment, BellSouth filed what essentially amounted to its existing Federal tariff with the modification of two pages for illustrative purposes showing how its proposal would look in Federal tariff format. In addition, BellSouth filed a cover letter which instructed this Commission that BellSouth would **not** be filing the supporting cost documentation as ordered. Quite frankly, BellSouth ignored the Commission's January 11, 2001, Order, which was clear as to its purpose and application.

As the Commission will recall, BellSouth proposed a revision to its Federal ADSL tariff following the decision in this case in favor of IgLou on November 30, 2000. In its Motion for Reconsideration, BellSouth once again challenged this Commission's jurisdiction over ADSL. In addressing BellSouth's jurisdictional challenge, the Commission held that "the Commission affirms its jurisdiction as set out in the Order."² Thus, jurisdiction is a non-issue in this case as it stands. The Commission granted a rehearing in this case "to allow BellSouth to *expand* its proposal for a revised tariff."³ (Emphasis supplied) "*Additional* information is needed to determine if BellSouth's proposed changes to its federal tariff will result in a positive resolution of the issues raised in this case."⁴ (Emphasis supplied)

BellSouth supplied **no** additional information with its filing. BellSouth's actions were and are in direct violation of this Commission's Order. As such, IgLou objects to the filing in its entirety.

² Id. at 4.

³ Id. at 5.

⁴ Id. at 5.

II. SUPPORTING COST INFORMATION IS NEEDED TO ASSESS THE MERITS OF THE PROPOSED TARIFF REVISION

As this Commission is aware, much of the discriminatory nature of the current ADSL tariff stems from its tiered volume structure. That structure operates to allow BellSouth to provide preferential treatment to its own ISP, BellSouth.net, to the detriment of Kentucky's ISPs. It is obvious that the cost data, if supplied by BellSouth, would have shed light on the fact that there is absolutely **no cost justification** for the volume requirements at all. Those tiered requirements have but one purpose: to ensure that smaller ISPs pay more for the same lines that BellSouth.net purchases from BellSouth. Even with the proposal offered by BellSouth, the tiered structure remains in place, affording BellSouth.net access to the lines at \$29.00, while a vast majority of Kentucky's ISPs will be purchasing the very same lines at \$32.00. Thus, the problem that existed when IgLou filed its complaint in November of 1999 still exists. As this Commission held in its Order granting reconsideration, "the practical result of BellSouth's current DSL tariff is that it creates unacceptable disparities between rates for which BellSouth's ISP qualifies and rates for which its average competitor would qualify."⁵ Nothing has changed in the marketplace, nor will anything change under this proposal.

Under the proposal, the price disparity between what BellSouth would charge BellSouth.net versus an ISP such as IgLou is major when the entire picture is considered. For illustrative purposes, under the proposal, if a Kentucky ISP were to purchase 10,000 lines over the course of a year, the price disparity between \$29.00 and \$32.00 would potentially result in that ISP paying \$360,000.00 more over the course of a year than BellSouth.net for the very same lines. This is money that could be used to improve

⁵ Id. at 5.

customer service, hire new employees in Kentucky and promote the rapid deployment of broadband within the Commonwealth. Again, there is no evidence that there is any cost justification for this disparity.

III. BELLSOUTH CONTINUES TO CHALLENGE THIS COMMISSION'S JURISDICTION

There can be no dispute that BellSouth affirmatively refused to comply with this Commission's January 11, 2001, Order. Presumably, this action by BellSouth was a result of BellSouth's continued refusal to recognize this Commission's jurisdiction. It should be noted to BellSouth that jurisdiction is no longer an issue in this case.

Reconsideration was not granted on that basis and that issue is now beyond the scope of these proceedings. Reconsideration was granted to determine if BellSouth's proposed revision to its Federal ADSL tariff would address, at least in part, the discriminatory conduct found by this Commission. Clearly, it will not.

As noted herein, the disparity in pricing remains. The unreasonable and unjustified volume commitments remain. The discrimination and preferential treatment remain.

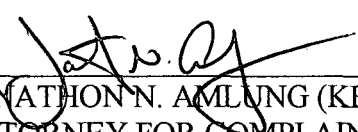
BellSouth simply seeks to keep this issue solely at the F.C.C. Kentucky-based ISPs are largely unable to afford the costs inherent in protecting their rights in Washington, D.C. Presumably, if BellSouth were permitted to simply revise its Federal tariff, nothing would prevent that revision from being temporary. At any time, BellSouth could simply revise the tariff back to its original levels, or worse, should it be permitted to carry out its proposal. If BellSouth does not have this in mind, why not revise the Federal tariff now? Why wait for an Order from this Commission to carry out its proposal? The answer is that BellSouth is using the proposal as a "quid pro quo" for this

Commission to abstain from asserting its jurisdiction in this matter. If BellSouth were permitted to carry out its proposal instead of complying with the Commission's Order, there would no longer be any incentive for BellSouth to cease its discriminatory practices. Nothing would change.

IV. CONCLUSION

IgLou objects to BellSouth's February 12, 2001, filing in this case because it fails to comply with the Commission's unambiguous Order. Further, the proposal fails to address the discriminatory conduct found by this Commission in its November 30, 2000, Order as well as its January 11, 2001, Order. IgLou is prepared to address these issues at the informal conference scheduled for March 7, 2001. IgLou respectfully reminds the parties to this case, however, that there is no jurisdictional issue to be discussed at the conference. That matter has been decided.

Respectfully submitted,



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February 15, 2001

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FEB 15 2001

PUBLIC SERVICE
COMMISSION

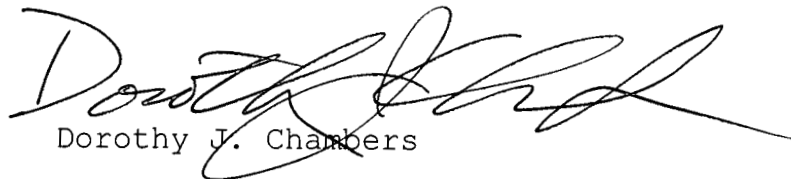
Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Per the Commission's January 11, 2001 Order, enclosed for filing are the original and ten (10) copies of the explanation of the requirements of a retail DSL tariff and the related public interest issues.

Sincerely,


Dorothy J. Chambers

Enclosure

cc: Parties of Record

247386

Background

BellSouth began development of its Asymmetric Digital Subscriber Line (ADSL) offering in April 1997. While BellSouth initially considered a retail offering in late 1997, BellSouth decided to offer ADSL only on a wholesale basis. The primary reason for this change in direction was a concern for the end user customer.

BellSouth's experience with Integrated Digital Subscriber Network (ISDN) taught us that, when it came to new, complex, technology, it would better serve the end user to have a single point of contact. With ISDN, should a customer have a problem connecting to email or the Internet, he/she would not know whether to call BellSouth or his/her Internet Service Provider (ISP). With a wholesale ADSL offering to Network Service Providers (NSPs), including ISPs, the end user would have one place to call for assistance, reducing help time through more effective coordination with the ISP and BellSouth. This single point of contact—with the customer viewing the ISP as the provider of the service—would make the overall experience more pleasant to the end user, to the benefit of both the ISP and BellSouth.¹ Also, experience has shown that a high majority of customer problems were with the Customer Provided Equipment (CPE), which more directly tied to the ISP's service and which BellSouth could not provide as a part of a regulated service. In fact, the link between CPE and the ISP is even more critical with ADSL than ISDN. Based upon this ISDN experience, the decision was made to offer ADSL on a wholesale basis. It is clear from looking at the industry, that this was not a unique decision. Some carriers offer ADSL as a wholesale service and others offer ADSL as a retail service directly to the end user. Some carriers, such as Qwest, started out with a retail offering, and added the wholesale offering at a later date.

The question now becomes: "So what's the big deal for BellSouth to also provide retail service along with its existing wholesale service?" While the rest of this paper will go into some detail on the whys, the short answer is that having gone down one path, heading down an entirely different path adds a significant amount of complexity and additional cost, not to mention the added confusion of end user customers having multiple ways of dealing with BellSouth and their ISP.

While BellSouth does not want to imply that it will never have a retail service, there are many factors that influence the development of such a service. BellSouth is currently making numerous process improvements to its existing service increasing the efficiency and ease for its wholesale customers to do business with BellSouth. Additionally,

¹ In connection with approving America Online's acquisition of Time Warner, Inc., the FCC required that AOL Time Warner open its cable systems to permit competing ISPs to provide broadband service over those systems. In doing so, it expressed concerns about subtle ways in which AOL Time Warner might discriminate against competing ISPs, and imposed certain restrictions to minimize that risk. One thing it required was that AOL Time Warner permit ISPs using its cable systems to establish direct billing relationships with their customers. *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, *Memorandum Opinion and Order*, FCC 01-12 rel. Jan. 22, 2001, at ¶ 98, ¶ 126C. Under the wholesale model that BellSouth chose, the ISPs exclusive relationship with their end users means that they alone have a billing relationship with the customer for high-speed Internet access. Under a retail model, BellSouth would have a provider relationship with the end users and would bill those end users.

BellSouth is in the middle of a large capital deployment of ADSL, as well as a major architecture change to deal with the high volumes of Asynchronous Transfer Mode (ATM) Permanent Virtual Circuits (PVCs) required to provide ADSL in the present network configuration. The Federal Communications Commission (FCC) is also requiring BellSouth to unbundle ADSL services at remote terminals. The resources required for developing a retail product are the same as those currently supporting our wholesale offerings and making other required changes. Although BellSouth does not desire, nor does it have the resources necessary to file a retail offering this year, a future retail offering may be possible, especially when expected improvements in operations, provisioning systems and CPE, such as auto configuration, become available.

For purposes of this response to the Kentucky PSC, the following assumptions have been made concerning a retail ADSL offering:

- Any retail offer would be in addition to the existing wholesale service.
- BellSouth Telecommunications, Inc. (BST) would bill only the ADSL transport service directly to the end user,
- If the end user desired Internet connectivity over the ADSL line, the end user would have to further order service directly from a participating ISP,
- A participating ISP would have already ordered ATM service to an ATM serving area or gateway that enables the ISP to provide ADSL service to that end user,
- The participating ISP would have to provide relevant provisioning information either to the end user or to BST so that service to the end user could be provisioned and assigned, and
- No CPE would be provided with the BST retail service. The ISP would provide and support the required CPE to the end user as part of the ISP's service.

The issues needing to be addressed for a retail offering are, therefore:

1. Service order coordination
2. Installation and repair
3. Tier 1 help desk requirements
4. Billing
5. CPE
6. Effect on new product introduction

BellSouth conservatively estimates the cost to add a retail service to be approximately \$1,270,000 in the first year, with an ongoing expense of at least \$882,000 per year starting in year 2. This estimate does not include contracted Information Technology (IT) dollars since BellSouth would have to expend money working with BellSouth's outside IT vendors to establish a description of work and associated estimate to modify major systems.

The six issues identified above are addressed in more detail below:

Service Order Coordination

To connect a new end user today, ISPs order wholesale ADSL transport service from BST and then add on their Internet connectivity service to provide a single, seamless ADSL Internet connection service to the end user. The concept of a retail BST ADSL offering changes this model.

Separate end-user orders will be required – one for the retail ADSL transport from BST and another for the Internet connectivity ordered from an ISP. There are two options as to how service orders may be made. First, it may be possible for the ISP to place the ADSL transport order on behalf of the end user. Second, the end user may be able to place individual orders with BST and with the ISP. In either case, at the time of the order to BST, whoever is placing the order for local ADSL transport must provide BST with information relative to the Circuit ID to the intended ISP as well as the Virtual Path Identifier/Virtual Channel Identifier (VPI/VCI) pair within the identified circuit that will bear the end user's traffic. Only the ISP knows and can provide this information – either to BST or to the end user for use when ordering the retail ADSL transport service.

The retail model, therefore, requires that service order activity be coordinated among three parties rather than just two as is the case under the present wholesale model. This complicates new service order activity and greatly impacts service changes, disconnects, and conversions from one grade of ISP service, (say Internet dial-up for example) to ADSL, and conversions between different ISPs. The processing time for BellSouth to take a service order would increase substantially. The service representative would have to determine if the customer wanted a wholesale or retail ADSL product. This would entail a lengthy discussion to clarify for the average customer and would likely be confusing and exasperating for the customer. The service representative would also have to gather the necessary circuit information provided by the ISP.

The process of developing new service order methods in BST would require:

- Front-end Operational Support System (OSS) work to support "retail" order issuance from either ISP "agents" of BST or from BST business office representatives.
- Downstream OSS systems work to identify / track "retail" from "wholesale" customer PVCs.
- Additional Business Office Service Representative training would be required to support calls requesting information about retail vs wholesale service, because more complex scripting requires more training.
- New provisioning Universal Service Order Codes (USOCs), supporting Field Identifiers (FIDs), edits associated with Service Order Edit Routine system, etc.
- **Estimated cost for service order changes - \$200,000.**

In addition, a longer call duration for service requests would be required, resulting in more representatives to support the greater call volumes. Estimated cost is undetermined. Finally, the complexity of the ordering process would require additional

training for service representatives. The cost for additional training cannot be accurately estimated at this time, but is believed to be in excess of \$1M.

Whether an ISP makes use of the wholesale product or the retail product, the fact that there is more than one way to order ADSL will require ISPs to handle additional questions from their customers.

Installation and Repair

Adding a retail BST ADSL service would require significant changes to Operations Support Systems both for BST as well as for the ISP community served by BST.

Specifically, billing, customer records, and customer contact support systems will be affected. Customer records and billing systems, for example, would need to track which end users have retail BST ADSL service and which have traditional ISP service. Customer contact support systems may need access to customer records both at BST as well as within the ISP itself in order to determine how best to handle the customer contact. Trouble reporting and tracking systems would need to recognize and acknowledge the new complexity of trouble shooting a combination of ISP services and retail and/or wholesale BST services. Provisioning and facility assignment systems would need to be built around an appropriate plant model that reflects changing combinations of responsibilities for ISP services, BST ADSL wholesale service, BST retail service, and CPE.

Interfaces between ISP OSS systems and BellSouth would have to be smoothly coordinated so that appropriate real-time customer data is available to BellSouth and ISP customer contact representatives during service order entry, trouble reporting, and billing inquiries.

In general, all BST and ISP OSS systems should anticipate multiple points of customer contact within both BellSouth and the ISP, rather than the traditional role of a single point of Customer contact with the ISP. This would require closer coordination between BST and ISPs than is required today to assure complete customer satisfaction. This in turn would place additional requirements on the OSS systems used to support these critical activities. Without detailed engineering studies, the cost of modifying OSS systems cannot be accurately determined.

For the ISP, it would be necessary to make the provisioning Circuit ID, and VPI/VCI information available to the person placing the retail order with BST at the time of ordering. This may necessitate some minor changes to the timing and flow of provisioning procedures within the ISP in order to make the required provisioning information available to the end user when the BST retail ADSL service is ordered.

Tier 1 Help Desk Requirements

A retail ADSL service would have a significant impact on customer help desk support. In the wholesale model, end-user customers purchase both their ADSL access and Internet access through a single Internet Service Provider. The ISP then serves as a single point of contact for the customer and provides full help desk support for the Internet access service and ADSL access. The ISP also provides and supports the customer's CPE. Although the ISP must refer network ADSL or ATM problems back to BST, end-user customers have a single point of contact for resolving any problem associated with their end-to-end Internet service. (See figure 1)

Single Point of Contact for End User Customer

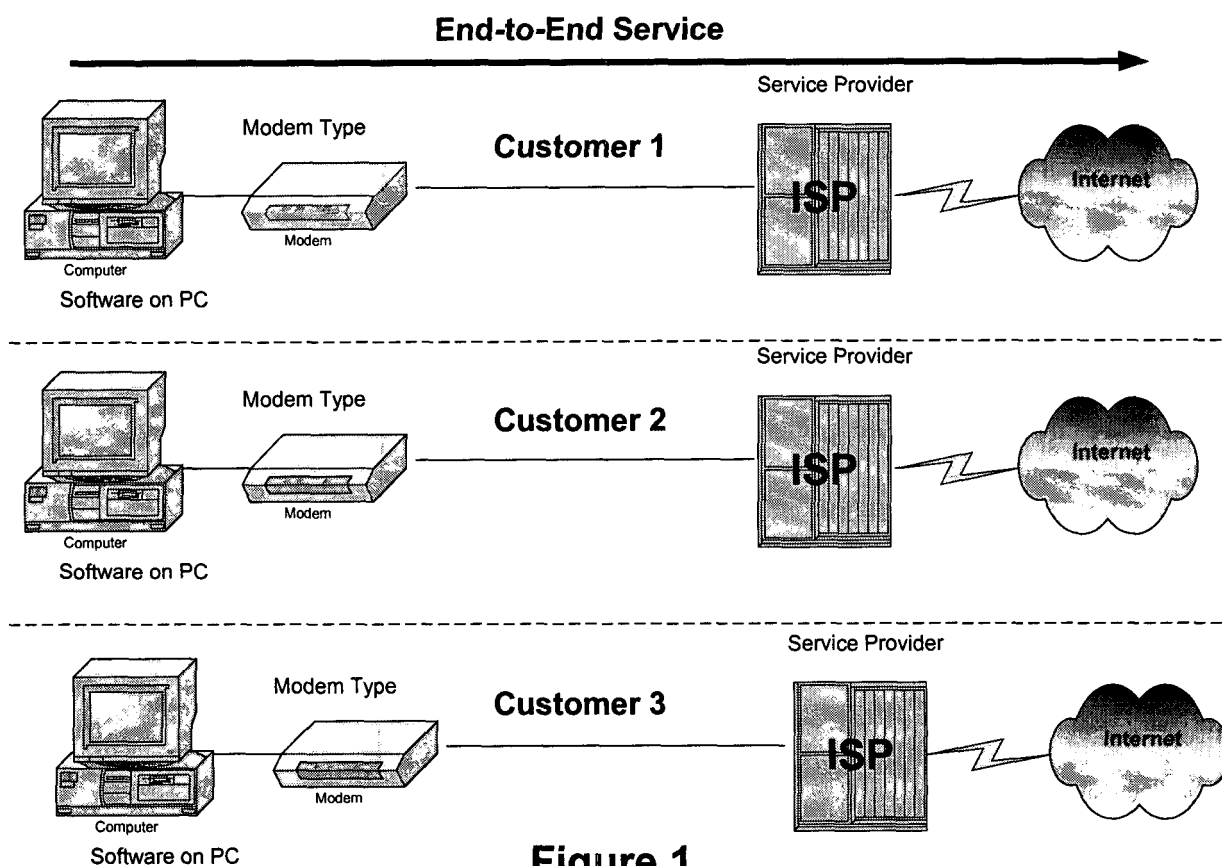


Figure 1

A retail ADSL model would resemble the existing ISDN model that has experienced several significant challenges. BST provides ISDN under tariff as an end-user voice/data dial access service. An end-user customer must therefore purchase an ISDN line as a regulated, tariffed service from BST and also purchase Internet access as an unregulated service, either from BellSouth or another ISP. BST takes trouble reports for ISDN line troubles as a regulated service and trouble reports for CPE as an unregulated service. Troubles relating to a customer's Internet access service must be

reported directly to the ISP's help desk. Unlike ISDN, which can access multiple ISPs through dial-up, the ADSL line is dedicated to a single ISP.

Under a retail ADSL offering, if a customer experiences a problem obtaining Internet access, the customer must attempt to determine the source of the problem in order to know whom to call about the problem. This is not always apparent. If a customer cannot access the Internet, there could be a problem with the customer's CPE, with the ISP's network, or with the ADSL line. Should a customer report the trouble to the wrong party, the customer would be faced with calling another help line only to explain the problem a second time. As a result, customers may have to wait in multiple queues for long periods of time to reach a technician. Unfortunately, it is not uncommon for a customer to be bounced, back-and-forth among help desks when service support is bifurcated. This can be very expensive for BellSouth and the ISP, and very frustrating for the end user. It is not uncommon for help desk support to approach \$50/hr. See Figure 2.

Multiple Suppliers, Multiple Contacts

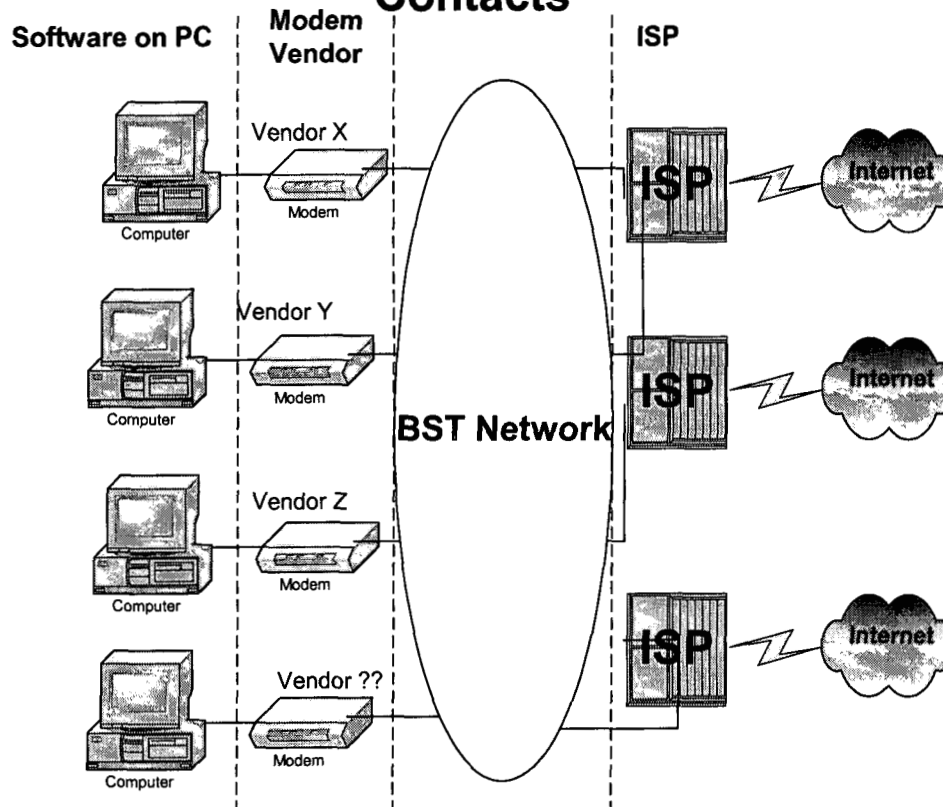


Figure 2

ADSL is currently far more complex in provisioning than ISDN. Most installations require software to be loaded on a PC (which must meet certain minimum requirements). The modem must be of a type that is supported and that will work in the network. The ISP may remotely monitor certain modems to further assist its customer in resolving problems. The ISP may support multiple Point-to-Point Protocol (PPP) sessions over

the single ADSL connection that may limit modem selection to a brand the ISP is familiar with and for which the ISP is capable of providing technical support.

Providing a single point of contact for end-to-end service best serves the customer, in that it defines overall responsibility of trouble resolution and promotes efficiency in resolving problems quickly. These problems can be mitigated somewhat if all service providers furnish effective troubleshooting and reporting guides to their customers and work closely with one-another to define trouble reporting and resolution procedures.

The creation of a new Tier 1 help desk would require the addition of approximately 19 service representatives, along with required supervisors, floor space, computer equipment, and data and voice communications. This could be accomplished by hiring the required technicians, or by outsourcing the help desk function.

Since a retail offering will be filed in the FCC tariff due to the interstate nature of Internet traffic, this service will be available in all nine BellSouth states. The staffing requirement assumes nine state support.

Estimated Cost of adding retail help desk

- First year cost (service reps, equipment, floor space, etc): \$1,072,000
- Recurring expense 2nd year and beyond (service reps, etc): \$882,000/year

Billing

Customer billing operations would be greatly affected by the availability of a retail service from BST. With a retail service, BST would bill end-users directly for the ADSL transport service. This would require revisions to billing systems, the addition of new USOCs, as well as changes in the systems and records necessary to track, bill and update maintenance records. The IT resources required for these changes already are in high demand due to other commitments.

Modifications to Customer Record Inventory System (CRIS) billing system are included in the service ordering costs.

CPE

In the wholesale model, the ISP assumes end-to-end responsibility of the service to the end-user. This includes responsibility for selecting, testing and supporting the CPE. This ensures that the CPE provided on the customer's premises will work in the BellSouth and the ISP's networks, and that the ISP's help desk is familiar with the equipment the customer is using so they can efficiently troubleshoot any issues.

Today, ADSL modem technology is in its infancy. All modems are not alike. The DSL Forum is working to standardize features that will make CPE "plug and play". However, it will at least a year away before these improvements will start to appear in the retail market. In addition, not all ADSL implementations are the same. Some, like BellSouth's use ATM as the backbone. Others, like Verizon (GTE), use Frame Relay. ADSL modems are not interchangeable between these two services. A retail model may fractionalize the end-to-end service model causing increased calls to both the ISP and BellSouth help desks, increasing cost for both as well as the level of frustration for the end user customer.

New Product Introduction

Currently, the ISP has sole ownership of the end user customer relationship. In a retail model, both the ISP and BST have a relationship with the end user customer. New products can and will be developed by both parties that will impact not only the end user but the other party as well. This arrangement would require increased resource allocation and coordination by both the ISP and BST.

Conclusion

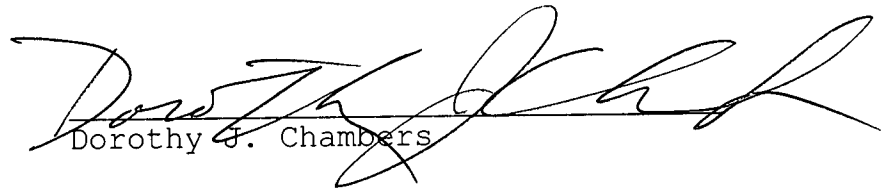
BellSouth will continue to look at the feasibility of a retail ADSL service. However at this time, BellSouth believes that introducing a retail ADSL offering in addition to its wholesale ADSL service is not in the interest of end-users, ISPs or the company. This belief is based upon the following factors:

- Experience with ISDN service used in connection with Internet access provides many lessons with regard to end-user problems and expectations. Using this experience, BellSouth's wholesale ADSL service provides end-users with a model that should make their experience much more pleasant. DSL is a relatively new technology. There have been difficulties with some installations across the country that has marred the end-user customer experience.²
- Current CPE technology is not yet at the "plug and play" level and thus most end-user customers will find dealing with multiple entities (ISPs and BST) frustrating and intolerable. As ADSL technology matures, this factor will diminish.
- BellSouth's massive ADSL infrastructure deployment for 2001 will tax BellSouth resources making it an inopportune time to introduce a new service that will use these same resources. The end result will be to slow availability of the service to end-user customers.
- Anticipated ADSL network architecture changes may provide a more promising time to consider a retail ADSL service.

² Some of the difficulties end-users have experienced in deployment of DSL technology have been reported by the media. For example, "Real Reasons for DSL Hell", USA Today 9/18/00 and "Verizon Sued over problems with DSL", Lexington Herald-Leader 1/18/01.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 15th day of February 2001.


Dorothy J. Chambers

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502 582-1475
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February 12, 2001

RECEIVED

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PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Per the Commission's Order of January 11, 2001, BellSouth hereby files a copy of its complete revised interstate wholesale tariff that it has proposed to file in lieu of filing a state tariff. A copy of the existing tariff, the proposed revised tariff and a summary comparing the two tariffs are attached. The proposed tariff addresses all levels of service that have a volume commitment. Under price cap guidelines at the Federal Communications Commission (FCC), BellSouth has not completed a cost study in association with this proposed FCC tariff filing. Since no such cost support will be provided to the FCC, the company does not have a cost study to support this tariff filing, and therefore, cost support is not provided with this documentation. BellSouth estimates a 45 day interval from filing date for the proposed changes to become effective.

Sincerely,


Dorothy J. Chambers


Enclosures

cc: Parties of Record

246633

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 12th day of February 2001.


Dorothy J. Chambers

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Tanya Monsanto
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Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
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BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29G57, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: AUGUST 18, 1998

TARIFF F.C. NO. 1
 12TH REVISED PAGE 12
 CANCELS 11TH REVISED PAGE 12

EFFECTIVE: SEPTEMBER 2, 1998

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(x) Reissued material originally filed under Transmittal 474, currently scheduled to become effective 8/27/98.

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BELLSOUTH TELECOMMUNICATIONS, INC.
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CANCELS 9TH REVISED PAGE 75.2
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ACCESS SERVICE

REFERENCE TO OTHER PUBLICATIONS (CONT'D)

The following publications, referenced in this tariff, may be obtained from BellSouth Telecommunications, Inc., Regional Documentation Coordinator, 20th Floor, 600 North 19th Street, Birmingham, AL 35203.

TR-73575 Issued: February, 1994	Available: February, 1994
TR-73575, Addendum 1 Issued: November, 1994	Available: November, 1994
TR-73583 Issued: November, 1994	Available: September, 1994
TR-73592 Issued: June, 1995	Available: June, 1995
BellSouth Enhanced Originating Line Screening (EOLS) Service Technical Reference TR-73604 Issued: July, 1997	Available: August, 1977
TR-73606 Issued: April, 1998	Available: April, 1998
TR-73607 Issued: April, 1998	Available: April, 1998
TR-73608 Issued: April, 1998	Available: April, 1998
TR-73609 Issued: April, 1998	Available: April, 1998
TR-73611 Issued: April, 1998	Available: April, 1998
BellSouth ADSL Service TR-73612 Issued: December, 1998	Available: December, 1998

(N) (x)
(N) (x)
(N) (x)

(x) Issued under the authority of Special Permission 99-154

Certain material previously appearing on this page now appears on
1st Revised Page 75.2.1

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: APRIL 28, 1999

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CANCELS 5TH REVISED PAGE 2-51

EFFECTIVE: MAY 13, 1999

ACCESS SERVICE

2 - General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Attenuation Distortion

The term "Attenuation Distortion" denotes the difference in loss at specified frequencies relative to the loss at 1004 Hz, unless otherwise specified.

B8ZS

The Term "B8ZS" (Bipolar with 8 Zero Substitution) denotes a line code which allows transport of an all-zero octet over a High Capacity DS1 (a.k.a. BellSouth SPA DS1) channel. B8ZS enables Clear Channel Capability on a High Capacity DS1 (a.k.a. BellSouth SPA DS1) service.

Balance (100 Type) Test Line

The term "Balance (100 Type) Test Line" denotes an arrangement in an end office which provides for balance and noise testing.

Basic Service Element

The term Basic Service Element denotes an optional network capability associated with a Basic Serving Arrangement.

BellSouth ADSL Service

The term "BellSouth ADSL Service" denotes a transmission service that provides high-speed transmission paths for voice, data, and multi-media communications. (C)
(C)

BellSouth Direct Access to Directory Assistance

The term "BellSouth Direct Access to Directory Assistance" denotes the provision of direct access to BellSouth's Directory Assistance Listing Database, Directory Assistance Search Application and Database Administration Call Control to enable a customer to provide voice Directory Assistance Service to its end users.

BellSouth Direct Access to Directory Assistance Location

The term "BellSouth Direct Access to Directory Assistance Location" denotes the Telephone Company location for the Directory Assistance Listing Database, the DA Search Application, and the Database Administration Call Control. The Company will provide BellSouth Direct Access to Directory Assistance from its location as specified in the NATIONAL EXCHANGE CARRIER ASSOCIATION, INC., TARIFF F.C.C. NO. 4.

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: AUGUST 18, 1998

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ACCESS SERVICE

5 - Ordering Options for BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

5.2 Access Order (Cont'd)

5.2.7 Special Access Service (a.k.a. BellSouth SPA) and BellSouth SWA Transport Service

- (A) For all Special Access (a.k.a. BellSouth SPA) Services other than BellSouth ADSL service, the customer must specify the customer premises or Hubs involved, the channel type (e.g., Video (a.k.a. BellSouth SPA Video), Voice Grade (a.k.a. BellSouth SPA DSO VG), High Capacity (a.k.a. BellSouth High Capacity), etc.), the channel interface, technical specification package and options desired. When ordering Voice Grade (a.k.a. BellSouth SPA DSO VG) local channels and associated voice grade (a.k.a. BellSouth SPA DSO VG) interoffice channels, the customer must specify whether they are to be billed under the Voice Grade (a.k.a. BellSouth SPA DSO VG) Rate Stability Plan. For multipoint services the channel interface at each premises may, at the request of the customer, be different but all such interfaces shall be compatible. When establishing Special Access (a.k.a. BellSouth SPA) Service under the Shared Network Arrangement, the host subscriber must coordinate with each service user the design, testing and maintenance of the service. Additionally, the service user must provide to the BellSouth Telephone Companies the Connecting Facility Arrangement (CFA) and the High Capacity (a.k.a. BellSouth SPA High Capacity) Billing Account Number (HBAN) of the host subscriber. (C)

For BellSouth ADSL service the Customer must specify the Customer commitment level, Customer electronic mail address, confirmation of an end-user letter of authorization, end-user's Telephone Exchange service provider, Network Service Provider and in-service telephone number, type of request, BellSouth XAATMS Port, and the circuit identification of the transport facility between the Customer's premises and its Serving Wire Center. (N)

- (B) For BellSouth SWA Dedicated Transport Services, the customer must specify the Facility Hubs involved, if applicable, the channel type (e.g. BellSouth SWA Voice Grade, BellSouth SWA DS1, etc.), the channel interface and any options desired. When establishing BellSouth SWA Transport Services under the Shared Network Arrangement, the host subscriber must coordinate with each service user the design testing and maintenance of the service. Additionally, the service user must provide to BellSouth Telecommunications, Inc., the Connecting Facility Arrangement (CFA) and the Billing Account Number (BAN) of the host subscriber. (N)

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: AUGUST 18, 1998

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ACCESS SERVICE

5 - Ordering Options for BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

5.2.15 Mechanized Interface to Specified Operation Support Systems

For any customer of BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Service, other than BellSouth ADSL Service, additional features are offered. (C)
The features include a mechanized interface to the trouble reporting system as indicated in (A) following, a mechanized interface to the Preferred Interexchange Carrier (PIC); Street Guide Validation, and verification of Connecting Facility Assignments (CFA) and Network Channel/Interface Codes (NC/NCI). The Telephone Company will provide BellSouth ADSL Service customers (N) electronic input and response format information. (N)

(A) The feature, Trouble Administration for Access Services, allows the customer to electronically perform the following:

- Enter a Trouble Report
- Request Trouble Report status
- Add Trouble Report information
- Modify Trouble Report attributes
- Verify repair completion
- Cancel Trouble Report
- Trouble Report attribute value change

(B) The feature, PIC Inquiry and Order, provides the BellSouth SWA Access Customers (BellSouth SWA FGD only) the ability to perform the following:

- Telephone PIC inquiry
- Telephone PIC change

This feature is only for access to the system. All other appropriate PIC charges as set forth in 13.3.3 following apply.

(C) The feature, Street Guide Validation, provides the customer with the ability to electronically verify an end user street address for the purpose of submitting an accurate access service request (ASR).

This feature is available to the customer in conjunction with the submission of an ASR for the sole purpose of validating the street address of an end user. Any other use of this service is prohibited.

(D) The features, Connecting Facility Assignment (CFA) and Network Channel/Interface Codes (NC/NCI) are provided for the sole purpose of enabling the customer to electronically verify connecting facility assignment(s) and network channel/interface code(s) prior to submitting an access service request (ASR).

(E) To implement these features, the customer must provide a terminal a modem and Switched Dial Service or a Private Line Service to a location designated by the Company at which the Company provides access to these features. If the customer chooses to utilize a dial service to access these features, a Security Card is required. The ordering conditions for the Security Card are set forth in 13.3.12 following.

BELLSOUTH TELECOMMUNICATIONS, INC.
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ACCESS SERVICE

5 - Ordering Options for BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

5.3 Access Order Modifications (Cont'd)

(C) (Cont'd)

(3) Design Change Charge

Except for BellSouth ADSL service, the customer may request a design change to the service ordered. A design change is any change to an Access Order which requires engineering review. An engineering review is a review by Telephone Company personnel of the service ordered and the requested changes to determine what changes in the design, if any, are necessary to meet the changes requested by the customer. Design changes include such things as the addition or deletion of optional features or functions or a change in the type of BellSouth SWA Transport Termination, type of channel interface, type of Interface Group or technical specification package. Design changes do not include a change of customer premises, end user premises, end office switch, Basic Serving Arrangement, BellSouth Virtual Interconnection Service DS1 or DS3 cross-connect element, or BellSouth SWA and Special Access (a.k.a. BellSouth SPA) service channel type. Changes of this nature will require the issuance of a new order and the cancellation of the original order with appropriate cancellation charges applied. BellSouth ADSL service Virtual Circuits are non-designed and the customer may not request a design change. (C)
(N)
(N)

Should a customer requested Design change be received on a pending access order that results in the establishment of a new service date that exceeds the original service date by more than 30 days, the customer shall not be required to cancel and reissue a new order, but shall be billed a design change charge and a service date change charge.

The Telephone Company will review the requested change, notify the customer whether the change is a design change, if it can be accommodated and if a new service date is required. If the customer authorizes the Telephone Company to proceed with the design change, a Design Change Charge will apply. The Design Change Charge will apply on a per order per occurrence basis, for each order requiring a design change. The applicable charge is:

<u>Design Change Charge</u>	<u>USOC</u>	<u>Rate Per Order</u>
ALL STATES	H28	\$39.93

If a change of service date is required, the Service Date Change Charge as set forth in (1) preceding will also apply.

Service Installation Guarantees, as set forth in 2.4.9 preceding, are not applicable for Design Change Charges.

BELLSOUTH TELECOMMUNICATIONS, INC.
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ACCESS SERVICE

5 - Ordering Options for BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

5.4 Cancellation of an Access Order (Cont'd)

- (C) When a customer cancels an order service for LightGate service (a.k.a. BellSouth SPA Point to Point Network) system, BellSouth Dedicated Ring or SMARTRing service (a.k.a. BellSouth SPA Dedicated Ring) prior to the beginning of the selected service period, the customer will be liable for all capital expenses incurred by the Telephone Company in provisioning the LightGate service (a.k.a. BellSouth SPA Point to Point Network), BellSouth Dedicated Ring or SMARTRing service (a.k.a. BellSouth SPA Dedicated Ring), as of the date the order is canceled by the customer. The charges billed to the customer will not exceed an amount equal to the minimum period for the service as set forth in 7.4 following of this tariff at the month-to-month rates set forth in 7.5 following of this tariff. Such charges will be billed in addition to and subsequent to the cancellation charges set forth in 5.4 (B) preceding.
- (D) When a customer cancels an order for BellSouth ADSL service prior to the Service Due Date no charges apply. Except as specified in 7.4.29(G), cancelation of an order for the installation of BellSouth ADSL service on or after the DD will require payment of a Termination Liability Charge and all nonrecurring charges appropriate for installation of BellSouth ADSL service. (N)
(N)
(N)
(N)
(N)
- (E) When a customer cancels an order for the discontinuance of service, no charges apply for the cancellation. (T)
- (F) If the Telephone Company misses a service date by more than 30 days due to circumstances over which it has direct control (excluding, e.g., acts of God, governmental requirements, work stoppages and civil commotions), the customer may cancel the Access Order without incurring cancellation charges. (T)

5.5 Selection of Facilities for Access Orders

- (A) When a customer places an Access Order, it may choose to utilize facilities it previously purchased. If the customer has a high capacity interface, or has purchased a facility, the customer must request that specific channels be used to implement the Access Order. If a facility assignment is not provided by the customer, the Telephone Company will provide the service from available inventory as discussed in 5.8 following.
- (B) For all other Access Orders, the option to request a specific transmission path or channel is not provided except as provided for under Special Facilities Routing as set forth in 11. following.

BELLSOUTH TELECOMMUNICATIONS, INC.
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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.2 Service Descriptions (Cont'd)

7.2.17 BellSouth ADSL Service

- (A) BellSouth ADSL service is intended as an industrial offering that is made available to Network Service Providers for provision of high speed data service to their customers, and provides subject to the terms and conditions set forth herein, for the establishment of a point-to-point Virtual Circuit (VC) between two customer designated locations. BellSouth ADSL service is primarily intended to provide a virtual circuit between an end-user premises location designated by Network Service Providers (NSP), including Internet/Intranet Service providers (ISP), Competitive Local Exchange Companies (CLEC), etc., hereinafter referred to as customer, and the customer's location. The design, maintenance, and operation of BellSouth ADSL service contemplates end-to-end communication consisting of combinations of overlay services using in-service, Telephone Company-provided, compatible end-user premises exchange line facility, BellSouth Exchange Access Asynchronous Transfer Mode Service (XAATMS) and other appropriate transport facilities. The designated end-user premises location must be served by an existing, in-service, Telephone Company provided exchange line facility and the designated customer location must be connected to BellSouth XAATMS, with the BellSouth XAATMS port enabled for Unspecified Bit Rate (UBR) transmission. Both the end-user and the customer designated premises must be in the same Local Access and Transport Area (LATA). BellSouth ADSL service utilizes the facilities used by these services in order to establish a VC between the customer designated location and the customer-specified end-user premises location. (C)

An in-service exchange line facility, as referred to in association with BellSouth ADSL service, is the serving Central Office line equipment and all the plant facilities up to and including the Telephone Company-provided Network Interface Device (NID).

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
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Atlanta, Georgia 30375
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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.2 Service Descriptions (Cont'd)

7.2.17 BellSouth ADSL Service (Cont'd)

- (B) BellSouth ADSL service is furnished where suitable facilities are available as determined by the Telephone Company. BellSouth ADSL service Central Office availability will be as listed in the National Exchange Carriers Association (N.E.C.A.) F.C.C. Tariff No. 4.
- (C) BellSouth ADSL service is available at peak data rates of from 384 Kbps to 6.0 Mbps downstream and from 256 Kbps to 896 Kbps upstream, in combinations as specified following.

	Downstream		Upstream	
	Minimum	Maximum	Minimum	Maximum
(1)	NA	1.5 Mbps	NA	256 Kbps
(2)	768 Kbps	NA	512 Kbps	NA
(3)	1.5 Mbps	1.8 Mbps	512 Kbps	768 Kbps
(4)	2.0 Mbps	4.0 Mbps	640 Kbps	896 Kbps
(5)	4.0 Mbps	6.0 Mbps	640 Kbps	896 Kbps
(6)	384 Kbps	NA	384 Kbps	NA
(7)	192 Kbps	NA	192 Kbps	NA

Actual data rate achieved may be affected by loop length and other factors. In some cases, the data rate provided by BellSouth may exceed the minimum data rates in (2) through (7) in order that the achieved minimum data rate will equal or exceed the minimum data rate specified. The movement of data in a direction away from the end-user premises, toward its normal Serving Wire Center (SWC), is in the upstream direction. The movement of data in a direction toward the end-user premises from its normal SWC is in the downstream direction.

Month-to-month terms are available for volume of service levels, of BellSouth ADSL service VCs as specified in (C)(1) and (2) preceding, of from 51-5000, 5,001-7,500, 7,501-10,000, 10,001-40,000, and greater than 40,000. Month-to-Month terms and variable commitment periods of 13 to 24 months, and greater than 24 months, are available for BellSouth ADSL service VCs specified in (C)(3) through (7) preceding. Except for changes brought about by the customer's attainment of the customer-specified volume of service commitment level prior to completion of the appropriate twenty-four or thirty-six month initial period of service, changes to volume of service commitment levels are not permitted. Quantities of all peak data rate options available with volume commitments will be considered when determining the achieved volume of service level, per customer account. (C) (T)

(D) Multipoint service is not available.

(E) The regulations, rates and charges specified in this tariff for BellSouth ADSL service are in addition to applicable regulations, rates and charges specified in this and/or other Tariffs of the Telephone Company, but do not include any regulations, rates or charges which may be applied or charged to the end-user by the customer.

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2ND REVISED PAGE 7-58.14
CANCELS 1ST REVISED PAGE 7-58.14

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.2 Service Descriptions (Cont'd)

7.2.17 BellSouth ADSL Service (Cont'd)

- (F) The maximum number of VCs per exchange line facility is one.
- (G) When two or more customers request the Telephone Company to provide BellSouth ADSL service, and designate the same end-user premises served by the same exchange line facility as a customer designated location, BellSouth ADSL service will be provided to the customer that provides the Telephone Company with a written letter of authorization from the end-user selecting the customer as the end-user's service provider. The Telephone Company will honor the last letter of authorization as determined by the date of the letter executed by the end-user.
- (H) The responsibility of the Telephone Company shall be limited to the furnishing and maintenance of BellSouth ADSL service, generally between the end-user premises Network Interface Device (NID) and the customer's designated BellSouth XAATMS location, in a manner proper for the furnishing of such service. The Telephone Company will qualify the exchange line facility to determine the suitability of the existing, in-service facility, for BellSouth ADSL service. (T)
- (1) The Telephone Company shall not be responsible for installation, operation, or maintenance of any terminal equipment or communications system provided by a customer or end-user. Where such equipment or system is connected to Telephone Company facilities the responsibility of the Telephone Company shall be limited to furnishing BellSouth ADSL service in accordance with the terms and conditions as set forth in this tariff. The Telephone Company shall not be responsible for:
- (a) the transmission of signals generated by such equipment or system, or for the quality of, or defects in, such transmission, or
 - (b) the reception of signals by such equipment or systems, or
 - (c) damage to a terminal or computer equipment or communications system provided by a customer or end-user due to testing.

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.2 Service Descriptions (Cont'd)

7.2.17 BellSouth ADSL Service (Cont'd)

(H) (Cont'd)

- (2) The Telephone Company shall not be responsible to the customer or end-user if changes in any Telephone Company facilities, operations, or procedures utilized in the furnishing of BellSouth ADSL service render any facilities or equipment provided by a customer or end-user obsolete, or require modification or alteration of such equipment or system, or otherwise affects its use or performance. It is expressly declared that metallic facilities are in a continually decreasing supply and that the Telephone Company does not hold itself in a position to warrant their availability. Should Telephone Company initiated changes occur that render the exchange line facility incapable of transporting BellSouth ADSL service, the Telephone Company will not be required to continue the BellSouth ADSL service, and the customer will not be liable for any Termination Liability Charges (TLC).
- (3) The Telephone Company undertakes to maintain and repair the facilities which it furnishes. The customer or end-user may not rearrange, disconnect, remove or attempt to repair any equipment installed by the Telephone Company without prior written consent of the Telephone Company.
- (I) The customer is responsible for installation and/or testing of customer or end-user premises equipment or facilities to ensure that when connected to BellSouth ADSL service such end-user premises equipment or facilities operate properly.
 - (1) The customer shall or arrange for the end-user to cooperatively test with the Telephone Company as may be necessary.
 - (2) It shall be the responsibility of the customer and/or end-user to ensure the continuing compatibility of Customer Premises Equipment (CPE) at the end-user premises. The customer and/or end-user shall be responsible for any expenses incurred for required changes to customer and/or end-user equipment or facilities in order to make such equipment or facilities compatible with BellSouth ADSL service.
 - (3) If requested by the Telephone Company, the customer ordering BellSouth ADSL service must produce a letter of authorization from an end-user requesting that the customer obtain a high speed data connection to the end-user's premises using BellSouth ADSL service provided by the Telephone Company.

(J) Technical Specifications Package

(N) (x)

Service specifications for BellSouth ADSL service are contained in
Technical Reference TR-73612.

(N) (x)
(N) (x)

(x) Issued under the authority of Special Permission 99-154

BELLSOUTH TELECOMMUNICATIONS, INC.
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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.3 Message Station Equipment Recovery Charge (Cont'd)

(T)

Pursuant to CC Docket 83-1145 Memorandum Opinion and Order adopted by the Federal Communications Commission on November 8, 1984 and released on November 9, 1984, this charge is assessed only to those customers to which the Special Access (a.k.a. BellSouth SPA) Surcharge applies. The rate for the Message Station Equipment Recovery Charge is set forth in 7.5.10 following.

7.4.4 Minimum Periods

The minimum service period for all services is one month except as specified following. The minimum service period for part-time and occasional Broadcast Quality Video (a.k.a. BellSouth SPA Broadcast Quality Video), DS3 Digital Video (a.k.a. BellSouth SPA DS3 Digital Video) and Program Audio (a.k.a. BellSouth SPA Program Audio) services is one day (i.e., a continuous 24-hour period, not limited to a calendar day). The minimum service period for ICB Services is specified in the Individual Case Basis Filing. The minimum service period for SMARTRing service (a.k.a. BellSouth SPA Dedicated Ring) is four months. The minimum service periods for LightGate service (a.k.a. BellSouth SPA Point to Point Network) are specified in 7.4.9 following. The minimum service period for DS1 Alternate Serving Wire Center Service is 12 months. The minimum service period for SMARTPath service (a.k.a. BellSouth SPA DS1 Shared Ring) is four months. The minimum service period for SMARTPath DS3 Transport (a.k.a. BellSouth SPA DS3 Shared Ring) service is 12 months. The minimum service period for each BellSouth ADSL service VC at a data rate as specified in 7.2.17(C)(1) and (2) is 6 months. The minimum service period for each BellSouth ADSL service VC at a data rate as specified in 7.2.17(C)(3) through (7), and having a customer-specified commitment period of less than 13 months, is 3 months. The minimum service period for each BellSouth ADSL service VC at a data rate as specified in 7.2.17(C)(3) through (7), and having a customer-specified commitment period equal to or greater than 13 months, and less than 25 months, is 13 months. The minimum service period for each BellSouth ADSL service VC at a data rate as specified in 7.2.17(C)(3) through (7), and having a customer-specified commitment period equal to or greater than 25 months, is 25 months.

(T)
(T)
(T)
(N)
(N)
(N)
(N)
(N)

(D)

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service

(A) Monthly rates and nonrecurring charges apply as specified in 7.5.21 following, and reflect the cost of providing BellSouth ADSL service to the customer, but do not reflect any additional incremental cost associated with providing service to customers of a NSP. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(1) and (2) to which the customer can commit is 51. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(3) through (7) to which the customer can commit is 1.

(T)
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(T)
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(T)
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(D)

(B) A monthly recurring rate will be billed to the customer for each end-user premises to which the customer has a VC established using BellSouth ADSL service. The initial monthly rate for data rate options specified in 7.2.17(C)(1) and (2) will be determined by the number of VCs to which the customer commits beginning with establishment of the customer account. The initial monthly rate for data rate options specified in 7.2.17(C)(3) through (7) will be determined by the commitment period designated by the customer beginning with establishment of the customer account. The volume of service level designated by the customer for data rate options specified in 7.2.17(C)(1) and (2) cannot be lowered during the initial service period.

(T)

In addition to month-to-month (MTM) rates, customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are available for data rate options specified in 7.2.17(C)(3) through (7). When the customer orders service for these data rate options, the customer must designate to the Telephone Company the commitment and optional commitment period desired, e.g. a commitment of 20 months and a 13 to 24 month commitment period.

(T)
(T)
(T)

Rates stabilized under customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are exempt from Telephone Company-initiated increases. However, decreases will flow through to the customer. In the event that a VC is disconnected at customer request prior to completion of a customer-selected commitment period in excess of 12 months, the customer will be required to pay a termination charge as specified in (G) following. The customer-designated commitment and commitment period may not be reduced, however, renewals of the existing VC and data rate, at the same end-user premises are allowed at rates and terms and conditions appropriate for new service. The VC nonrecurring charges are not applicable for the renewed services.

(T)
(T)
(T)
(T)
(T)

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(B) (Cont'd)

Subsequent to the establishment of a customer-selected commitment period longer than 12 months, and prior to completion of that period, the existing commitment and commitment period may be replaced by a currently offered commitment and commitment period having a length equal to or longer than the time remaining in the existing arrangement. The appropriate rates will be as if for new service. Nonrecurring charges will not be re-applied for these renewals, and no credit will be provided for payments made during the formerly selected period. Changes to a commitment or commitment period with a length shorter than the existing arrangement will result in application of termination liability charges as specified in G. following. Recognition of previous service will not be a factor in determination of rates appropriate for a renewed arrangement. (T)

(C) For VC data rate options specified in 7.2.17(C)(1) and (2), customers specifying volume of service levels of from 51 to 40,000 VCs on billing accounts across the region will be allowed an initial period of twenty-four months, beginning with establishment of the first billing account, to attain the customer-specified volume level. Customers specifying a volume of service level of more than 40,000 VCs on billing accounts across the region will be allowed an initial period of thirty-six months from establishment of the first billing account to attain the customer-specified volume level. (T)

(D) For VC data rate options specified in 7.2.17(C)(1) and (2), a review by the Telephone Company of the quantity of VCs billed to each customer's billing accounts across the region will occur at the completion of the initial period appropriate for the customer-specified volume of service level. Beginning with completion of the twenty-four or thirty-six month initial period, or upon attainment of the customer-specified volume of service level, the product of a rate appropriate for the quantity of VCs verified on the last Friday of the prior month, multiplied by the corresponding quantity of VCs, will appear on the customer's monthly bill following the current month. In order to benefit from rates appropriate for higher volume of service levels, in the case of a customer surpassing their initial volume of service level commitment prior to completion of the twenty-four or thirty-six month initial period, the customer must notify the Telephone Company of that accomplishment. (T)

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(E) Upon completion of the twenty-four or thirty-six month initial period allowed for data rate options specified in 7.2.17(C)(1) and (2), shortfall charges will apply for failure to attain the VC volume of service commitment level designated by the customer. The shortfall charge will be an amount equal to the in-service quantity of VCs at completion of the initial period multiplied by 50%, multiplied by the number of initial period months appropriate for the volume of service level to which the customer subscribed, multiplied by the difference between the rate appropriate for the in-service quantity at completion of the initial period and the rate appropriate for the committed quantity. An example of the shortfall charge for a customer that commits to 10,001 VCs but attains only 7,000 VCs, and having a \$4 difference in applicable rate, is as follows:

- 7000 VCs x 50% x 24 months x \$4 = \$336,000 (N)

Shortfall charges are reduced by 2.5% for each full percentage point (rounded to the closest whole number) above 60% of the customer's commitment level that the customer achieved are applicable to the total shortfall charge. No reductions will apply for VC quantities greater than 100% of the customer-specified commitment level. An example of the shortfall reduction calculation is as follows:

- 7000 (customer achieved) divided by 10001 (customer specified commitment) and rounded to the closest whole number = 70% (N)
- Full percentage points above 60% of customer-specified commitment = 10 (N)
- 10 times 2.5% = 25% (N)
- 25% of \$336,000 = reduction of \$84,000 (N)
- \$336,000 shortfall charge minus \$84,000 reduction = \$252,000 (N)
- \$252,000 is the reduced shortfall charge (N)

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(F) A move charge applies for each BellSouth ADSL service VC moved to an end-user's new premises as designated by the customer. This charge is equal to the sum of all the nonrecurring charges applicable for a new installation of BellSouth ADSL service. (T)

If BellSouth ADSL service is available at the end-user's new premises as designated by the customer, no Termination Liability Charge is applicable when the service orders to install a BellSouth ADSL service VC at the end-user's new premises and disconnect a BellSouth ADSL service VC at the end-user's old premises are for the same end-user, both orders are related together, and there is no lapse in service between installation and disconnection of a BellSouth ADSL service VC. (T)

If BellSouth ADSL service is not available at the end-user's new premises as designated by the customer, the move request will be treated as a discontinuance of service at the old premises and the customer will remain responsible for satisfying minimum period obligations. If appropriate, a Termination Liability Charge as specified in (G) following will apply. (T)

(G) A Termination Liability Charge (TLC) is applicable for VCs at data rates specified in 7.2.17(C)(1) through (7), on a per end-user basis, that are disconnected prior to completion of the appropriate minimum service period as specified in 7.4.4 preceding. (T)

The TLC for VC data rates specified in 7.2.17(C)(1) and (2) is: (N)

<u>Tariff Reference</u>	<u>VC Data Rate</u>	<u>Charge</u>	(T)
7.2.17(C)(1)	256 Kbps x 1.5 Mbps	\$ 50.00	
7.2.17(C)(2)	512 Kbps x 768 Kbps	\$200.00	

For VCs at data rates specified in 7.2.17(C)(3) through (7) that are provided on a month-to-month basis and have a customer-designated commitment of 12 months or less, but are disconnected prior to completion of the minimum service period specified in 7.4.4 preceding, the TLC is equal to the number of minimum service period months, less the number of months completed service, multiplied by the appropriate VC monthly rate for the data rate option to which the customer subscribed. This TLC will not exceed the monthly rate for the option to which the customer subscribed, multiplied by the minimum service period months as specified in 7.4.4. (N)

Certain material previously appearing on this page now appears on 2nd Revised Page 7-103.24.2

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(G) Cont'd

The TLC for VCs at data rates specified in 7.2.17(C)(3) through (7) having a customer-selected commitment period greater than 12 months, but disconnected prior to completion of the commitment and prior to completion of 13 months service, is equal to:

(C)
(C)
(C)

Minimum Downstream Data Rate	Commitment Period of:	
	From 13 To 24 Months	25 Months Or More
1.5 Mbps	\$200.00	\$ 400.00
2.0 Mbps	\$500.00	\$1000.00
4.0 Mbps	\$500.00	\$1000.00
384 Kbps	\$200.00	\$ 400.00
192 Kbps	\$200.00	\$ 400.00

(C)
(C)
(C)
(C)
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(C)

The TLC for VCs at data rates specified in 7.2.17(C)(3) through (7) having a customer-selected commitment period greater than 24 months, but disconnected prior to completion of the commitment, prior to completion of 25 months service and subsequent to completion of 13 months service, is equal to:

(C)
(C)
(C)
(C)

Minimum Downstream Data Rate	Commitment Period of:
	25 Months Or More
1.5 Mbps	\$200.00
2.0 Mbps	\$500.00
4.0 Mbps	\$500.00
384 Kbps	\$200.00
192 Kbps	\$200.00

(C)
(C)
(C)

TLC does not apply if:

- (1) A customer cannot synchronize its terminal equipment with BellSouth ADSL service equipment, or

Certain material now appearing on this page previously appeared on 2nd Revised Page 7-103.24.1

Certain material previously appearing on this page now appears on 1st Revised Page 7-103.24.3

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(G) Cont'd

(2) A BellSouth ADSL service VC is disconnected prior to completion of the appropriate minimum service period as a result of a customer requested change to a higher or lower peak minimum or maximum downstream data rate:

(a) TLC will not apply for changes from the current VC peak data rate to a VC having a higher downstream peak data rate. However, a new minimum service period as specified in (A) and (B) preceding and rates appropriate for the new data rate as specified in 7.5.21 following will apply. When requested, the appropriate charge for this change will be the sum of all nonrecurring charges appropriate for provisioning of new BellSouth ADSL service, for the new peak data rate.

(b) Except for changes to the data rate option specified in 7.2.17(C)(1), TLC will not apply for changes from the current VC peak data rate to a VC having a lower downstream peak data rate. When requested, the appropriate charge for this change will be the sum of all nonrecurring charges appropriate for provisioning of new BellSouth ADSL service, for the new peak data rate. A new minimum period as specified in (A) and (B) preceding and rates appropriate for the new data rate specified in 7.5.21 following will apply. Changes to a lower downstream peak data rate prior to completion of the minimum service period as specified in (A) and (B) preceding for the current data rate will result in the application of TLC. Changes from data rate options specified in 7.2.17(C)(2) through (7) to the data rate option specified in 7.2.17(C)(1) are not allowed.

(H) The Service Rearrangement Charge specified in 7.5.21(D)(1) is applicable on a per VC rearranged basis for customer requests to redirect a VC from one BellSouth XAATMS port to a different BellSouth XAATMS port.

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Certain material previously appearing on this page now appears on Original Page 7-103.24.4

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ACCESS SERVICE

(N)

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

(N)

7.4 Rate Regulations (Cont'd)

(N)

7.4.29 BellSouth ADSL Service (Cont'd)

(N)

(I) The customer will be responsible for payment of a Maintenance of Service charge as specified in 13.3.1(E) when a customer reports a trouble to the Telephone Company for clearance and no trouble is found in the Telephone Company's facilities.

(M)
(M)
(M)

(J) A BellSouth ADSL service customer may request BellSouth ADSL service be provisioned to a designated end-user premises for purposes of demonstration, for a period not to exceed 5 calendar days. Demonstration requests will be accommodated no more frequently than once in thirty calendar days per designated end-user premises. The appropriate Virtual Circuit nonrecurring charge specified in 7.5.21(A), (B) or (C) will apply.

(M)
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(M)
(M)
(M)

If notified by the customer prior to expiration of the five day demonstration period that the Telephone Company should not disconnect the designated end-user premises, normal monthly billing will commence on the date that notification is received and additional nonrecurring charges are not applicable. If the five day period has expired, service ordered at that same customer-designated premises will be as for new service and the terms and conditions and appropriate rates and charges applicable for new service will apply.

(M)
(M)
(M)
(M)
(M)

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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (cont'd)

7.5.21 BellSouth ADSL Service

(A) Low Speed, Asymmetric Virtual Circuits

- (1) Per Virtual Circuit, Downstream data rate up to 1.5 Mbps,
 Upstream data rate up to 256 Kbps

	VC Quantity		Nonrecurring Charge	Monthly Rate	USOC	
	Minimum	Maximum	Per VC	Per VC		
(a)	51	5,000	\$50.00	\$37.00	ADF11	(C)
						(D)
						(D)
(b)	5,001	7,500	\$50.00	\$34.00	ADF14	(T)
(c)	7,501	10,000	\$50.00	\$32.00	ADF15	(T)
(d)	10,001	40,000	\$50.00	\$30.00	ADF16	(T)
(e)	40,000+		\$50.00	\$29.00	ADF17	(T)

- (2) Per Virtual Circuit, Downstream data rate of at least 768 Kbps,
 Upstream data rate of at least 512 Kbps

	VC Quantity		Nonrecurring Charge	Monthly Rate	USOC	
	Minimum	Maximum	Per VC	Per VC		
(a)	51	5,000	\$300.00	\$116.00	ADF61	(C)
						(D)
						(D)
(b)	5,001	7,500	\$300.00	\$108.00	ADF64	(T)
(c)	7,501	10,000	\$300.00	\$101.00	ADF65	(T)
(d)	10,001	40,000	\$300.00	\$ 94.00	ADF66	(T)
(e)	40,000+		\$300.00	\$ 85.00	ADF67	(T)

BELLSOUTH TELECOMMUNICATIONS, INC.
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ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (Cont'd)

7.5.21 BellSouth ADSL Service (Cont'd)

	Nonrecurring Charge Per VC	Monthly Rate Per VC	13-24 Month Rate Per VC	25+ Month Rate Per VC	USOC
(B) High Speed Asymmetric Virtual Circuits					
(1) Per Virtual Circuit, Downstream data rate of from 1.5 Mbps to 1.8 Mbps, Upstream data rate of from 512 Kbps to 768 Kbps					
(a) each	\$300.00	\$195.00	\$175.00	\$150.00	ADF31
(2) Per Virtual Circuit, Downstream data rate of from 2.0 Mbps to 4.0 Mbps, Upstream data rate of from 640 Kbps to 896 Kbps					
(a) each	\$300.00	\$450.00	\$400.00	\$335.00	ADF41
(3) Per Virtual Circuit, Downstream data rate of from 4.0 Mbps to 6.0 Mbps, Upstream data rate of from 640 Kbps to 896 Kbps					
(a) each	\$300.00	\$850.00	\$800.00	\$725.00	ADF51

(C) Symmetric Virtual Circuits

(1) Per Virtual Circuit, Downstream data rate of at least 384 Kbps, Upstream data rate of at least 384 Kbps

	Nonrecurring Charge Per VC	Monthly Rate Per VC	13-24 Month Rate Per VC	25+ Month Rate Per VC	USOC
(a) each	\$300.00	\$140.00	\$120.00	\$99.00	ADF21

(2) Per Virtual Circuit, Downstream data rate of at least 192 Kbps, Upstream data rate of at least 192 Kbps

(a) each	\$230.00	\$ 97.00	\$ 82.00	\$68.00	ADF71
----------	----------	----------	----------	---------	-------

(N)
(N)
(N)

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: JULY 9, 1999

TARIFF F.C.C. NO. 1
 ORIGINAL PAGE 7-156.95

EFFECTIVE: JULY 24, 1999

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (Cont'd) (N)

7.5.21 BellSouth ADSL Service (Cont'd) (N)

(D) Miscellaneous Charges (N)

(1) Service Rearrangement Charge (M)

	Nonrecurring Charge Per VC	Monthly Rate Per VC	USOC	
(a) Each VC	\$10.00	-	ADR	(M)

Material appearing on this page previously appeared on 1st Revised Page
 7-156.93

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29G57, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375

TARIFF F.C.C. NO. 1
 4TH REVISED PAGE 7-58.13
 CANCELS 3RD REVISED PAGE 7-58.13

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.2 Service Descriptions (Cont'd)

7.2.17 BellSouth ADSL Service (Cont'd)

- (B) BellSouth ADSL service is furnished where suitable facilities are available as determined by the Telephone Company. BellSouth ADSL service Central Office availability will be as listed in the National Exchange Carriers Association (N.E.C.A.) F.C.C. Tariff No. 4.
- (C) BellSouth ADSL service is available at peak data rates of from 192 Kbps to 6.0 Mbps downstream and from 192 Kbps to 896 Kbps upstream, in combinations as specified following. (C)

	Downstream		Upstream	
	Minimum	Maximum	Minimum	Maximum
(1)	NA	1.5 Mbps	NA	256 Kbps
(2)	768 Kbps	NA	512 Kbps	NA
(3)	1.5 Mbps	1.8 Mbps	512 Kbps	768 Kbps
(4)	2.0 Mbps	4.0 Mbps	640 Kbps	896 Kbps
(5)	4.0 Mbps	6.0 Mbps	640 Kbps	896 Kbps
(6)	384 Kbps	NA	384 Kbps	NA
(7)	192 Kbps	NA	192 Kbps	NA

Actual data rate achieved may be affected by loop length and other factors. In some cases, the data rate provided by BellSouth may exceed the minimum data rates in (2) through (7) in order that the achieved minimum data rate will equal or exceed the minimum data rate specified. The movement of data in a direction away from the end-user premises, toward its normal Serving Wire Center (SWC), is in the upstream direction. The movement of data in a direction toward the end-user premises from its normal SWC is in the downstream direction.

Month-to-month terms are available for volume of service levels, of BellSouth ADSL service VCs as specified in (C)(1) and (2) preceding, of from 51-10,000, 10,001-40,000, and greater than 40,000. Month-to-Month terms and variable commitment periods of 13 to 24 months, and greater than 24 months, are available for BellSouth ADSL service VCs specified in (C)(3) through (7) preceding. Except for changes brought about by the customer's attainment of the customer-specified volume of service commitment level prior to completion of the appropriate twenty-four or thirty-six month initial period of service, changes to volume of service commitment levels are not permitted. Quantities of all peak data rate options available with volume commitments will be considered when determining the achieved volume of service level, per customer account. (C)

(D) Multipoint service is not available.

(E) The regulations, rates and charges specified in this tariff for BellSouth ADSL service are in addition to applicable regulations, rates and charges specified in this and/or other Tariffs of the Telephone Company, but do not include any regulations, rates or charges which may be applied or charged to the end-user by the customer.

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (cont'd)

7.5.21 BellSouth ADSL Service

(A) Low Speed, Asymmetric Virtual Circuits

- (1) Per Virtual Circuit, Downstream data rate up to 1.5 Mbps,
 Upstream data rate up to 256 Kbps

	VC Quantity		Nonrecurring Charge Per VC	Monthly Rate Per VC	USOC	
	Minimum	Maximum				
(a)	51	10,000	\$50.00	\$32.00	ADF11	(C)
						(D)
						(D)
(b)	10,001	40,000	\$50.00	\$30.00	ADF16	(T)
(c)	40,000+		\$50.00	\$29.00	ADF17	(T)

- (2) Per Virtual Circuit, Downstream data rate of at least 768 Kbps,
 Upstream data rate of at least 512 Kbps

	VC Quantity		Nonrecurring Charge Per VC	Monthly Rate Per VC	USOC	
	Minimum	Maximum				
(a)	51	10,000	\$300.00	\$101.00	ADF61	(C)
						(D)
						(D)
(b)	10,001	40,000	\$300.00	\$ 94.00	ADF66	(T)
(c)	40,000+		\$300.00	\$ 85.00	ADF67	(T)

**Summary of BellSouth Proposed FCC Tariff
of Volume Priced ADSL Services**

BellSouth 256 Kbps x 1.5 Mbps ADSL Service

Current BellSouth FCC Tariff	
Volume Commitment Levels	Monthly Price Per Virtual Channel
51 to 5,000	\$37.00
5,001 to 7,500	\$34.00
7,501 to 10,000	\$32.00
10,001 to 40,000	\$30.00
40,000 +	\$29.00

Proposed BellSouth FCC Tariff	
Volume Commitment Levels	Monthly Price Per Virtual Channel
51 to 10,000	\$32.00
10,001 to 40,000	\$30.00
40,000 +	\$29.00

BellSouth 512 Kbps x 768 Kbps ADSL service

Current BellSouth FCC Tariff	
Volume Commitment Levels	Monthly Price Per Virtual Channel
51 to 5,000	\$116.00
5,001 to 7,500	\$108.00
7,501 to 10,000	\$101.00
10,001 to 40,000	\$94.00
40,000 +	\$85.00

Proposed BellSouth FCC Tariff	
Volume Commitment Levels	Monthly Price Per Virtual Channel
51 to 10,000	\$101.00
10,001 to 40,000	\$94.00
40,000 +	\$85.00



BellSouth Telecommunications, Inc.
P.O. Box 32410
Louisville, KY 40232

or
BellSouth Telecommunications, Inc.
601 West Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Attorney

502 582-1475
Fax 502 582-1573

February 6, 2001

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PUBLIC SERVICE
COMMISSION

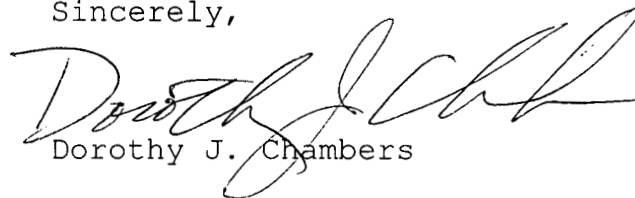
Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Response to IgLou's Motion to Strike and Suppress.

Sincerely,



Dorothy J. Chambers

Enclosure

cc: Parties of Record

246250

1500 pages). Both parties filed extensive direct and rebuttal testimony and the Commission conducted a formal hearing.

Pursuant to the Commission's Order, both parties filed briefs.

On November 30, 2000, this Commission issued its Order.

Pursuant to KRS 278.400 BellSouth moved for reconsideration. IgLou filed a response to BellSouth's Motion for Reconsideration and BellSouth filed a Reply Memorandum. By Order dated January 11, 2001, this Commission issued an Order granting BellSouth's Motion for Reconsideration. The Commission's Order required BellSouth to file a copy of the revised interstate wholesale tariff BellSouth proposes to file in lieu of filing a state tariff and any supporting cost information and also to address all levels of service that are to be included in the FCC tariff. The Commission's schedule established in its January 11, 2001 Order, allowed IgLou 15 days to respond following BellSouth's submission of its proposal. The Commission also scheduled an informal conference for March 7, 2001, for the parties to present any additional information to assist the Commission in its determination. The Commission also ordered the parties to communicate following IgLou's submission of its response and prior to the informal conference as to the possibility of an agreed proposal to be submitted for the Commission's approval, and required the parties to file a

status report no later than March 2, 2001, describing their efforts to reach agreement.

IgLou's Motion to Strike appears to be based upon an incorrect assumption, that is, that BellSouth is seeking to present new evidence in support of its Motion for Reconsideration. On the contrary, the Commission, of course, already has granted reconsideration and expressly has ordered BellSouth to file further information in support of its proposal to resolve this matter by the filing of an interstate wholesale tariff.

As BellSouth has noted, it does not dispute the Kentucky Public Service Commission's authority to order an intrastate DSL tariff. However, such a Kentucky specific DSL tariff would apply to only intrastate services. The ADSL tariff utilized by internet service providers to connect to the internet is interstate, not intrastate, in nature. BellSouth has cited in its previous filings the FCC decisions that make clear a Kentucky specific DSL tariff could not be used by ISP's such as IgLou to provide ADSL based internet connectivity for an ISP's customers. BellSouth believes that the rate making authority over interstate services is exclusively governed by the Federal Communications Commission. As noted in BellSouth's January 9, 2001, Reply to IgLou's Response to BellSouth's Motion for Reconsideration, filed the FCC denied NARUC's motion for

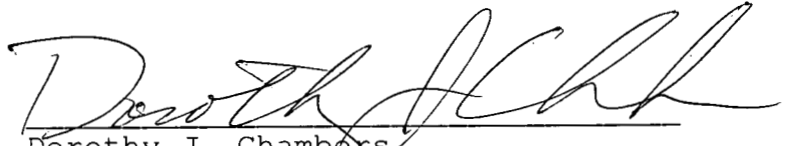
reconsideration of the jurisdictional determinations in the GTE DSL order.²

BellSouth raised the jurisdictional issues in its Motion for Reconsideration and suggested the filing of a revised federal tariff in an effort to avoid a jurisdictional confrontation and to resolve this matter in a manner in keeping with the apparent intent of this Commission and without improperly impacting a federal tariff filed with the FCC. In this case, BellSouth has not presented, nor has it sought to present, any new evidence. Rather, in a manner in conformity with KRS 278.400, BellSouth sought reconsideration of this Commission's earlier Order. IgLou's "Motion to Strike and Suppress" is, in fact, a belated attempt to reargue BellSouth's Motion for Reconsideration which this Commission already has granted.

For the above reasons, this Commission properly granted reconsideration; a further procedural schedule has been established; and this Commission should proceed in accordance therewith.

² In the matter of GTE Telephone Operation Cos., FCC 99-41, CC Docket No. 98-79 released February 26, 1999, at 4.

Respectfully submitted,



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Telephone No. (404) 335-0710

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

246140

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 6th day of February 2001.


Dorothy J. Chambers

Honorable Jonathon N. Amlung
1000 Republic Building
429 West Muhammad Ali Blvd.
P. O. Box 1417
Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

February 7, 2001

To: All parties of record

RE: Case No. 1999-484

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

Honorable Jonathon N. Amlung
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Louisville, KY 40220

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
COMPLAINANT)	
V.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

O R D E R

On January 24, 2001, Complainant, IgLou Internet Services, Inc. ("IgLou"), filed a motion to strike and suppress any evidence pertaining to BellSouth Telecommunications, Inc.'s ("BellSouth") proposed federal tariff, and to preclude BellSouth from presenting any evidence pertaining to its proposed federal tariff, as well as any other new evidence. The "evidence" IgLou attempts to have stricken or suppressed is a proposal by BellSouth to amend its Federal Communications Commission ("FCC") wholesale tariff to offer Digital Subscriber Line ("DSL") service at more competitive rates, in lieu of filing a state DSL tariff, as ordered by the Commission on November 30, 2000. For the reasons set out herein, the Commission denies IgLou's motion.

Although IgLou now characterizes BellSouth's federal tariff revision proposal as "new evidence," the Commission views the proposal as a possible means to the same end it wished to achieve by way of its November 30, 2000 Order. Rehearing was

granted to consider whether FCC tariff modifications would be a sufficient vehicle to reach the mandated goal of fair rates and conditions based on Kentucky-based volumes of DSL traffic.

The Commission retains the right to prescribe reasonable utility rates following a hearing on the issues or to grant a rehearing on any of the issues. KRS 278.270 and KRS 278.400. Nothing in either statute precludes the Commission from considering a party's proposal to accomplish the required outcome through a different means than that originally ordered.

For the foregoing reasons, IgLou's motion to strike and suppress BellSouth's proposal for a federal tariff revision is denied. The November 30, 2000 Order remains in effect pending the resolution of the rehearing granted on January 11, 2001.

BE IT SO ORDERED.

Done at Frankfort, Kentucky, this 7th day of February, 2001.

By the Commission

ATTEST:


Executive Director

JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

J.D./M.B.A.
LICENSED IN KENTUCKY AND OHIO

TELEPHONE: (502) 587-6838
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E-MAIL: jonathon@amlung.com

January 23, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

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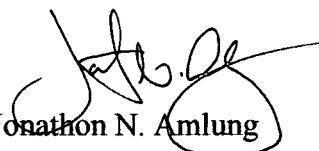
RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.
Case No. 99-484

Dear Mr. Dorman:

Please find enclosed for filing an original and ten (10) copies of IgLou's Motion to Strike and Suppress in the above-referenced case.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,


Jonathon N. Amlung

Enclosures

cc: Parties of record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
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PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)	
)	
Complainant)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Defendant)	

IGLOU'S MOTION TO STRIKE AND SUPPRESS ANY
EVIDENCE PERTAINING TO BELLSOUTH'S PROPOSED
FEDERAL TARIFF

Comes now Complainant, IgLou Internet Services, Inc. ("IgLou"), by and through Counsel, and pursuant to KRS 278.400, hereby moves this Commission to enter an Order striking any evidence submitted thus far in relation to BellSouth's proposed federal tariff, and further precluding BellSouth from presenting any evidence whatsoever pertaining to its proposed federal tariff, as well as any other new evidence. In support of this Motion, IgLou states as follows:

FACTS

For months before IgLou filed its Complaint, employees of IgLou attempted to contact BellSouth to voice its concerns over what IgLou perceived to be anticompetitive and discriminatory behavior in BellSouth's deployment of its Internet services in general. BellSouth consistently ignored those concerns. IgLou filed its Complaint on November 12, 1999, based upon this discriminatory behavior which, IgLou contended, was in violation of KRS 278.170. BellSouth denied wrongdoing in its Answer. This

Commission held a formal evidentiary hearing on May 26, 2000, in which both parties presented evidence to support their side. On November 30, 2000, this Commission entered its final Order in favor of IgLou, finding in part that BellSouth had, indeed, violated KRS 278.170 in many of its business practices. One of those ways was through BellSouth's discriminatory ADSL federal tariff, which essentially shut out any hope of meaningful competition for ADSL deployment in the regions of this Commonwealth in which BellSouth operates. This Commission thus ordered BellSouth to file an additional tariff for its ADSL services in Kentucky, modifying its federal tariff to state-specific levels. This Commission gave BellSouth thirty (30) days in which to comply with its Order.

BellSouth filed a Motion for Reconsideration on December 22, 2000, challenging this Commission's jurisdiction to compel it to file a state-specific tariff. In its Motion, BellSouth proposed a "resolution" to this jurisdictional conflict by filing *new evidence* in this case, a proposed revision to its federal ADSL tariff, attached as an exhibit to BellSouth's Motion. BellSouth told this Commission that it denied all wrongdoing and it would only file this revision to its federal ADSL tariff if the Commission did not assume jurisdiction over BellSouth's ADSL services and require BellSouth to file a state-specific tariff in Kentucky. IgLou responded in kind, noting the absurdity of the proposal.

On January 11, 2001, this Commission entered an Order reaffirming its shared jurisdiction over BellSouth's ADSL services. The Commission considered the new evidence supplied by BellSouth, and now seeks further new evidence relating to this proposal by BellSouth.

**THE COMMISSION IS PROHIBITED FROM MODIFYING,
AMENDING OR VACATING ITS NOVEMBER 30, 2000, ORDER
BASED UPON THE NEW EVIDENCE PRESENTED BY
BELLSOUTH AFTER THE FORMAL HEARING IN THIS CASE.**

As this Commission is aware, a motion for reconsideration is a vehicle to request the Commission to reconsider an order based upon errors in its *legal* reasoning. The basis for BellSouth's motion in the present case was BellSouth's erroneous assertion that this Commission did not have jurisdiction to require an intrastate tariff for ADSL services. The Commission was within its authority to reconsider this *legal* argument by BellSouth. The Commission reached the correct conclusion in denying BellSouth's motion on jurisdictional grounds.

BellSouth's motion, however, also contained new evidence submitted by BellSouth in the form of a proposed revision to its federal ADSL tariff. This new document invoked the evidentiary limitations of KRS 278.400, which reads as follows:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. **Upon the rehearing, any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.** Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

(Emphasis supplied)

There is no question that the Commission refers to KRS 278.400 when considering a motion for reconsideration as well as a petition for rehearing. There is no other authority for the Commission to entertain motions for reconsideration. The Commission has

consistently followed the timelines set forth in this statute when ruling on either type of request to modify its orders, and it followed those timelines in the present case.

When BellSouth submitted new evidence in addition to its legal arguments, it clearly invoked the evidentiary limitations set forth in KRS 278.400. In the present case, this statute operates to preclude the Commission from considering any evidence pertaining to BellSouth's "proposal," including the proposal itself, after the Commission's Order was entered on November 30, 2000.

This Commission has recognized on numerous occasions that it may not consider new evidence proposed by a party seeking modification of an Order, unless that evidence was *in existence* at the time of the evidentiary hearing **and** the new evidence could not with reasonable diligence been offered at the original hearing.

The Commission recognized this fact as recently as February 17, 2000, in Case No. 98-426.¹ In that case, LG&E sought reconsideration of a Commission Order denying a proposed increase in LG&E's depreciation expense. The Commission determined that LG&E did not provide adequate support for its proposed increase. In its petition for rehearing, LG&E provided additional evidence supporting its case in the form of balances, corresponding depreciation rates, and the calculation of the depreciation accruals. The Commission denied a rehearing based upon this new evidence, because it felt that the evidence could have, with reasonable diligence, been provided at the original hearing. The Commission held that "the standard contained in KRS 278.400 for additional evidence is that the evidence could not with reasonable diligence have been offered during the initial hearing." *Id.* Obviously, the Commission recognized that KRS

¹ Re Louisville Gas and Electric Company, Case No. 98-426, Kentucky Public Service Commission, Slip Opinion, February 17, 2000.

278.400 prohibits a party seeking modification of a Commission Order from offering new evidence that *could* have been offered at the original hearing.

Similarly, in Case Number 96-524,² the Commission struck affidavits submitted by LG&E for the first time upon seeking a rehearing. This Commission relied upon KRS 278.400 in striking these affidavits from the record. This Commission held that KRS 278.400 “is intended to provide closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearings. It requires parties to Commission proceedings to use reasonable diligence in the preparation and presentation of their case and serves to prevent piecemeal litigation of issues.” Id.

In Case Number 90-158,³ the Commission rejected a petition for rehearing by Jefferson County, Kentucky, which based its motion on a reduction in interest rates since the Commission’s original hearing. The Commission held that “the evidence that may be considered on rehearing is expressly limited by KRS 278.400 to ‘additional evidence that could not with reasonable diligence have been offered on the former hearing.’ This standard encompasses only such evidence in existence at the time of the hearing.” Id.

Finally, the Commission declined to consider new evidence proposed by Kentucky-Ohio Gas Company (“KOG”) in seeking a rehearing in Case Number 91-138.⁴ In that case, the Commission rejected new evidence proposed by KOG on the basis of KRS 278.400 because the information “could have been obtained by KOG during the

² Re Louisville Gas and Electric Company, Case No. 96-524, Kentucky Public Service Commission Slip Opinion, March 11, 1999.

³ Re Louisiana Gas and Electric Company, Case No. 90-158, Kentucky Public Service Commission Slip Opinion, January 29, 1991.

⁴ Columbia Gas of Kentucky, Inc. v. Kentucky-Ohio Gas Co., Case No. 91-138, Kentucky Public Service Commission Slip Opinion, January 13, 1992.

course of this proceeding. Hence, the Commission finds that rehearing should be denied.”

Id.

The reasoning underlying each of these Commission opinions is also applicable to the present case. In this case, BellSouth presented new evidence in seeking a modification of the Commission’s November 30, 2000, Order. Clearly, that evidence was not in existence at the time of the hearing, which was held May 26, 2000. Surely, it would be disingenuous of BellSouth to propose that it could not, with reasonable diligence, have presented this new evidence at the time of the hearing. This was evidence that BellSouth *created* in order to persuade the Commission to modify its Order. BellSouth could have created this evidence at *any* time, but chose to do so only after this matter was decided.

The issue of the discriminatory nature of BellSouth's ADSL tariff has been present throughout this proceeding. It was questioned as one of the tools used by BellSouth to stifle competition of other ISPs in IgLou's initial Complaint filed November 12, 1999. In BellSouth's Answer, no mention of any tariff modification was offered. BellSouth's ADSL tariff was the subject of much of the questioning of opening testimony on both sides and during the formal hearing in this case held on May 26, 2000. Again, no evidence of any tariff, modification or proposal was brought forth by BellSouth. There is no question that BellSouth's tariff was an issue at every step in this proceeding. BellSouth not only had a significant opportunity but a statutory requirement to produce this new evidence of its proposal **during** this proceeding, rather than after it.

There is no doubt that the Public Service Commission retains authority to modify its orders once entered. That authority, however, is expressly limited by statute. In the

present case, the authority of the Commission to consider new evidence, as it proposes to do, is limited by KRS 278.400. All documentation, charts, diagrams, testimony and other forms of proof supporting BellSouth's proposal must be considered evidence supporting BellSouth's arguments in this case, i.e., that it should be permitted to circumvent this Commission's authority by filing a revision to its federal ADSL tariff. This Commission is prohibited from considering this evidence pursuant to statute.

CONCLUSION

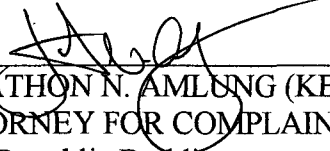
IgLou respectfully requests this Commission to strike from the record the document attached to BellSouth's Motion for Reconsideration as "Attachment 1." IgLou further respectfully requests this Commission to enter an Order prohibiting BellSouth from providing supplementary evidence supporting this document, as well as any other evidence prohibited by KRS 278.400. The issues in this case have been litigated and a decision has been reached. As this Commission correctly recognized in previous rulings, permitting BellSouth to introduce this new evidence would result in "piecemeal litigation" of the issues. Allowing BellSouth to introduce new evidence after every Order by this Commission could serve to drag out this litigation ad infinitum. KRS 278.400 serves to provide finality and closure to litigation before the Commission. The Commission has made its decision, and IgLou respectfully requests enforcement of that decision.

IgLou respectfully requests this Commission to rule on this Motion expeditiously. This proceeding has been pending for well over a year, with no relief in immediate sight for IgLou. As this Commission recognized, BellSouth's business practices are harming

Kentucky's ISPs on a daily basis, and stifling the deployment of ADSL in Kentucky.

Further delay will simply cause more irreparable damage.

Respectfully submitted,



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Louisville, Kentucky 40202
Telephone (502) 587-6838
Facsimile (502) 584-0439

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage pre-paid, to the parties of record this the 23rd day of January, 2001.



JONATHON N. AMLUNG (KBA#86892)

Service List:

Hon. Dorothy J. Chambers
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BellSouth Telecommunications, Inc.
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Hon. R. Douglas Lackey
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General Attorney

or
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601 West Chestnut Street, Room 407
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RECEIVED

JAN 9 2001

PUBLIC SERVICE
COMMISSION

January 9, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Reply to IgLou's Response to BellSouth's Motion for Reconsideration.

Sincerely,


Dorothy J. Chambers

Enclosure

cc: Parties of Record

242266

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 9 2001

PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
Complainant)	
)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO
IGLOU'S RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, hereby replies to IgLou Internet Services, Inc.'s ("IgLou") Response to BellSouth's Motion for Reconsideration of this Commission's Order of November 30, 2000.

BellSouth proposed in its Motion for Reconsideration a resolution to address the concerns expressed by this Commission with respect to deployment of DSL. BellSouth's proposed resolution consists of an offer to file with the FCC a substantially collapsed ADSL wholesale tariff with prices ranging from \$29.00 at the highest volume commitment level to \$32.00 at the lowest volume commitment level. There are a number of advantages to the resolution BellSouth has suggested. For example, this proposal would result in pricing for the smaller ISPs in Kentucky that would be **lower** than the pricing

IgLou advocates. Moreover, this revised FCC tariff would be applicable across the entire nine-state region in which BellSouth operates. BellSouth offered this resolution not as a "strong arm tactic" or for any of the other reasons suggested by IgLou. Moreover, BellSouth has not raised the jurisdictional question in order to create a confrontation but in an effort to avoid a confrontation and resolve this matter in a manner in keeping with the apparent intent of this Commission and without improperly impacting a federal tariff filed at the FCC.

BellSouth does not dispute that the Kentucky Public Service Commission has the authority to order an intrastate DSL tariff. However, as has been noted, a Kentucky-specific DSL tariff would of necessity apply only to intrastate services. It is well established that the Communications Act establishes a dual jurisdictional scheme that governs telecommunications. While the FCC is precluded from regulating common carrier services that are provided in connection with **intrastate** communications (47 U.S.C. Sec. 152(b)), the Communications Act likewise vests exclusive ratemaking authority over **interstate** services to the Federal Communications Commission. Thus, Section 152(a) makes clear that the Act applies "to all interstate services" and that the Federal Communications Commission shall be responsible "to execute and enforce the provisions of this Act." The FCC alone has jurisdiction and authority under Section 201-205 of the Act

to regulate interstate common carrier services, including determining the reasonableness of rates.

FCC decisions make clear that an ADSL tariff utilized by ISPs to connect to the Internet is interstate, not intrastate, in nature. A Kentucky-specific DSL tariff could not be used by ISPs, such as IgLou, to provide ADSL-based Internet connectivity for ISP customers. This Commission's Order has noted the FCC decision in the GTE case that determined DSL is an interstate DSL access service subject to the FCC's jurisdiction.¹ IgLou alleges BellSouth "conveniently omitted an important clarification" regarding the FCC's decision in the GTE case, citing the NARUC motion for clarification.² However, contrary to IgLou's assertion, the FCC's subsequent opinion and order makes absolutely clear that BellSouth has correctly cited the FCC order and that it is IgLou that has omitted an important clarification. With regard to the NARUC motion for reconsideration, IgLou failed to quote the following sentence from the FCC order:

To the extent NARUC also seeks reconsideration of our **jurisdictional determinations in the GTE DSL order we deny its petition as well.**³ [Emphasis added.]

¹ GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC transmittal number 1148, CC Docket No. 98-79, Released October 30, 1998, cited in Kentucky Public Service Commission November 30, 2000, Order at 6, footnote 3.

² IgLou Response at 7.

³ In the matter of GTE Telephone Operation Cos., FCC 99-41, CC Docket No. 98-79 released February 26, 1999, at 4.

The FCC at this point cited the similar determination it had made with respect to BellSouth and other companies that their new DSL offerings are properly tariffed at the federal level.⁴

While IgLou quoted the following sentence, "We reiterate, however, that in some circumstances, ADSL services may be appropriately tariffed as intrastate services.", IgLou failed to continue the quotation or even mention that the FCC opinion went on to explain that these appropriate "intrastate services" occurred in circumstances where Internet use is **10 percent or less interstate**. Where customers whose Internet use is **more than 10 percent interstate**, the FCC decision made clear that the services are to be purchased out of the **federal** tariff. IgLou failed to quote the following key sentence:

For example, GTE may tariff an ADSL service with the states so that those customers whose Internet use is 10 percent or less interstate may purchase the service out of state tariffs and those customers whose Internet use is more than 10 percent interstate may purchase the service out of the federal tariff.⁵

Similarly disingenuous is IgLou's citation of a Ninth Circuit opinion as the basis for its claim there is no serious jurisdictional issue involved in the present case. See IgLou Response at 2, citing Communications Telesystems International v. California Public Utility Commission, 196 F.3d 1011 (9th Cir.

⁴ BellSouth also cited this decision as to BellSouth. Bell Atlantic Tel. Cos., FCC 98-317, CC Docket No. 98-168, 161, 167, and 103, released November 30, 1998, in its Motion for Reconsideration at page 8, footnote 7.

⁵ FCC 99-41, CC Docket No. 98-79 at 4.

1999). In Communications Telesystems, CTS was found to have "slammed" or switched customers' telephone carrier without the customer's permission, for **intrastate** long distance telecommunications services under authority granted by the California Public Utilities Commission. Again, IgLou's citation of this case and quotations from that case neglect to mention a key fact, that is, that the slamming was of **intrastate** long distance service. Thus, there was no serious question of federal preemption.⁶ In contrast, in the present case, IgLou's dispute is with the rates in a DSL tariff, which as noted, is clearly an **interstate** service filed in a federal tariff before the FCC.

IgLou also contended that BellSouth has not cited any cases where the powers of a regulatory commission to examine a rate have been limited by the jurisdictional nature of the communications. On the contrary, in noting the FCC's position that Internet calls are within the interstate jurisdiction, BellSouth cited several determinations that demonstrate the FCC's position on Internet calls is consistent with the FCC's traditional method of determining the jurisdictional nature of communications. In one such example BellSouth cited, the FCC

⁶ IgLou's complaints in this case regarding allegations of alleged inappropriate business practices or alleged violations of accounting safeguards have appropriately been considered and determined by this Commission to be unsupported. IgLou has neither sought reconsideration nor appealed from any of these findings.

determination that the BellSouth® MemoryCall® service transaction constituted one interstate call was as a result of a petition for emergency relief and declaratory ruling from the Georgia Public Service Commission filed by BellSouth before the FCC.⁷ Similarly, there can be no doubt that if IgLou attempts to circumvent BellSouth's ADSL tariff filed at the FCC by attempting to utilize instead an intrastate tariff, even if one is filed in Kentucky, for interstate DSL access such action would raise serious jurisdictional issues that would need to be resolved before the FCC.

CONCLUSION

This complaint, in essence, concerns the timing and cost to make broadband services available to customers. IgLou has sought to blame its delay in offering broadband services to its customers by attacking BellSouth and other large companies with the ludicrous pejorative of "foreign monopolies" and other colorful, but ill-conceived, rhetoric. Meanwhile, IgLou continues to claim any other "options" for ISPs to gain access to broadband facilities are "non-existent". However, while IgLou has waged its campaign of rhetoric and blaming others,

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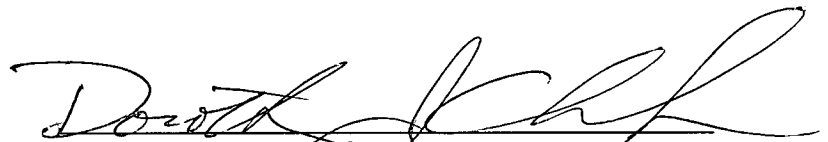
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⁷ 7 F.C.C. Rcd. 1619 (1992).

several of IgLou's Kentucky ISP competitors have chosen instead to utilize some of these so-called "non-existent options" and are already delivering broadband service to their customer base.⁸ Moreover, while IgLou, as the largest independent ISP in Kentucky, may favor the 5 percent modification of all tiers of BellSouth's tariff, the many smaller ISPs in Kentucky actually stand to benefit to a much greater extent from the resolution BellSouth has proposed in its Motion for Reconsideration.

BellSouth has respectfully requested reconsideration because it believes the proposed resolution offers a fair and reasonable solution that has the added advantage of mooting the serious jurisdictional issue which otherwise must be resolved. BellSouth respectfully requests that the Commission grant reconsideration and modify its previous order based on the resolution BellSouth has proposed.

Respectfully submitted,



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⁸ See attached Business First article, Win.Net joins crowded waters: offering DSL service. Article dated October 13, 2000.

R. Douglas Lackey
J. Phillip Carver
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675 W. Peachtree Street, N.E.
Atlanta, GA 30375
Telephone No. (404) 335-0710

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

242182

Win.Net joins crowded waters: offering DSL service

Win.Net Business Internet

Founder and
president:
Michael Tague



Tague

Address: 300
Distillery
Commons, Suite
400

Employees: 11
Phone: 815-7000
Web site:
www.win.net

"It just
shows the
growth of
high-tech in
Louisville."

Jim Graham
ITRC

BY REBECCA L. MARTIN
AND GREG GOLDSMITH
BUSINESS FIRST STAFF REPORT

In the fast-paced Internet services industry, Louisville-based Win.Net Business Internet is poised again to offer a new service. This time it's getting into digital subscriber line (DSL) Internet service.

Company founder Michael Tague said offering DSL is the next step in growing the company, one of the area's oldest Internet service providers, which marked its 10th anniversary last month.

Tague said the company has \$10,000 invested in new equipment for the high-speed Internet service and hopes to have the service available by the end of October.

It has taken two years longer than Tague had hoped to get Win.Net into the DSL business. The company's goal was to find an affordable method of leasing the copper telephone wires required to run DSL, Tague said.

Originally, Win.Net would have paid \$45 per month for each connection, Tague said.

But the Kentucky Internet Service Providers Association this summer was able to persuade the much larger Florida Internet Service Providers Association to allow KYISPA members to join the Florida organization's bulk rate plan with BellSouth. That lowered the price by \$13 per connection.

Tague called landing the deal "a significant feather in the cap of KYISPA."

"Through KYISPA and by pooling our efforts," Tague said, Win.Net was able "to be competitive with price and service with everyone else out there."

Not alone in DSL arena

BluegrassNet, also a local ISP, has been providing DSL for about seven months in the Louisville, Lexington, Radcliff and Elizabethtown areas of Kentucky.

The company also belongs to KYISPA and reaped the benefits of the agreement with the Florida association,

according to Norman Schippert, chief executive officer of the company.

Schippert said BluegrassNet was able to increase bandwidth and maintain its price to commercial users at \$100 to \$600 a month, depending on the type of service.

Schippert said the company provides DSL service to residential customers for about \$60 a month, and Schippert said although the company was losing money at the old rate it paid, the Florida deal allows that price to remain the same. He expects to have about 1,000 DSL subscribers by the end of the year.

Currently, Schippert said, BluegrassNet has about 200 customers and that DSL is a good service to provide because "it gives more bandwidth for less money."

The exact number of DSL providers for Louisville is difficult to track. Many buy the service from BellSouth or other providers, then bundle it with their own services and resell it to consumers.

A Web site that claims to keep track of providers, www.dslproviders.com, lists 20 residential and 26 business providers for the 40202 postal ZIP code.

Jim Graham, director of the Information Technology Resource Center at the University of Louisville, called the competition "real exciting" for Louisville.

"It's great to see the vitality of these DSL services," he said. "It just shows the growth of high-tech in Louisville."

He predicted that the competition would "come down to who can provide the best service."

Tague said Win.Net already has a list of customers who want to receive DSL service when the company begins offering it. Win.Net will charge \$49.95 a month for residential DSL and between \$59.95 a month and \$199 a month for business DSL, Tague said.

He said he hopes that the dedicated Internet-access segment of the business, which includes T-1s, ISDN and wireless, will grow from being one-third of the company's revenue to about 50 percent of it.

Web hosting and dial-up Internet access each make up the remaining thirds of the business, he said.

Tague said he hopes many of Win.Net's current customers switch to DSL. "We would be happy as we can be if we could convert our own customers" to DSL, he said, because "this is where the technology is going."

Busy decade brings wireless challenge

In the 10 years since its founding, Win.Net has developed its offerings as Internet technology has advanced. The company started as a dial-up service provider, then added integrated services digital network (ISDN) service technology, and next got on board with T-1 service.

Then about a year ago, Win.Net made its leap into offering wireless Internet service.

Rather than using bank financing or the company reserves, Tague said he "passed the hat" among the family members and friends who have been his primary investors and came up with \$300,000 to launch wireless service. Tague said the \$300,000 was spent in just about equal amounts for equipment and personnel costs.

Tague admits there have been bumps along the road for Win.Net in terms of its wireless product. "There are new issues we had to deal with," such as locating antenna towers on private and government property, Tague said. "It's a whole new way of doing things."

He said employees also had to learn how to use the new technology. "The equipment just behaves a little differently than the stuff we're used to."

But now, he said, "it's working really well." Tague wouldn't say how many customers Win.Net has for its \$495-a-month wireless service, but he did say they were concentrated in three areas: downtown, along the Hurstbourne Parkway corridor and in the Middletown area.

Part of the company's plan to expand its customer base is "filling the gaps" between those areas.

More investments, even sale possible

Next year, Tague said, Win.Net may seek an investment of \$1 million to \$2 million to fund further development of the services the company already offers.

But he declined to disclose from whom he may seek the investment. There are "no formal discussions on this at all," Tague added.

In addition, the possibility exists that Win.Net could be sold, he said.

So far this year, Tague said, Win.Net has been courted by seven suitors.

He declined to identify the companies that made offers. But he said three of them were local "venture-funded companies around town."

He did not agree to any of the offers because "there's not been any combination that's looked really good," he said. "The right offer hasn't come around yet."

Holding steady in employment

Even with the additional services, Win.Net's staff of 11 is covering all the bases, Tague said. He said he believes he can finish this year with the current staffing level, but may add a few jobs in January.

Tague declined to disclose the company's financial figures, but he said the company has been profitable since its founding and has had "pretty steady" revenue growth through the years, averaging about 15 percent to 20 percent every year.

Last year's revenue growth was less than 5 percent, Tague said, and that was because of what he called the "distraction" of moving into the wireless and DSL operations.

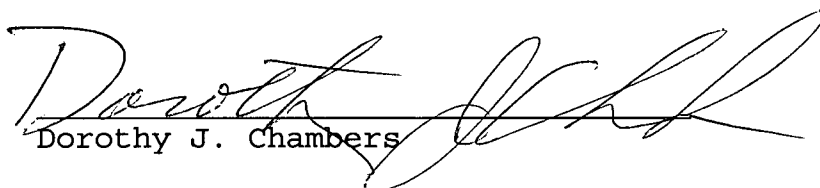
He said the company spent a lot of time and attention on those new areas at the expense of growing its existing business.

For this year, Tague said of the company's revenues, "I think we'll sort of return to our traditional growth rate."

REBECCA MARTIN is a Business First staff writer. GREG GOLDSMITH is a Business First correspondent.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 9th day of January 2001.


Dorothy J. Chambers

Honorable Jonathon N. Amlung
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429 West Muhammad Ali Blvd.
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Louisville, KY 40201-1417

IgLou Internet Services, Inc.
3315 Gilmore Industrial Boulevard
Louisville, KY 40213

Tanya Monsanto
Legislative Research Commission
Capital Annex, Room 127
Frankfort, KY 40601

Mr. Richard M. Breen
2950 Breckenridge Lane, Suite 3
Louisville, KY 40220



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Dorothy J. Chambers
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January 5, 2001

RECEIVED
JAN 05/8 2001
PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.
PSC 99-484

Dear Mr. Dorman:

Enclosed is an original and ten copies of BellSouth's Reply to Iglou's Response to BellSouth's Motion for Extension of Time in the above referenced matter. As with BellSouth's Motion for Extension of Time and Motion for Reconsideration, in addition to mailing the service copies, BellSouth is also transmitting a copy via facsimile to Mr. Amlung on the date of this letter.

Very truly yours,

Dorothy J. Chambers

Enclosure

cc: Parties of Record

241476

the Commission had posed in its November 30, 2000 Order regarding a retail offering. It should be noted that the Commission concluded in its November 30, 2000 Order that it did not need to require, and was not requiring, that BellSouth file a retail tariff for DSL at the present time. Rather, the Commission indicated its desire to have further information and to monitor the market considering the other elements of the Order. As noted, BellSouth also has sought reconsideration with respect to those aspects of the Order requiring BellSouth to file a Kentucky specific DSL tariff for wholesale service.

BellSouth respectfully suggests that it has sought a modest extension of time so that BellSouth might respond in a reasonably complete and accurate manner to the Commission's request. With all due respect to IgLou, it is not a fair assumption that any task can be accomplished immediately simply because a large corporation is the entity undertaking the action. As noted in BellSouth's detailed explanation in its Motion for Extension of Time, a number of departments within BellSouth must necessarily participate in exploring the issues the Commission has raised. In order to adequately respond to the Commission, numerous BellSouth teams need to be consulted to develop the estimates necessary to respond to the questions posed by the Commission. The specific issues and departments that are involved are discussed more fully in BellSouth's Motion for Extension of Time. For the reasons stated in BellSouth's original Motion for Extension and as further amplified herein, BellSouth respectfully urges the Commission to grant the extension requested.

Respectfully submitted,



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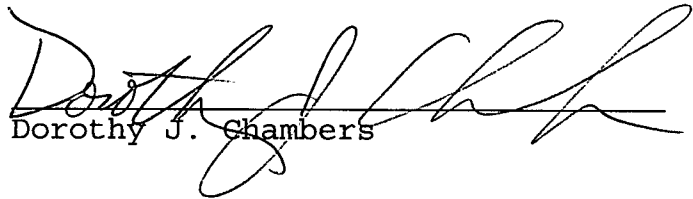
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COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

241419

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 5th day of January 2001.


Dorothy J. Chambers

SERVICE LIST - PSC 99-484

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Tanya Monsanto
Legislative Research Commission
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Louisville, KY 40220

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 04 2001

PUBLIC SERVICE COMMISSION

IGLOU INTERNET SERVICES, INC.,)
 Complainant,)
 v.) No. 1999-484
 BELLSOUTH TELECOMMUNICATIONS, INC.,)
 Defendant.)

IGLOU INTERNET SERVICES, INC.'S RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION

* * * * *

Comes now Complainant, IgLou Internet Services, Inc., and hereby submits its Response to BellSouth's Motion for Reconsideration, urging the Commission to overrule BellSouth's Motion and further to enforce its November 30, 2000, Order in this action.

I. THE COMMISSION WAS EMPOWERED TO REQUIRE AN INTRASTATE TARIFF UNDER THE TELECOMMUNICATIONS ACT OF 1996.

Much of BellSouth's argument is based on the faulty assumption that this Commission was without authority to regulate competition within its borders, specifically in regard to DSL deployment. The Telecommunications Act of 1996 specifically reserved to the states the power to protect their citizens and promote competition within their borders. When coupled with the fact that the F.C.C. has absolutely no statutory grant of authority under the Telecommunications Act of 1996 ("Telecom Act") to regulate DSL, it is clear that this Commission was empowered to require an intrastate tariff for intrastate DSL facilities.

The Telecom Act specifically reserves to the states their traditional police powers in the area of telecommunications. For instance, Section 253(b) of the Telecom Act reads as follows:

(b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

This authority is clearly a recognition by the legislature of the states' police powers.

The 9th Circuit recently drafted an excellent analysis of preemption and states' rights in conjunction with the Telecom Act. In Communications Telesystems Intl. v. California Pub. Util. Comm'n., 196 F.3d 1011, 1017 (9th Cir. 1999), the plaintiff, a telecommunications company, sought to challenge a fine imposed by the California P.U.C. for slamming violations. The basis for the plaintiff's appeal was preemption of state regulatory power over telecommunications by the Telecom Act. In refusing to find preemption, the Court reaffirmed the scope and extent of the states' police power over telecommunications, as addressed in Section 253(b) of the Act. "As the Supreme Court has held, 'the regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States.'" Id. at 1017 (*Citing Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n.*, 461 U.S. 375, 377, 76 L. Ed. 2d 1, 103 S. Ct. 1905 (1983)). "Among the important state interests at issue here are the protection of consumers from unfair business practices, the compensation of those consumers for harm, and the need to ensure fair competition between, and the fitness to operate of, licensed carriers." Id. (Citations omitted)

The Telecom Act contains other provisions that reflect Congress' intent to preserve states' authority in the area of telecommunications. Section 261 reads as follows:

(a) Commission regulations. Nothing in this part shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996] in fulfilling the requirements of this part, to the extent that such regulations are not inconsistent with the provisions of this part.

(b) Existing State regulations. Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

(c) Additional State requirements. Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

Finally, Section 152(b) of the Telecom Act expressly recognizes states' jurisdictional authority with respect to "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier."

In the present case, the Commission correctly determined that the facilities used to provision DSL are intrastate facilities. The Commission's Order affects only an intrastate facility, the price of physical loops wholly located in the Commonwealth, which is well within this Commission's jurisdiction. Assuming, arguendo, that the Commission's decision affected an interstate service, the police power of the state in promoting competition and protecting the welfare of its residents would still operate to vest the Commission with jurisdiction to require and enforce a Kentucky-specific DSL

tariff. Congress has specifically recognized this power of the states in the Telecom Act, specifically Section 253(b). Regardless, the Commission correctly determined that the DSL facilities in question are an intrastate matter and are thus properly tariffed at the state level.

II. THERE'S A NEW TARIFF IN TOWN.

BellSouth asserts that it "recognizes and wholeheartedly supports this Commission's position with respect to the importance of broadband infrastructure." (BellSouth Motion for Reconsideration, p. 4). Unfortunately this is the root of the problem at hand. BellSouth does indeed fully recognize the importance of this vital infrastructure and will do all they can to maintain full control of it now and in the future.

As previously stated in this case, BellSouth occupies a powerful position between an Internet Service Provider and its customers. BellSouth is able to, and does in fact, utilize this gatekeeper position to leverage its monopoly of telephone services to gain control of other markets, such as Internet access. As everyone has recognized, ADSL will play an increasingly important role in the deployment of advanced services in the Commonwealth. This makes protection of this facility from such monopolization all the more important.

In its Order dated November 30, 2000, this Commission correctly recognized the crucial importance of an ADSL broadband infrastructure to the future of this Commonwealth. Surrendering such an important vital state resource to a foreign monopoly such as BellSouth would be a grave mistake and result in serious consequences down the road. As a result, it is of utmost important to ensure that a vibrant and competitive marketplace exists for broadband ADSL services.

This Commission correctly recognized the need for intervention in its Order when it found BellSouth's current wholesale tariff for ADSL unacceptable, unreasonable, discriminatory and destructive to the competitive broadband market here in the Commonwealth. The Commission further recognized its authority to prevent such anticompetitive practices within the Commonwealth.

Unfortunately, instead of complying with this Commission's Order, BellSouth has chosen to file a Motion for Reconsideration and put forth what has been termed, by BellSouth, as a "resolution," i.e., a proposed modification of its federal tariff. In its Motion, BellSouth touts that this resolution fairly responds to the issues raised by IgLou and noted by this Commission. **However, BellSouth's proposed resolution is in fact not a resolution at all, and does not serve to address the issues raised by IgLou nor those noted by this Commission.** In fact, BellSouth's offer to file this new DSL tariff is much like a thief who has been caught by the police and demands to be released because he is willing to give back some of the loot. The Commission should not be fooled by this thinly veiled attempt to circumvent its Order.

In fact, BellSouth attempts to characterize itself as a veritable broadband Robin Hood and that its proposed DSL tariff somehow results in better pricing for smaller ISPs than that found in the Commission's Order. BellSouth is simply comparing apples to oranges when it compares its new 3 tier proposed tariff to the Commission's modification of its own current 5 tier tariff. This Commission did not propose a 5 tier tariff in its Order, but rather a 5% modification of all tiers of BellSouth's existing tariff. To accurately compare the two, BellSouth would need to apply the Commission's 5%

mandate to this new “resolution” tariff as well. After such calculation, one finds that BellSouth's new tariff is, in fact, not a lower alternative for smaller ISPs.

If, in fact, BellSouth truly cared for ISPs as it claims, it would not be making an *offer* to file such a new tariff and would simply file a new tariff. Instead, one must correctly recognize BellSouth's offer as what it is, a threat. On the one hand, BellSouth claims that it wants to help ISPs obtain better pricing for its DSL services; on the other hand, it is refusing to file a revision to its federal tariff unless the Commission abstains from regulation of BellSouth. Essentially, BellSouth is attempting to tell the Commission that it has no authority to promote competition and broadband deployment in Kentucky, and that any attempts to protect Kentucky’s interests at BellSouth’s expense will be met with challenges to this Commission’s authority. Such strong-arm tactics should not be tolerated.

During the many months of this proceeding, BellSouth has had ample time to make meaningful modifications to its ADSL tariff. Instead BellSouth chooses to make half-hearted attempts to pacify those businesses and consumers who are being harmed by BellSouth’s discriminatory conduct. BellSouth’s proposed “resolution” would be in fact the second modification that BellSouth has made to its ADSL tariff in six (6) months. This brings into question that resounding rigidity that BellSouth claims is in its ADSL tariff. It especially brings into question what cost justification that BellSouth has used to arrive at the tier levels and pricing contained in that tariff. The only justification offered by BellSouth for the tier levels in its “resolution” is that it wishes to offer favorable volume pricing to large out-of-state ISPs such as Earthlink, Telocity and Mindspring, as well as BellSouth’s own ISP, all to the detriment of Kentucky’s ISPs (BellSouth Motion

for Reconsideration, p. 5). Once again, BellSouth's "offer of compromise" is yet another attempt to offer favorable rates to a select set of ISPs and charge Kentucky's ISPs a higher price for the same service.

This Commission determined a certain pricing structure for DSL facilities that is reasonable and nondiscriminatory. BellSouth is essentially telling the Commission that it will not comply with the Order and offers a diluted and self-serving solution to a problem created by BellSouth itself. This Commission's Order was well within its jurisdiction; the Order represents a fair and equitable resolution to this matter, and the BellSouth's Motion for Reconsideration should be denied.

III. THE COMMISSION'S ORDER DOES NOT PRESENT A JURISDICTIONAL CONFLICT.

In its Motion for Reconsideration, BellSouth incorrectly asserts that there is an unavoidable jurisdictional conflict if this Commission does not accept BellSouth's "resolution." BellSouth relies upon the oft-cited GTE decision¹ for the faulty assumption that there is no room for both an intrastate and interstate ADSL tariff. BellSouth conveniently omitted an important clarification by the FCC regarding this issue. Shortly after the FCC released its decision in the GTE matter, NARUC filed a Motion for Clarification regarding the scope of the FCC's decision. The FCC responded that "in some circumstances, ADSL services may be appropriately tariffed as intrastate services."² The FCC's clarification left to open the circumstances under which an intrastate tariff should be utilized. More importantly, the FCC specifically and unambiguously recognized that there is no irreconcilable conflict inherent in requiring

¹ GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, released October 30, 1998.

² Id., Release No. FCC 99-41.

both an interstate and an intrastate tariff for ADSL, as BellSouth claims in its Motion for Reconsideration.

BellSouth further presents an inaccurate characterization of IgLou's arguments in the present case by claiming that they are identical to the "price squeeze" arguments made by Northpoint in the GTE case. It should be noted that Northpoint's arguments of a price squeeze in regard to ADSL tariffs in that case dealt with a CLEC's ability to purchase UNE's. As previously established in this case, IgLou is not a CLEC, and as a result cannot attempt to purchase UNEs. Northpoint's arguments in that case were by no means similar to any of the complaints brought forth by IgLou. The comparison to Northpoint's arguments in the GTE case is therefore not valid and should be disregarded by this Commission.

BellSouth incorrectly asserts that there is a jurisdictional conflict inherent in this Commission's Order. BellSouth Motion for Reconsideration on these grounds should, therefore, be denied.

IV. THE FILED RATE DOCTRINE IS NOT IMPLICATED BY THE COMMISSION'S ORDER

Simply put, the filed rate doctrine bars collateral judicial attacks against regulatory agencies based upon rates approved by that agency. Wegoland v. Nynex, 27 F.3d 17 (2nd Circuit 1994). The doctrine addresses two corresponding interests, one concerned with the 'justiciability' of determining reasonable rates, and the other concerned with potential 'discrimination' in rates as between ratepayers. Id. at 19. Contrary to BellSouth's assertions, neither of these interests is implicated by the Commission's Order in the present case.

The justiciability strand of the filed rate doctrine stands for the premise that an attack on a filed rate by a court would “unnecessarily enmesh the courts in the rate-making process.” Id. at 19. In other words, the courts recognized that regulatory agencies, such as Kentucky’s Public Service Commission, are far better equipped to understand the complex issues surrounding a utility rate, and are far better equipped to determine a fair and reasonable utility rate. The judiciary thus is required to abstain from second-guessing a regulatory agency with regard to utility rates.

The discrimination strand stands for the proposition that courts may not set a rate for an individual utility customer different from other similarly situated utility customers for the same service. American Tele. & Telegraph Co. v. Central Office Tele., Inc., 524 U.S. 214, 118 S. Ct. 1956, 1963, 141 L. Ed. 2d 222 (1998).

Neither of these strands is implicated by the Commission’s decision. Initially, it should be noted that all of the cases cited by BellSouth in its Motion for Reconsideration deal with the inability of a **court** to collaterally attack a filed tariff. BellSouth has not cited any cases limiting the powers of a **regulatory commission**, such as the P.S.C., to examine rates. Indeed, the filed rate doctrine affirmatively gives the same protection to state commissions as it does to federal agencies. See Wegoland, supra at 20; Taffet v. The Southern Co., 967 F.2d 1483 (11th Cir. 1992).

Contrary to BellSouth’s argument, the filed rate doctrine essentially affirms this Commission’s power to regulate utilities as it has in its Order. This Commission is in a better position than any other agency to determine what rates for intrastate communications facilities, such as DSL, are reasonable and nondiscriminatory within this Commonwealth. In addition, this Commission is empowered to require a uniform tariff

across the Commonwealth for intrastate facilities used by similarly situated people, i.e., residents and businesses of the Commonwealth. The tariff required by the Commission in this case is no different than other tariffs BellSouth must file for intrastate facilities in each state within its region.

It is somewhat ironic that BellSouth persistently recommended the FISPA aggregation agreement during this litigation as a means for IgLou to obtain "special" access to lower prices for DSL, yet now BellSouth argues that all utility customers must pay the same rate for BellSouth service under the filed rate doctrine. BellSouth asserts in its Motion for Reconsideration that a state specific tariff would "allow Kentucky ISPs to obtain more favorable, preferential, and discriminatory rates." (BellSouth Motion for Reconsideration, p. 12). One is left to wonder how the FISPA arrangement advertised by BellSouth would not result in "favorable, preferential and discriminatory rates" for a special group identified as FISPA members. It is further ironic that the FISPA agreement pushed by BellSouth is, itself, prohibited by the filed rate doctrine, as it was not developed or approved by any regulatory agency, such as this Commission.

Nonetheless, it is clear that the filed rate doctrine is inapplicable in the present case. This Commission is empowered to require tariffs filed at the state level for intrastate facilities. This Commission is in the best position to understand what rates are fair and equitable for utility services deployed in the Commonwealth. Any tariff approved by this Commission will obviously be applied uniformly throughout the Commonwealth. BellSouth incorrectly asserts that the filed rate doctrine is implicated by this Commission's Order, and its Motion for Reconsideration on these grounds should be denied.

V. DISCRIMINATION BY BELLSOUTH IN THIS CASE WAS OBVIOUS

In its Motion, BellSouth asserts that the record in this case failed to support the Commission's finding that BellSouth's means of providing utility services is discriminatory. Such an absurd assertion is an insult to the Commission, which had the vision to see the practical effect of BellSouth's tariff on Kentucky's ISPs and the general deployment of broadband in this Commonwealth.

Throughout this preceding BellSouth has continued to point to other non-existent "options" for ISPs to gain access to broadband facilities. This Commission correctly noted in its Order that these options presented by BellSouth entail unnecessary burdens and/or are unrealistic. In its Motion for Reconsideration, BellSouth continues to point to many of these same supposed options. The Commission has already spoken as to its position on these proposed "alternatives," and BellSouth's Motion for Reconsideration on these grounds should be denied.

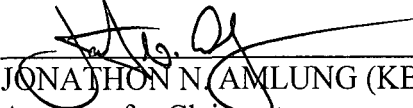
CONCLUSION

As this Commission is aware, it was well within its jurisdiction to require BellSouth to comply with all aspects of its Order. BellSouth's offer of "compromise" is unacceptable and nothing more than an attempt to circumvent this Commission's jurisdiction, and hide itself from this Commission's watch. BellSouth has engaged in anticompetitive and discriminatory behavior in the deployment of its DSL services. The Commission's Order effectively addresses the problems faced by Kentucky's ISPs and their customers. Not only does BellSouth's "resolution" fall short of the Commission's mandates in this case, it presents no guarantee that BellSouth will cease its anticompetitive behavior. By attempting to remove this issue to Washington, D.C.,

BellSouth is attempting to ensure that no local businesses will be able to challenge its business practices. Kentucky's small ISPs are simply not equipped with the resources to fight for their interests in that forum.

The Commission presented a well-reasoned and effective decision to resolve the issues in this case. The Commission was within its jurisdiction to so act. BellSouth's Motion for Reconsideration should be denied.

Respectfully submitted,



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COMMUNICATIONS TELESYSTEMS INTERNATIONAL, a California corporation, Plaintiff-Appellant, and GREENLINING INSTITUTE; LATINO ISSUES FORUM; GREENLINING INSTITUTE AND LATINO ISSUES FORUM, Intervenor, v. CALIFORNIA PUBLIC UTILITY COMMISSION; P. GREGORY CONLON; JESSIE J. KNIGHT, JR.; HENRY M. DUQUE; JOSIAH L. NEPER; RICHARD A. BILAS, Defendants-Appellees. COMMUNICATIONS TELESYSTEMS INTERNATIONAL, a California corporation, Plaintiff-Appellant, v. P. GREGORY CONLON; JESSIE J. KNIGHT; HENRY M. DUQUE; JOSIAH L. NEPER; RICHARD A. BILAS, Defendants-Appellees, and GREENLINING INSTITUTE AND LATINO ISSUES FORUM, Defendant-Intervenor-Appellee.

No. 98-16400, No. 99-15940

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

196 F.3d 1011; 1999 U.S. App. LEXIS 28497; 99 Cal. Daily Op. Service 8843; 99 Daily Journal DAR 11309; 18 Comm. Reg. (P & F) 511

October 5, 1999, Argued and Submitted, San Francisco, California

November 4, 1999, Filed

PRIOR HISTORY:

[**1] Appeals from the United States District Court for the Northern District of California. D.C. No. CV 97-01935-MHP. D.C. No. CV 98-02861-MHP. Marilyn Hall Patel, District Judge, Presiding.

DISPOSITION:

AFFIRMED.

COUNSEL:

M. Laurence Popofsky, Heller Ehrman White & McAuliffe, San Francisco, California, for the plaintiff-appellant.

Terry J. Houlihan, McCutchen, Doyle Brown & Enersen, San Francisco, California, for defendants-appellees The Greenlining Institute and Latino Issues Forum; Lynne P. McGhee, San Francisco, California, for defendant-appellee California Public Utilities Commission.

JUDGES:

Before: Alfred T. Goodwin, Mary M. Schroeder, and Susan P. Graber, Circuit Judges. Opinion by Judge Goodwin.

OPINIONBY:

ALFRED T. GOODWIN

OPINION:

[*1014] OPINION

GOODWIN, Circuit Judge:

Plaintiff Communications Telesystems International ("CTS") sued in district court ("*CTS 1*") to set aside sanctions imposed upon it by the California Public Utilities Commission ("CPUC"). CTS claimed that the sanctions violated the Telecommunications Act of 1996, 47 U.S.C. § 253 (the "Act"). The district court eventually dismissed the action in deference to state proceedings under the doctrine of *Younger v. Harris*, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971). [**2] See *CTS v. CPUC*, 14 F. Supp. 2d 1165, 1166-67 (N.D. Cal. 1998). CTS appeals that decision in Appeal No. 98-16400. CTS then filed a second challenge ("*CTS 2*") raising the same issues. The district court again dismissed, this time concluding that the state proceedings barred the claim under the doctrine of res judicata. CTS appeals the second dismissal in Appeal No. 99-15940. *CTS 1* and *CTS 2* have been consolidated for the purpose of disposition.

I. FACTUAL AND PROCEDURAL BACKGROUND

CTS is a California-based corporation that provides intrastate long-distance telecommunications services under authority granted by the CPUC. This case began after the CPUC received more than 56,000 complaints from California consumers that their long-distance carrier had been switched to CTS without their permission, an unlawful practice known as "slamming." On May 21, 1997, after more than a year of investigation and administrative proceedings before an administrative law judge, the CPUC concluded that CTS had indeed engaged in slamming, as prohibited by California Public Utility Code § 2889.5. See *Final Decision*, 1997 Cal. PUC LEXIS 447. Among the sanctions [**3] imposed by the CPUC was a three-year prohibition on the provision of intrastate long-distance services in California. It is only this sanction which CTS seeks to enjoin in federal court.

On May 22, 1997, CTS filed *CTS 1* in federal district court, arguing that the suspension on the provision of intrastate services is preempted by § 253 of the Act, and should therefore be enjoined. CTS focuses on § 253(a) of the Act, which provides that "no State or local statute or regulation, or other ... legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Section 253(b), however, provides that "nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this section, requirements necessary to ... protect the public safety and welfare ... and safeguard the rights of consumers." Because the CPUC already had eliminated CTS' ability to engage in slamming, n1 CTS argues that the three-year suspension violates the Act because it is not "necessary to ... safeguard the rights of consumers."

n1 See *Interim Order*, 1997 WL 178856 (Cal. P.U.C. Mar. 18, 1997) (Decision No. 97-03-053).

[**4]

Although no substantive proceedings took place in the federal case for almost a year, the state proceedings continued apace. On June 10, 1997, before the decision [*1015] of the CPUC became effective, CTS filed a petition for rehearing with the CPUC pursuant to California Public Utility Code § 1733(a). In that petition, CTS purported to reserve its federal claims under *England v. Louisiana Board of Medical Examiners*, 375 U.S. 411, 420, 11 L. Ed. 2d 440, 84 S. Ct. 461 (1984). CTS did not describe its federal claims,

however. On October 22, the CPUC denied the bulk of the petition for rehearing. See *Order* (Cal. P.U.C. Oct. 22, 1997) (Decision No. 97-10-063). The Order does not discuss § 253 of the Act. The CPUC did consider the preemptive effect of § 253, however, in its interim order freezing CTS' ability to switch consumers' long-distance service. See *Interim Order*, 1997 WL 178856, *3-4.

On November 21, 1997, CTS filed in the California Supreme Court a petition for a Writ of Review. In that petition, CTS did not present its federal claims or purport to make an *England* reservation of those claims. At the time, the petition was the only judicial [**5] review of CPUC decisions available in California. Compare Cal. Pub. Util. Code § § 1756-61 (1997) with § § 1756-61 (1999). On December 23, 1997, the California Supreme Court summarily denied review. On January 5, 1998, CTS halted intrastate service in California.

On June 22, 1998, the district court dismissed *CTS 1*, holding that abstention was appropriate under the *Younger* doctrine. See *CTS 1*, 14 F. Supp. 2d 1165 at 1167. In a well-reasoned decision, the district court concluded that state proceedings were still ongoing at the time CTS filed suit in federal court, that important state interests were at stake, and that the California state courts afforded CTS an adequate opportunity to raise its federal claims.

On July 20, 1998, CTS filed a second federal action, *CTS 2*, again claiming that the CPUC's sanctions violated § 253 of the Act. Because state proceedings were no longer ongoing at that time, *Younger* did not apply. In due course, the district court dismissed this second action, holding that because the federal claim could have been raised in the state proceedings, CTS' suit was barred by claim preclusion. CTS appeals both dismissals.

II. [**6] STANDARD OF REVIEW

We review a decision to abstain under *Younger* as a question of law. See *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994). A district court's determination that a claim is barred by res judicata also is reviewed as an issue of law. See *Cabrera v. City of Huntington Park*, 159 F.3d 374, 381 (9th Cir. 1998).

III. DISCUSSION

Abstention by a district court is required under *Younger* when three criteria are satisfied:

- (1) State judicial proceedings are ongoing;
- (2) The proceedings implicate important state interests; and

(3) The state proceedings provide an adequate opportunity to raise federal questions. n2

Fresh Int'l Corp. v. Agricultural Labor Relations Bd., 805 F.2d 1353, 1357-58 (9th Cir. 1986). The doctrine propounded by *Younger* and its progeny reflects a strong policy against federal court interference in ongoing state proceedings. The interests of comity, federalism, economy, and the presumption that state courts are competent to decide issues of federal constitutional law underlie *Younger* abstention. *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 431-32, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982). [**7]

n2 This prong is intertwined with the res judicata analysis discussed in Part III, subsection 3, *infra*.

Res judicata, or claim preclusion, bars courts from hearing claims that [*1016] should have been raised and resolved in earlier litigation between the same parties. This salutary rule is motivated by policies of avoiding repetitive litigation and conserving judicial resources. *International Union of Operating Eng'rs v. Karr*, 994 F.2d 1426, 1430 (9th Cir. 1993).

1. State Judicial Proceedings Were Ongoing.

CTS contends that state proceedings were not ongoing when it filed *CTS 1* with the district court because the CPUC had labeled its decision "final" one day before CTS filed suit in federal court. However, by its own terms, the CPUC's decision was not to take effect for 30 days. *See Decision No. 97-05-89*. During this interim period, CTS was not only aware that a petition for a rehearing was available as of right, but CTS in fact filed such a petition on June 10, 1997. According [**8] to California law, the "final" administrative decision is the one made on an application for rehearing, not the original decision. *See Cal. Pub. Util. Code § 1731(b); City of Los Angeles v. Public Util. Comm'n*, 15 Cal. 3d 680, 707, 125 Cal. Rptr. 779, 542 P.2d 1371 (1975). Hence, the decision by the CPUC was not final until October 22, 1997, when the order denying rehearing was filed. CTS subsequently filed an appeal with the California Supreme Court, which was denied on December 23, 1997.

Even more damaging to CTS' claim that the state proceedings were not ongoing is *Hicks v. Miranda*, 422 U.S. 332, 45 L. Ed. 2d 223, 95 S. Ct. 2281 (1975) (overruled on other grounds). In *Hicks*, the Supreme Court held that even where state proceedings are begun *after* a federal complaint is filed, but before any

proceeding of substance on the merits have taken place in federal court, the principles of *Younger* apply with full force. *See id.* at 349. Applying *Hicks* to the instant case, even if the May 21, 1997 CPUC decision was final as CTS contends, CTS initiated a "second" state proceeding on June 10, 1997 (by filing a petition for [**9] rehearing) *after* their federal complaint was filed (on May 22, 1997), but before the district court had done anything of substance concerning its merits. Hence, following the *Hicks* analysis, the *Younger* doctrine applies.

2. The CPUC Proceedings Were Not Preempted.

Rather than attempt to challenge the validity of the state interests at stake before the CPUC, CTS argues that any such interests are obviated because preemption of the CPUC's actions by federal law is "readily apparent." *Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437, 441 (9th Cir. 1994). CTS does not allege that the CPUC's imposition of fines and other penalties is unlawful, but that the CPUC's three-year suspension of CTS' intrastate operations is preempted by § 253(a) of the Act. The argument misses an important point.

Section 253(a) of the Act does contain an explicit preemption provision: "No State or local statute or regulation, or other ... legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Section 253(b) then states, however, that "nothing in this section shall affect [**10] the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this section, requirements necessary to ... protect the public safety and welfare ... and safeguard the rights of consumers." As noted earlier, CTS contends that, because the CPUC had deprived it of its ability to engage in slamming, n3 the three-year suspension on providing long-distance services was not [*1017] "necessary to ... safeguard the rights of consumers" and therefore trespasses into federal territory.

n3 *See Interim Order*, 1997 WL 178856 (Cal. P.U.C. Mar. 18, 1997) (Decision No. 97-03-053).

The United States Supreme Court and the Ninth Circuit have held that federal preemption of state regulation in the area of telecommunications must be clear and occurs only in limited circumstances. *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368-69, 90 L. Ed. 2d 369, 106 S. Ct. 1890 (1986); *California v. FCC*, 905 F.2d 1217, 1243 (9th Cir. 1990).

Under [**11] *Younger*, state action may be preempted only for conduct that is "flagrantly and patently violative of the constitution," i.e., preemption must be "readily apparent." *Fresh Int'l*, 805 F.2d at 1361 n.12 (quoting *Younger*, 401 U.S. 37 at 54).

CTS' preemption argument misinterprets the purpose of the Act and ignores the important state interests at issue here. The Act was designed to prevent explicit prohibitions on entry by a utility into telecommunications, and thereby to protect competition in the industry while allowing states to regulate to protect consumers against unfair business practices such as slamming. See Joint Explanatory Statement of the Committee of Conference, Cong. Rec. H1078, H1111 (Jan. 31, 1996). As the Supreme Court has held, "the regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 377, 76 L. Ed. 2d 1, 103 S. Ct. 1905 (1983). Among the important state interests at issue here are the protection of consumers from unfair business practices, the compensation of [**12] those consumers for harm, and the need to ensure fair competition between, and the fitness to operate of, licensed carriers. See *Hirsh v. Supreme Court*, 67 F.3d 708, 712-13 (9th Cir. 1995) (quoting *Middlesex*, 457 U.S. at 434).

The CPUC's actions in fining and temporarily suspending CTS from providing long-distance service serve the very purpose specified in § 253(b) of the Act and are not "flagrantly and patently" violative of the Constitution. The CPUC has the power to implement regulations that are "necessary" to "protect the public" against slamming, which reasonably may include fines or suspensions needed to prevent such unlawful activity. Under CTS' analysis of "necessary," a freeze on slamming would be the only action permitted. CTS ignores the reality that fines or suspensions may be required to prevent and deter illegal behavior. More crucially, as the CPUC points out, the suspension handed down against CTS need not be necessary to prevent CTS' slamming; rather, it need only be necessary to serve the interests recognized in § 253(b) of protecting the public welfare.

Hence, the Act does not preempt the sanctions handed down against CTS by [**13] the CPUC. The sanctions advanced important state interests and thus were not "flagrantly and patently" violative of the Constitution.

3. CTS 2 is Barred by Claim Preclusion.

Because the third prong of *Younger* ("adequate opportunity" to raise federal claims) is closely related to

the res judicata issue raised in CTS 2, this final point will be considered after the claim preclusion discussion at issue in CTS 2. In CTS 2, the district court concluded that CTS' federal claims were barred by res judicata because CTS had an adequate opportunity to litigate the claims in the state proceedings.

Res judicata, or claim preclusion, bars claims that should have been raised and resolved in earlier litigation between the same parties. Generally, a claim is barred under this doctrine if the earlier litigation: (1) concerned the same claim as the current action, (2) reached final judgment on the merits, and (3) involved the same parties. See *Nordhorn v. Ladish Co.*, 9 F.3d 1402, 1404 (9th Cir. 1993).

[*1018] By statute, state court judgments are accorded the same preclusive effect in federal courts as they are given in the courts of that state. See 28 U.S.C. § 1738. [**14] Under federal common law, quasi-judicial state administrative proceedings are treated similarly. See *University of Tennessee v. Elliott*, 478 U.S. 788, 799, 92 L. Ed. 2d 635, 106 S. Ct. 3220 (1986) (holding that state administrative fact-finding is given the same preclusive effect as it is given by state courts); *Guild Wineries & Distilleries v. Whitehall Co.*, 853 F.2d 755, 758 (9th Cir. 1988) (recognizing 9th Circuit's extension of *Elliot* to legal conclusions of state administrative proceedings).

The Due Process Clause places some limits on the doctrine of res judicata; only proceedings that meet the minimal requirements of due process are accorded preclusive effect. See *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 483-85, 72 L. Ed. 2d 262, 102 S. Ct. 1883 (1982). A state proceeding that does not provide a party a "full and fair opportunity" to litigate the claim" does not qualify. *Id.* at 480-81; see also *Elliot*, 478 U.S. at 799. We have recently held that a state administrative procedure provides a "full and fair opportunity" to litigate only if it includes some form of judicial review. [**15] See *Wehrli v. County of Orange*, 175 F.3d 692, 693 (9th Cir. 1999).

CTS does not dispute that the state proceedings involved the same parties and the same claim. CTS argues, however, that the state proceedings cannot be considered res judicata given the history of summary rejections of review by the California Supreme Court. It is not clear whether CTS is arguing that there was no final decision on the merits for res judicata purposes or instead, that the California Supreme Court's procedures did not meet the minimal requirements of due process. In either case, CTS' argument is unpersuasive. There was a final decision on the merits, and minimal requirements were met.

Until this year, the only judicial review of CPUC decisions was through a petition for a writ of review to

the California Supreme Court. *See* Cal. Pub. Util. Code § 1756 (1998). CTS filed such a petition but declined to include its federal claims. The petition was denied in a one-line order. *See* *CTS v. CPUC*, 1997 Cal. LEXIS 8656 (Cal. Dec. 23, 1997). Under California law, the California Supreme Court's summary denial is a final decision on the merits with res judicata effect. *See* [**16] *Consumers Lobby Against Monopolies v. CPUC*, 25 Cal. 3d 891, 901, 905, 160 Cal. Rptr. 124, 603 P.2d 41 (1979). Section 1738 thus requires this court to accord the denial the same res judicata effect and to affirm the dismissal in *CTS 2*. *See* 28 U.S.C. § 1738.

CTS argues that the denial should not be considered res judicata because the California Supreme Court did not provide it a "full and fair opportunity" to litigate its claims. CTS contends that no meaningful review in the California Supreme Court was available because the Court grants only a small portion of civil writs for review, 4% in 1996-97. CTS claims that only one petition for review of a CPUC decision has been granted out of 79 filed since 1990, effectively rendering it futile to bring its federal claims in the state courts. CTS also alleges that every other state in the Union provides mandatory judicial review of public utility commission decisions. California now provides for appeal of CPUC decisions to the California Courts of Appeal. *See* Cal. Pub. Util. Code § 1756 (1999).

Although this court is familiar with the futility argument, CTS fails to recognize that summary [**17] denials by the California Supreme Court of petitions for review of CPUC decisions have long been accorded preclusive effect by the federal courts. *See, e.g., Napa Valley Elec. Co. v. Board of R.R. Comm'rs of Cal.*, 251 U.S. 366, 372-73, 64 L. Ed. 310, 40 S. Ct. 174 (1920) (recognizing res judicata effect of denial of review of Board's rate-making; Board was [*1019] predecessor of the CPUC); *Pacific Tel. & Tel. Co. v. CPUC*, 600 F.2d 1309, 1314 (9th Cir. 1979) (affirming continued vitality of *Napa Valley*); *Jackson Water Works, Inc. v. CPUC*, 793 F.2d 1090, 1097 (9th Cir. 1986) (following *Pacific Tel. & Tel.*).

These decisions are not surprising. Unlike the United States Supreme Court's denials of petitions for certiorari, the California Supreme Court has no discretion to refuse to consider petitions for review of CPUC decisions. *See* *Consumers Lobby*, 25 Cal. 3d 891 at 901 n.3, 160 Cal. Rptr. 124, 603 P.2d 41 (distinguishing mandatory review of CPUC decisions with discretionary writs of prohibition and mandate). The California Supreme Court has only the discretion to deny oral argument and a written opinion. The summary denials thus are similar to the Supreme [**18] Court's summary denials of review of state court decisions. Those denials are on the merits and have preclusive

effect, despite the lack of oral argument or a written opinion. *See* *Boggs v. Boggs*, 520 U.S. 833, 849, 138 L. Ed. 2d 45, 117 S. Ct. 1754 (1997). This circuit also resolves, on occasion, appeals in one-line unpublished dispositions without oral argument. Such decisions are on the merits and have res judicata effect. *See* 9th Cir. R. 36-3. In any event, CTS will not be heard to criticize the California Supreme Court's refusal to consider its federal claims when CTS failed to present its federal claims to that court. That court may well have taken a second look had it been presented with the federal claims. CTS' statistics do not indicate the frequency with which writs of review are granted in cases raising important federal claims.

CTS further attempts to rely on *UPS v. CPUC*, 77 F.3d 1178 (9th Cir. 1996). CTS claims that the Ninth Circuit reversed course in that case and held that summary denials of review by the California Supreme Court are inadequate for res judicata purposes. While *UPS* does express "serious reservations" regarding [**19] the adequacy of California's review procedures, those reservations were by way of dicta. *See* *UPS*, 77 F.3d 1178 at 1188. The *UPS* discussion of the "full and fair" opportunity to litigate before the California Supreme Court applies only to the analysis of whether *UPS*' *England* reservation should be honored despite *UPS*' failure to file its federal action before filing the state action. *UPS* recognized "the affirmation granted this state practice by the Supreme Court and by this court" and explicitly declined to consider any issues of res judicata. *Id.*

Further, to the extent that CTS cites *UPS* for its liberal interpretation of *England* reservations, *UPS* is irrelevant. The *UPS* court recognized that *England* reservations do not apply in the *Younger* context. *See* *UPS*, 77 F.3d at 1184 n.5. Because the state proceeding in *UPS* was a quasi-legislative rate-making, *Younger* abstention could not apply, and an *England* reservation was appropriate. *See id.* In the instant case, CTS made no *England* reservation in its petition to the California Supreme Court and thus cannot rely on *UPS*.

This court is bound to follow [**20] earlier Ninth Circuit and Supreme Court precedent rather than any dicta in *UPS*. The decision of the district court, concluding that CTS' federal claims were barred by res judicata, is affirmed.

4. CTS Had an Adequate Opportunity to Present Its Federal Claims in the State Proceedings.

The third prong of the *Younger* analysis asks whether the plaintiff has or had an "adequate" or "full and fair" opportunity to raise its federal claims in the state proceedings. *See* *Moore v. Sims*, 442 U.S. 415, 431

n.12, 60 L. Ed. 2d 994, 99 S. Ct. 2371 (1979). The federal issues need not, of course, have been actually litigated in the state proceedings. In fact, the Supreme Court has suggested that a plaintiff's failure to raise its federal claims in the state proceedings favors *Younger* abstention. See *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15, 95 L. Ed. 2d 1, 107 S. Ct. 1519 (1987) ("When a litigant has [*1020] not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.").

The "adequate opportunity" [**21] prong of *Younger* is no more difficult to satisfy than the res judicata test. *Younger* requires only the absence of "procedural bars" to raising a federal claim in the state proceedings. See, e.g., *Middlesex*, 457 U.S. at 432 (1982) ("[A] federal court should abstain 'unless state law clearly bars the interposition of the constitutional claims.'" (quoting *Moore*, 442 U.S. at 426); *Dubinka*, 23 F.3d at 224 (9th Cir. 1994) (applying *Younger* even

though state courts are compelled to reject a federal constitutional claim under state precedent; relying on absence of *procedural* bar to raising the claim). CTS has the burden of showing "that state procedural law barred presentation of [its] claims." *Pennzoil*, 481 U.S. at 14. CTS has not met this burden.

CTS does not dispute that it could have presented its federal claims to the California Supreme Court but argues only that that opportunity was inadequate because of the court's practice of summarily denying petitions for review of CPUC decisions. CTS' argument is unpersuasive for the reasons discussed in Part III, subsection 3. If the California Supreme Court's [**22] denial suffices for res judicata purposes, then, by definition, the denial must provide a "full and fair" opportunity for parties to litigate their claims. *Younger* requires no more. The decisions of the district court in *CTS 1* and *CTS 2* are

AFFIRMED.

2 of 11 DOCUMENTS

In the Matter of GTE Telephone Operating Cos., GTOC Tariff
No. 1, GTOC Transmittal No. 1148

CC Docket No. 98-79; GTOC Tariff No. 1; GTOC Transmittal No.
1148

FEDERAL COMMUNICATIONS COMMISSION

1999 FCC LEXIS 822

RELEASE-NUMBER: FCC 99-41

February 26, 1999 Released; Adopted February 26, 1999

ACTION: [*1] MEMORANDUM OPINION AND ORDER

JUDGES:

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a
statement at a later date

OPINION:

I. INTRODUCTION

1. MCI WorldCom, Inc. (MCI WorldCom) has filed a petition for reconsideration of our order concluding our investigation of GTE Telephone Operating Cos.' GTOC Transmittal No. 1148. n1 In addition, the National Association of Regulatory Utility Commissioners (NARUC) filed a request for clarification and/or reconsideration of the GTE DSL Order. n2 In this Memorandum Opinion and Order, we deny both the petition for reconsideration filed by MCI WorldCom and the request for clarification and/or reconsideration filed by NARUC.

n1 GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. Oct. 30, 1998) (GTE DSL Order).

n2 A list of parties submitting comments is included at Appendix A. A summary of MCI WorldCom's petition for reconsideration and NARUC's request for clarification is included at Appendix B.

II. BACKGROUND

2. In an Order released October 30, 1998, we concluded an investigation of a new access offering filed by GTE that GTE calls its DSL Solutions-ADSL

[*2] Service (ADSL service). We found that this offering, which permits Internet Service Providers (ISPs) to provide their end user customers with high-speed access to the Internet, is an interstate service and is properly tariffed at the federal level. n3

n3 GTE DSL Order at P1.

3. In the GTE DSL Order, we found that the jurisdictional nature of communications traditionally is determined by the end points of the communication and not points of intermediate switching or exchanges between carriers. n4 We rejected the argument that, for jurisdictional purposes, an end-to-end ADSL communication must be separated into two components: an intrastate telecommunications service, provided in this instance by GTE, and an interstate information service, provided by the ISP. n5 We emphasized that the Commission's decision to treat ISPs as end users for access charge purposes does not affect the nature of the end-to-end communication or the Commission's jurisdiction over such traffic. n6 Accordingly, we concluded that ISP traffic must be analyzed as a continuous transmission from the end user to a distant Internet website. n7

n4 GTE DSL Order at PP17-19.

n5 GTE DSL Order at P20.

[*3]

n6 GTE DSL Order at P21.

n7 GTE DSL Order at P21.

4. We then determined that GTE's ADSL service offering is properly tariffed at the federal level on the ground that it is similar to existing special access services that are subject to federal regulation under the mixed-use facilities rule. n8 We found that, like point-to-point private line service that high-volume telephony customers purchase for direct access to interexchange carriers' networks, GTE's ADSL service provides end users with direct access to their selected ISPs, over a connection that is dedicated to ISP access. n9 We determined that the ADSL service also is similar to traditional private line services in that they both may carry interstate and intrastate traffic and both services provide direct access from an end user to a service provider's (ISP or IXC) point of presence (POP). n10 Because more than a *de minimis* amount of Internet traffic is destined for websites in other states or other countries, we concluded that GTE's ADSL service offering is subject to federal jurisdiction under the mixed-use facilities rule. n11

n8 GTE DSL Order at P23. As discussed in the GTE DSL Order, under the mixed-use facilities rule, special access lines carrying both interstate and intrastate traffic are subject to the Commission's jurisdiction where it is not possible to separate the uses of the special access lines by jurisdiction. *Id.* Special access lines carrying more than *de minimis* amounts (*i.e.*, more than ten percent) should be assigned to the interstate jurisdiction. *Id.*

[*4]

n9 GTE DSL Order at P25.

n10 GTE DSL Order at P25.

n11 GTE DSL Order at P26.

A. MCI WorldCom's Petition for Reconsideration

5. MCI WorldCom requests the Commission to reconsider its finding that ADSL communications "do not terminate at the ISP's local server, . . . but continue to the ultimate destination or destinations, very often at a distant Internet website accessed by the end users." n12 MCI WorldCom states that the Commission's jurisdictional analysis treats the ISP as if it is a provider of telecommunications and presumes that there is end-to-end telecommunications between the end user and the distant website, with one portion provided by GTE and the other portion provided by the ISP. n13

n12 MCI WorldCom Petition at 2, citing GTE DSL Order at P19.

n13 MCI WorldCom Petition at 3.

B. NARUC's Request for Clarification

6. NARUC requests that the Commission clarify that the GTE DSL Order does not preclude states from requiring intrastate tariffs of ADSL services designed to connect end users to ISPs. n14 NARUC states that some of its member commissions either currently have under investigation the filing of intrastate tariff arrangements

[*5] similar to that proposed in the GTE/BOC tariffs or are considering such action. n15

n14 NARUC Request at 2.

n15 NARUC Request at 2.

7. NARUC also requests that the Commission clarify that Part 36 separation rules for special access tariffs should remain in effect for GTE's tariff until the Separations Joint Board issues a recommendation on any needed revisions. n16 NARUC states that the question of whether changes to section 36.154(b) of the Commission's rules (entitled "Exchange Line Cable and Wire Facilities (C&WF) -- Category 1 -- Apportionment Procedures") are needed to appropriately allocate line costs associated with virtual special access tariffs like GTE's is currently pending before the Separations Joint Board. n17 NARUC argues that the current separations rules require direct assignment of "special access" line costs to the relevant jurisdiction. n18 NARUC states that in the case of GTE's ADSL tariff, that is the interstate jurisdiction. n19

n16 NARUC Request at 3, 6.

n17 NARUC Request at 5.

n18 NARUC Request at 3.

n19 NARUC Request at 4.

III. DISCUSSION

8. MCI WorldCom presents no new facts or arguments in its petition that would lead us to change

[*6] the decisions that we made in the GTE DSL Order. We therefore affirm our decision for the reasons stated therein and deny MCI WorldCom's petition. n20 To the extent NARUC also seeks reconsideration of our jurisdictional determinations in the GTE DSL Order, we deny its petition as well. n21 We reiterate, however, that in some circumstances, ADSL services may be appropriately tariffed as intrastate services. n22 For example, GTE may tariff an ADSL service with the states so that those customers whose Internet use is 10 percent or less interstate may purchase the service out of state tariffs and those customers whose Internet use is more than 10 percent interstate may purchase the service out of the federal tariff.

n20 See GTE DSL Order at PP16-29.

n21 See GTE DSL Order at PP16-29. We made a similar determination in an Order released on November 30, 1998, concluding our investigation of new access offerings filed by Bell Atlantic, BellSouth, GTE System Telephone Cos., and Pacific Bell (collectively, the "ILECs") establishing ADSL service. Bell Atlantic Telephone Cos., CC Docket No. 98-168; BellSouth Telecommunications, Inc., CC Docket No. 98-161; GTE System Telephone Cos., CC Docket No. 98-167; and Pacific Bell Telephone Co., CC Docket No. 98-103, FCC 98-317, Memorandum Opinion and Order (rel. November 30, 1998). In that Order, the Commission concluded that, for reasons set forth in the GTE DSL Order, the ILECs' ADSL service offerings are interstate services and are properly tariffed at the federal level. *Id.* at P1.

[*7]

n22 GTE DSL Order at P27.

9. The request for clarification filed by NARUC raises separations and cost allocation issues that go beyond the scope of the limited issue that was subject to investigation in this tariff proceeding. These are important questions that we intend to address in a separate proceeding in conjunction with the Federal-State Joint Board. Accordingly, we refer NARUC's petition to the Joint Board proceeding in Docket No. 80-286.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4(j), 201-205, and 405 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, and 405, that the petitions for reconsideration filed by MCI WorldCom, Inc., IS HEREBY DENIED.

11. IT IS FURTHER ORDERED, that the request for clarification and/or reconsideration filed by the National Association of Regulatory Utility Commissioners IS HEREBY DENIED.

Magalie Roman Salas

Secretary

APPENDIX: APPENDIX A

Parties Filing Comments

ACI Corp.

Ameritech

Association for Local Telecommunications Services (ALTS)

Bell Atlantic

BellSouth Corporation

California Public Utilities Commission (CPUC)

Commonwealth

[*8] Telecom Services, Inc. (CTSI)
Florida Public Service Commission (FPSC)
GTE Service Corporation
Hyperion Telecommunications, Inc.
KMC Telecom, Inc.
Logix Communications Corp.
MCI/Worldcom, Inc. (MCI)
Minnesota Department of Public Service (MDPS)
National Association of Regulatory Utility Commissioners (NARUC)
Pacific Bell
Public Utility of Texas (TPUC)
RCN Telecomm Services, Inc.
Telecommunications Resellers Association (TRA)
Transwire Communications, Inc.
United States Telephone Association (USTA)
US West, Inc.
Washington Association of Internet Service Providers (WAISP)
Washington Utilities and Transportation Commission (WUTC)

WEGOLAND LTD., MICHAEL ROTH, executor of the estate of Howard Weiner, DONNA RUTILI ROAZEN, Plaintiffs-Appellants, v. NYNEX CORP., PETER L. HAYNES, NEW ENGLAND TELEPHONE & TELEGRAPH CO., NEW YORK TELEPHONE COMPANY, NYNEX BUSINESS INFORMATION SYSTEMS, NYNEX CREDIT CO., NYNEX INFORMATION SOLUTIONS GROUP, INC., WILLIAM G. BURNS, WILLIAM C. FERGUSON, NYNEX INTERNATIONAL CO., NYNEX MATERIAL ENTERPRISES CO., NYNEX MOBILE COMMUNICATIONS CO., NYNEX PROPERTIES CO., NYNEX SYSTEMS MARKETING, PAUL C. O'BRIEN, DELBERT C. STALEY, PAUL D. COVILL, FREDERICK SALERNO, NYNEX SERVICE CO., Defendants-Appellees.

Docket Nos. 93-7565, 93-7589

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

27 F.3d 17; 1994 U.S. App. LEXIS 11843

January 26, 1994, Argued

May 20, 1994, Decided

PRIOR HISTORY:

[**1] Plaintiff ratepayers appeal from a judgment of the United States District Court for the Southern District of New York (Wood, J.), 806 F. Supp. 1112 (S.D.N.Y. 1992), dismissing their two complaints against telephone companies and subsidiaries on the ground that the suits were barred by the filed rate doctrine.

DISPOSITION:

Affirmed.

COUNSEL:

KENNETH A. JACOBSEN, Haverford, PA (Michael D. Donovan, Chemicles, Burt, Jacobsen & McNew, Haverford, PA, Arnold Levin, Levin, Fishbein, Sedran & Berman, Philadelphia, PA, of counsel), for Plaintiffs-Appellants.

GUY MILLER STRUVE, New York, NY (James D. Liss, Nancy B. Ludmerer, Vincent T. Chang, Davis Polk & Wardwell, New York, NY, Raymond F. Burke, Gerald E. Murray, Richard H. Wagner, White Plains, NY, of counsel), for Defendants-Appellees.

JUDGES:

Before: WALKER and JACOBS, Circuit Judges, and DALY, District Judge. *

* The Honorable T.F. Gilroy Daly, United States District Judge for the District of Connecticut, sitting by designation.

OPINION BY:

WALKER

OPINION:

[*17] WALKER, Circuit Judge:

Plaintiff ratepayers appeal from a judgment of the United States District Court for the Southern District of New York (Kimba [*18] M. Wood, Judge) dismissing their [**2] two putative class action suits brought pursuant to the civil provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., and associated state statutes and causes of action. Judge Wood ruled that the plaintiffs' actions were barred by the filed rate doctrine. For substantially the reasons articulated in Judge Wood's thorough and commendable opinion reported at 806 F. Supp. 1112 (S.D.N.Y. 1992), we affirm.

BACKGROUND

Plaintiffs filed two nearly identical complaints in this matter, which name as defendants NYNEX, New England Telephone and Telegraph Co. ("NETel"), New

York Telephone Co. ("NYTel"), numerous subsidiaries, and individual directors and executives of these corporate entities (collectively "NYNEX"). Plaintiffs are three purported NYNEX ratepayers. The facts necessary to dispose of this appeal are succinctly stated in the district court's opinion:

The complaints allege that NYTel and NETel gave regulatory agencies and consumers misleading financial information to support the inflated rates they requested. More particularly, plaintiffs allege a scheme in which [**3] certain unregulated subsidiaries of NYNEX sold products and services to NYTel and NETel at inflated prices. NYTel and NETel then used those prices to justify inflated rates, resulting in high profits to the NYNEX corporate family, which profited by extracting higher rates from ratepayers, but did not suffer from the higher "cost" of products and services because these extra costs inured to the benefit of members of the corporate family. The net effect, the complaints allege, was that the ratepayers and the regulatory agencies were misled into believing that certain higher rates were justifiable, and the NYNEX corporate family was able to enjoy inflated profits as a result of its misrepresentations.

Wegoland, Ltd v. NYNEX Corp., 806 F. Supp. 1112, 1113 (S.D.N.Y. 1992). The district court referred this matter to Chief Magistrate Judge Nina Gershon, who issued a Report and Recommendation recommending that four of the plaintiffs' seven claims be dismissed. These dismissals were not contested and are thus not before us. As for the remaining three claims, two RICO claims and one state claim, the Chief Magistrate Judge rejected the defendants' argument [**4] that the claims were barred by the filed rate doctrine. The Chief Magistrate Judge's recommendation relied primarily on the Eleventh Circuit's ruling in Taffet v. Southern Co., 930 F.2d 847 (11th Cir. 1991) ("Taffet I"), which was the only appellate decision directly addressing this issue and which held that the filed rate doctrine did not bar RICO claims by ratepayers against utilities.

After the Chief Magistrate Judge issued her recommendation, the Eleventh Circuit, sitting en banc, unanimously reversed itself, ruling that the filed rate doctrine does bar RICO claims by ratepayers against utilities. Taffet v. Southern Co., 967 F.2d 1483 (11th Cir.) (en banc) ("Taffet II"), cert. denied, 121 L. Ed. 2d 583, 113 S. Ct. 657 (1992). Also in the intervening period between the Chief Magistrate Judge's recommendation and Judge Wood's ruling, the Eighth Circuit applied the filed rate doctrine to bar a suit in similar circumstances. H.J. Inc. v. Northwestern Bell Tel. Co., 954 F.2d 485 (8th Cir.), cert. denied, 119 L. Ed. 2d 228, 112 S. Ct. 2306 (1992). [**5]

In her thoughtful opinion, Judge Wood analyzed the history and purposes of the filed rate doctrine. Agreeing with the analyses in Taffet II and H.J. Inc., she concluded that the filed rate doctrine barred the plaintiffs' actions, and accordingly she dismissed the complaints in their entirety. This appeal followed.

DISCUSSION

The filed rate doctrine bars suits against regulated utilities grounded on the allegation that the rates charged by the utility are unreasonable. Simply stated, the doctrine holds that any "filed rate" -- that is, one approved by the governing regulatory agency -- is per se reasonable and unassailable in judicial proceedings brought by ratepayers. In her opinion, Judge Wood carefully explained the history and rationale of the filed [**19] rate doctrine. See Wegoland, 806 F. Supp. at 1113-16. We summarize briefly.

One of the earliest applications of what has become known as the filed rate doctrine came in *Keogh v. Chicago & Northwestern Railway Co.*, 260 U.S. 156, 67 L. Ed. 183, 43 S. Ct. 47 (1922). In *Keogh*, the plaintiff alleged a conspiracy to fix freight transportation [**6] rates at an unnaturally high level and asked for damages to the extent he had to pay inflated rates as a result of the conspiracy. Assuming the plaintiff's conspiracy allegations were true, Justice Brandeis writing for the Court held that the complaint still had to be dismissed because the rates had been filed with the Interstate Commerce Commission and deemed reasonable by that body. Justice Brandeis articulated several reasons for dismissing the complaint. Among them, he noted that the legal rights between a regulated industry and its customers with respect to rates are controlled by and limited to the rates filed with and approved by the appropriate regulatory agency, and that any attempt to reassess the reasonableness of rates would require the judiciary to "reconstitute the whole rate structure" of the industry. He also explained that any retroactive relief would lead to discrimination in rates in that a victorious plaintiff would end up paying less than similarly situated non-suing customers. *Id.* at 163-64.

Since *Keogh*, these two corresponding interests, one concerned with potential "discrimination" in rates as [**7] between ratepayers and the other concerned with the "justiciability" of determining reasonable rates, have turned up in Supreme Court decisions discussing the filed rate doctrine. For example, in *Maislin Industries, U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 111 L. Ed. 2d 94, 110 S. Ct. 2759 (1990), the Court emphasized the nondiscrimination strand of this rationale when discussing the policies behind strict adherence to the filed rate doctrine. *Id.* at 126-28. Likewise, in *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 69 L. Ed. 2d

856, 101 S. Ct. 2925 (1981) ("Arkla"), the Court explained that allowing individual ratepayers to attack the filed rate "would undermine the congressional scheme of uniform rate regulation." *Id.* at 579.

In other instances, the Court is concerned that an attack on the filed rate would unnecessarily enmesh the courts in the rate-making process. For example, in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 95 L. Ed. 912, 71 S. Ct. 692 (1951), [**8] the Court stressed the difficulty for courts "to determine what the reasonable rates during the past should have been" and explained that the "abstract" notion of reasonableness is best left a "function of the Commission." *Id.* at 251. Although not referring to the filed rate doctrine or the Keogh decision by name, Justice Jackson maintained that a plaintiff "can claim no rate as a legal right that is other than the filed rate," and that a court "can assume no right to a different one on the ground that, in its opinion, it is the only or the more reasonable one." *Id.* at 251-52. More recently, in *Square D Co. v. Niagara Frontier Tariff Bureau*, 476 U.S. 409, 90 L. Ed. 2d 413, 106 S. Ct. 1922 (1986), the Court endorsed the district court's dismissal of the plaintiff's antitrust complaint seeking treble damages under the Sherman Antitrust Act measured by the difference between the artificially high rate actually filed and the "reasonable" rate absent the fraudulent conspiracy. The Court reaffirmed Keogh [**9] and its application to the case before it, one in which the district court had spoken of the "attendant complications" in calculating damages because the court would have to determine a "hypothetical" reasonable rate in order to determine the difference from the rate actually paid, and stated that "rate determinations are a matter for the ICC and not for the court." See 596 F. Supp. 153, 156 (W.D.N.Y. 1984).

Drawing from the Keogh decision and these subsequent cases, Judge Wood pointed out that "two companion principles lie at the core of the filed rate doctrine: first, that legislative bodies design agencies for the specific purpose of setting uniform rates, and second, that courts are not institutionally well suited to engage in retroactive rate setting." Wegoland, 806 F. Supp. at 1115.

[*20] Plaintiffs do not, nor could they, quarrel with the general applicability of the filed rate doctrine. Instead, they argue that there should be an exception to the filed rate doctrine when there are allegations of fraud upon the regulatory agency. Yet, apart from the Taffet I ruling, which was unanimously overturned en banc, [**10] every court that has considered the plaintiffs' argument has rejected the notion that there is a fraud exception to the filed rate doctrine. See Taffet II, 967 F.2d at 1494-95; H.J. Inc., 954 F.2d at 489; *Sun City Taxpayers' Ass'n v. Citizens Utils. Co.*, No. 3:93- CV-

364 (JAC), 1994 U.S. Dist. LEXIS 3800, at * 35 (D. Conn. Feb. 1, 1994) (Cabranes, J.); *Lifschultz Fast Freight, Inc. v. Consolidated Freightways Corp.*, 805 F. Supp. 1277, 1295 (D.S.C. 1992), *aff'd* without opinion, 998 F.2d 1009 (4th Cir.), cert. denied, 114 S. Ct. 553 (1993); *Cullum v. Arkla, Inc.*, 797 F. Supp. 725, 728-29 (E.D. Ark. 1992), *aff'd* without opinion, 994 F.2d 842 (8th Cir. 1993); *Hilling v. Northern States Power Co.*, No. 3-90 CIV 418, slip op. at 5 (D. Minn. Dec. 12, 1990). Furthermore, the Supreme Court has ruled that the filed rate doctrine acts to bar state causes of action. See *Arkla*, 453 U.S. at 584. [**11] Similarly, courts have uniformly held, and we agree, that the rationales underlying the filed rate doctrine apply equally strongly to regulation by state agencies. See Taffet II, 967 F.2d at 1494; H.J. Inc., 954 F.2d at 494; *Sun City*, 847 F. Supp. 281, 1994 U.S. Dist. LEXIS 3800, at * 25; Wegoland, 806 F. Supp. at 1115.

In rejecting the plaintiffs' argument on this point, Judge Wood stated that creating a fraud exception would be both out of step with guiding Supreme Court caselaw, which has applied the filed rate doctrine in the face of allegations of fraud on the regulators, as well as contrary to the policies behind the doctrine. We agree.

The Supreme Court in *Square D* considered an alleged conspiracy to submit fraudulently inflated rates to the regulating agency. The Court in *Square D* did not hesitate to apply the filed rate doctrine and gave no intimation that there is an exception for fraud on the regulatory agency. Indeed, applying a general exception for fraud on the regulators would be inconsistent with the line of Supreme Court cases from Keogh to *Square D* [**12] which developed the filed rate doctrine "precisely for actions alleging a type of fraud on a regulatory agency." Wegoland, 806 F. Supp. at 1118.

We note that five years prior to *Square D*, the Court "saved for another day the question of whether the filed rate doctrine applies in the face of fraudulent conduct." See *Arkla*, 453 U.S. at 583 n.13. The plaintiffs make the point that the Court in *Square D* made no mention of the fact that it seemed to be resolving that open question. But on closer examination, there is an explanation for the Court's silence.

In *Arkla*, a plaintiff utility company had a contract with the defendant-buyer that entitled it to charge higher rates in special circumstances. The utility alleged that the defendant fraudulently failed to notify the utility of the occurrence of these special circumstances, thus preventing it from filing the higher rates with the regulators. The utility further argued that the defendant's fraudulent omission, which kept the utility from filing the higher rate in the first place, estopped it from asserting as a defense the filed [**13] rate doctrine. The

Court rejected as unsupported by the record plaintiffs' allegations of fraud; however, it reserved deciding the narrow legal question, which the district court accurately described as "whether a person's fraudulent failure to notify a seller of conditions triggering a contractual entitlement to a higher rate, thereby preventing the seller from filing a higher rate, estops that person from using the filed rate doctrine in an action against it for the higher rate." *Wegoland*, 806 F. Supp. at 1118 n.4. Thus, we agree with the district court that the question reserved by the Arkla Court was actually a much "narrower question than whether there should be a general exception to the filed rate doctrine for fraudulent conduct." *Id.*

Apart from its incompatibility with Supreme Court precedent, plaintiffs' proposed fraud exception is also inconsistent with the strong policies behind the filed rate doctrine. The doctrine is designed to insulate from challenge the filed rate deemed reasonable by the regulatory agency. Congress [*21] and state legislatures establish regulatory agencies in part to ensure that rates charged by generally monopolistic [**14] and oligopolistic industries are reasonable. This regime protects consumers while fostering stability. The regulatory agencies are deeply familiar with the workings of the regulated industry and utilize this special expertise in evaluating the reasonableness of rates. The agencies' experience and investigative capacity make them well-equipped to discern from an entity's submissions what costs are reasonable and in turn what rates are reasonable in light of these costs.

If courts were licensed to enter this process under the guise of ferreting out fraud in the rate-making process, they would unduly subvert the regulating agencies' authority and thereby undermine the stability of the system. For only by determining what would be a reasonable rate absent the fraud could a court determine the extent of the damages. And it is this judicial determination of a reasonable rate that the filed rate doctrine forbids.

As compared with the expertise of regulating agencies, courts do not approach the same level of institutional competence to ascertain reasonable rates. Regulators employ their peculiar expertise to consider the whole picture regarding the reasonableness of a proposed rate. They [**15] make hundreds if not thousands of discretionary decisions about the submitted costs and ultimately arrive at the approved filed rate. Courts are simply ill-suited to systematically second guess the regulators' decisions and overlay their own resolution. Indeed, as Judge Wood perceptively noted, application of the filed rate doctrine is even more appropriate in the RICO context of alleged fraud on the agency (where "regulatory bodies are particularly well

sued to determining whether utility costs borne within a corporate family are reasonable," *id.* at 1122) than in the antitrust context (where regulators are unlikely to have much special knowledge as to the existence of illegal conspiracies among competitors), and it is in the antitrust context that the Supreme Court has consistently applied the filed rate doctrine. See, e.g., *Square D*, 476 U.S. at 418-19; *Keogh*, 260 U.S. at 161-62.

The plaintiffs respond that courts would not be required to determine a "reasonable" rate, but rather would only have to decide what damages arose [**16] from the fraud, a task courts routinely undertake. However, the two are hopelessly intertwined: "The fact that the remedy sought can be characterized as damages for fraud does not negate the fact that the court would be determining the reasonableness of rates," *Wegoland*, 806 F. Supp. at 1119, and that "any attempt to determine what part of the rate previously deemed reasonable was a result of the fraudulent acts would require determining what rate would have been deemed reasonable absent the fraudulent acts, and then finding the difference between the two." *Id.* at 1121.

Apart from the institutional competency concern, allowing courts to become enmeshed in the rate-making process would undermine our current regulatory regime, which is designed to be self-policing. Individual ratepayers are unlikely to have any special knowledge of the alleged wrongdoing that would make it advantageous to have private enforcement through the RICO or antitrust provisions. By contrast, regulators who are intimately familiar with the industry are best situated to discover when regulated entities engage in fraud on the agency and to remedy [**17] the wrongdoing when the specter of fraud arises. Indeed, that is precisely what has happened in this case, where the regulators in every state affected by NYNEX's alleged fraud have initiated administrative hearings to investigate the charges and issue appropriate remedies to benefit the ratepayers. See *Wegoland*, 806 F. Supp. 1112 at 1120-21. Apart from participating in the political process and filing complaints with the regulatory agencies, individual ratepayers simply have no role in attacking the reasonableness of filed rates. Nor is there room for judicial intervention in such a case.

Furthermore, application of the filed rate doctrine prevents discrimination in rates paid by consumers because victorious plaintiffs would wind up paying less than non-suing ratepayers. See *Keogh*, 260 U.S. at 163-64. Plaintiffs respond that the [*22] class action nature of this suit eliminates any potential discrimination, and thus the filed rate doctrine should not apply. While not specifically raised in the district court, the importance of this purely legal issue warrants our attention. See *Austin v. Healey*, 5 F.3d 598, 601 (2d Cir. 1993), [**18] cert.

denied, 127 L. Ed. 2d 542, 114 S. Ct. 1192 (1994). To be sure, the concerns for discrimination are substantially alleviated in this putative class action. See, e.g., *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 760 F.2d 1347, 1352 (2d Cir. 1985) (Friendly, J.), *aff'd*, 476 U.S. 409, 90 L. Ed. 2d 413, 106 S. Ct. 1922 (1986); *Gelb v. American Tel. & Tel. Co.*, 813 F. Supp. 1022, 1028 (S.D.N.Y. 1993). However, the class action nature of the proceeding in no way affects the important concerns of agency authority, justiciability, and institutional competence previously described. To the contrary, use of the class action to attack the rate-making process tends to frustrate these legitimate interests and might end up costing the consumers even more in litigation expenses. See, e.g., *Taffet II*, 967 F.2d at 1492 (explaining that application of the filed rate doctrine forecloses "strike suits that would be brought as eager lawyers, using the class action vehicle, circumvent [**19] the states' rate-making mechanisms -- all at the expense of the consumers"). Just as important, court-ordered rate reductions potentially raise the cost of capital (and impede access to equity and bond markets) for capital-intensive utilities, and thereby affect the company and all of its future customers in ways that courts cannot afterwards undo. Moreover, the Supreme Court in *Square D* rejected the invitation of Judge Friendly and the Justice Department to overrule *Keogh* based upon the advent of various procedural developments to avoid discrimination in rates, like the class action. *Square D*, 476 U.S. at 423. Because most of the animating policies behind the filed rate doctrine are not diminished in the class action context, we hold that the filed rate doctrine applies whether or not plaintiffs are suing for a class.

Finally, we note that the filed rate doctrine does not leave regulated industries immune from suit under the RICO or antitrust statutes. While individual ratepayers are precluded from challenging the reasonableness of the rates, the proper government officials remain free to pursue this avenue in appropriate [**20] circumstances.

See, e.g., *Sun City*, 847 F. Supp. 281, 1994 U.S. Dist. LEXIS 3800, at * 32.

In conclusion, because a fraud exception to the filed rate doctrine is both contrary to guiding Supreme Court precedent and important regulatory policies, we hold that there is no fraud exception to the filed rate doctrine that would save this suit from dismissal.

As a final point, we note that the district court correctly discerned a tension between the applicability of the filed rate doctrine and this Court's ruling in *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295 (2d Cir. 1990) ("*LILCO*"). In *LILCO*, we held that RICO is applicable to public utilities and examined the merits of a claim brought by individual ratepayers. *Id.* at 1305-08. The district court understandably was concerned that its ruling would contravene *LILCO* by immunizing utilities from RICO suits brought by ratepayers. The court therefore labored to distinguish the facts of this case from those in *LILCO* and pointed out that the filed rate doctrine was never raised in the *LILCO* opinion. See *Wegoland*, 806 F. Supp. at 1122-24. [**21]

We conclude that *LILCO* erects no barrier in this Circuit to the application of the filed rate doctrine to RICO suits brought by ratepayers against utilities. Since we had no occasion to consider the filed rate doctrine in *LILCO* because it was not brought to the panel's attention, the absence of such a discussion can by no means be construed as an implicit rejection of the filed rate doctrine. Accordingly, the *LILCO* decision does not alter the outcome in this case.

CONCLUSION

We have carefully considered the remainder of the arguments proffered by the parties and find them to be without merit. For the forgoing reasons, we affirm the district court's judgment dismissing the plaintiffs' actions as barred by the filed rate doctrine.

M.R. TAFFET and ROBERT M. FIERMAN, on behalf of themselves and all of the persons, corporations, municipalities, and other entities, other than the defendants, who are similarly situated, Plaintiffs-Appellants, versus THE SOUTHERN CO., SOUTHERN COMPANY SERVICES, INC., ALABAMA POWER COMPANY and ARTHUR ANDERSEN & CO., Defendants-Appellees. FREDERICK RODGERS CARR, CARR SALES COMPANY, O.E.M. PRODUCTS, INC., TIMOTHY DUNN STOKELY, CLARK STOKELY, III and ALL OTHERS SIMILARLY SITUATED, Plaintiffs-Appellants, versus THE SOUTHERN COMPANY, SOUTHERN COMPANY SERVICES, INC., GEORGIA POWER COMPANY, and ARTHUR ANDERSEN & CO., Defendants-Appellees.

No. 90-7088, No. 90-8452

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

967 F.2d 1483; 1992 U.S. App. LEXIS 16867; 6 Fla. Law W. Fed. C 959

July 24, 1992, Decided

July 24, 1992, Filed

SUBSEQUENT HISTORY:

As Amended.

PRIOR HISTORY:

[**1] Appeal from the United States District Court for the Middle District of Alabama. D. C. Docket No. 89-V-712-N. D/C Judge VARNER

Appeal from the United States District Court for the Southern District of Georgia. D. C. Docket No. CV189-118. D/C Judge BOWEN

DISPOSITION:

AFFIRMED

COUNSEL:

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(FOR: TAFFETT et al (90-7088)): Andrew M. Scherffius, Andrew M. Scherffius, Joseph C. Freeman, Jack N. Sibley, P.C., 3166 Mathieson Drive, P.O. Box 53299, Atlanta, Georgia 30355 404/261-3562, A. Timothy Jones, Freeman & Hawkins, 2800 First Atlanta Tower, Atlanta, Georgia 30383. 404/522-0856.

(FOR: M.R. TAFFETT, et al (90-7088)): Larry Moffett, Jackson Henderson [**2] Chiles, III, Daniel, Coker, Horton and Bell, P.A., 111 East Capitol Street, Suite 600, Jackson, Mississippi 39201, 601/969-7606.

APPELLEES

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(FOR: SOUTHERN CO. (90-7088)): James E. Joiner, Troutman, Sanders, 885-3000, (See 4/29/92 letter), 600 Peachtree St., NE, Ste., 5200, Atl., GA 30308-2216.

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JUDGES:

Before TJOFLAT, Chief Judge, FAY, KRAVITCH, HATCHETT, COX, and DUBINA, Circuit Judges. *

* Judges Anderson, Edmondson, and Birch recused themselves and did not participate in this decision.

OPINIONBY:

TJOFLAT

OPINION:

[*1485]

TJOFLAT, Chief Judge:

These two cases, n1 consolidated on appeal, raise the question whether a private suit under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c) (1988), may be brought against a utility to recover for excessive charges for electrical power resulting from the utility's fraudulent and material misrepresentations to a state rate-setting commission. The appellants in these cases seek to

represent those who have purchased [**4] electrical power from Georgia Power Company and Alabama Power Company (the Utilities), both of which are subsidiaries of The Southern Company. The appellants allege that the Utilities, in conspiracy with Arthur Andersen & Co., their independent accounting firm, understated their net income in rate applications to their state public service commissions (the PSCs) by improperly accounting for purchases of spare parts; thus, the Utilities fraudulently obtained rate increases. n2

n1 Frederick Rodgers Carr, Carr Sales Company, and O.E.M. Products, on behalf of themselves and all similarly situated persons, corporations, and other entities, filed the first of these actions, No. 90-8452, on June 30, 1989 in the United States District Court for the Southern District of Georgia. M.R. Taffet and Robert M. Fierman, on behalf of themselves and all similarly situated persons, filed the second of these actions, No. 90-7088, on July 10, 1989 in the United States District Court for the Middle District of Alabama.

n2 The appellants' allegations are recounted in detail in *Taffet v. Southern Co.*, 930 F.2d 847, 849-50 (11th Cir.1991), *vacated*, 958 F.2d 1514 (11th Cir.1992) (per curiam).

[**5]

The district courts below dismissed the appellants' complaints under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. Both courts, finding that the exclusive authority to set rates for electricity is vested in the PSCs, based dismissal upon the filed rate doctrine, the primary jurisdiction doctrine, the clear statement doctrine, and abstention based upon federalism interests. *Taffet v. Southern Co.*, No. 89 V-712N, 1990 U.S. Dist. LEXIS 4189, at *3-5 (M.D.Ala. Jan. 5, 1990); *Carr v. Southern Co.*, 731 F. Supp. 1067, 1071-72 (S.D.Ga.1990). On consolidated appeal to this court, a divided panel reversed; the majority rejected each of the doctrines relied upon by the district courts as a basis for dismissal of the cases at hand. *Taffet v. Southern Co.*, 930 F.2d 847, 851-57 (11th Cir.1991), *vacated*, 958 F.2d 1514 (11th Cir.1992) (per curiam). The dissent argued that the filed rate doctrine and the primary jurisdiction doctrine foreclose application of RICO to a public utility after a rate has been approved by a state rate-making body; thus, the appellants' actions must be dismissed. [**6] *Id.* at 857 (Birch, J., dissenting).

A majority of this court's judges in regular active service ordered that the consolidated appeals be reheard by the court en banc. *Taffet v. Southern Co.*, 958 F.2d 1514 [*1486] (11th Cir.1992) (per curiam). n3 On rehearing en banc, we affirm the district courts' dismissals of these actions.

n3 That order vacated the panel's opinion.

I.

Section 1964(c) of RICO allows a private plaintiff to recover for injuries that he has suffered to his business or property as a result of a violation of the criminal prohibitions in section 1962 of RICO. n4 Section 1962 imposes criminal liability on

n4 18 U.S.C. § 1964(c) provides that "any person injured in his business or property by reason of a violation of [18 U.S.C. §] 1962 ... shall recover threefold the damages he sustains...." 18 U.S.C. § 1964(c) (1988).

[**7]

those who engage in, or aid and abet another to engage in, a pattern of racketeering activity if they also do the following: invest income derived from the pattern of racketeering activity in the operation of an enterprise engaged in interstate commerce (section 1962(a)); acquire or maintain, through the pattern of racketeering activity, any interest in or control over such an enterprise (section 1962(b)); or conduct, or participate in the conduct of, the affairs of such an enterprise through a pattern of racketeering activity (section 1962(c)). Section 1962(d) makes it a crime to conspire to violate sections 1962(a), (b), or (c).

Pelletier v. Zweifel, 921 F.2d 1465, 1495-96 (11th Cir.), cert. denied, --- U.S. ---, 112 S. Ct. 167, 116 L. Ed. 2d 131 (1991). Title 18 U.S.C. section 1961(1) lists the acts that constitute "racketeering activity" under RICO. n5 A "pattern" of racketeering activity consists of at least two acts of racketeering [*1487] activity committed within ten years of each other (excluding any period of imprisonment). 18 U.S.C. § 1961(5) (1988).

n5 18 U.S.C. § 1961(1) provides:

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic

or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251-2252 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any

offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act.

18 U.S.C. § 1961(1) (1988 & Supp. II 1990). As we note *infra*, see note 6 and accompanying text, the appellants allege that the appellees committed the following acts of racketeering activity: mail fraud under 18 U.S.C. § 1341 (1988 & Supp. II 1990), wire fraud under 18 U.S.C. § 1343 (1988 & Supp. II 1990), and transportation in aid of racketeering activities under 18 U.S.C. § 1952 (1988 & Supp. II 1990).

[**8]

The RICO plaintiff, to recover, must show that the defendant is criminally liable under section 1962, *Pelletier*, 921 F.2d at 1496, and that the plaintiff has suffered an injury that "flows from the commission of the [criminal violation]." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497, 105 S. Ct. 3275, 3285, 87 L. Ed. 2d 346 (1985) (footnote omitted).

In the instant cases, the appellants allege that they have suffered an injury to their business and property, within the purview of title 18 U.S.C. section 1964(c), in the form of excessive and illegal charges paid for electrical utility services, and that this injury is the proximate result of the appellees' racketeering activities, in violation of the prohibitions set forth in title 18 U.S.C. section 1962, n6 relating to their conspiracy and scheme to obtain PSC approval of excessive rate increases by means of fraudulently [*1488] accounting for spare parts held in inventory.

n6 The appellants in No. 90-7088 (the Taffet appellants) allege in their complaint that The Southern Company, Southern Company Services, Inc., Alabama Power Company, and Arthur Andersen & Co. (collectively the Taffet appellees) committed or conspired in and aided the commission of numerous predicate acts involving the racketeering activity of mail fraud under 18 U.S.C. § 1341, and wire fraud under 18 U.S.C. § 1343 including the following: (a) the mailing of Alabama Power Company's rate applications that included fraudulent accounting for inventory spare parts; (b) the mailing of

Alabama Power Company's quarterly reports that included fraudulent accounting for inventory spare parts; (c) the mailing to Alabama Power Company's customers of millions of monthly billing statements that included fraudulent rate charges derived from fraudulent accounting for inventory spare parts; (d) the mailing of Form 3115 (regarding a proposed change in accounting, for tax purposes, of spare parts) to the Internal Revenue Service (IRS) in an effort to deceive the IRS; (e) the participation in the preparation of false rate applications that the Taffet appellees knew would be mailed to the Alabama PSC, which materials were predicated in part on fraudulent accounting for inventory spare parts; (f) the participation in the preparation of false annual, quarterly, and monthly reports that the Taffet appellees knew would be mailed to the Alabama PSC, which reports were predicated in part on fraudulent accounting for inventory spare parts; (g) the preparation and mailing by Arthur Andersen & Co. to The Southern Company, Southern Company Services, Inc., and Alabama Power Company on numerous occasions of fraudulent accounting information relating to or constituting fraudulent rate applications, financial statements, reports, audits, federal tax returns, and cost of service data, which materials were predicated in part on fraudulent accounting for inventory spare parts; and (h) the participation in hundreds of telephone calls between the Taffet appellees and other co-conspirators and between the Taffet appellees and the Alabama PSC for the purpose of perpetuating the scheme and conspiracy relating to the inventory spare parts.

The Taffet appellants allege that the Taffet appellees' misconduct is a violation of 18 U.S.C. § 1962(c) in that they have been associated with an enterprise engaged in interstate commerce, and the activities of the enterprise have affected interstate commerce, and, further, that they have conducted or participated in the conduct of the enterprise's affairs through a pattern of racketeering activity. Moreover, the Taffet appellants allege, the Taffet appellees have violated 18 U.S.C. § 1962(d) by conspiring among themselves and with others to violate 18 U.S.C. § 1962(c).

The appellants in No. 90-8452 (the Carr appellants) allege in their complaint that The Southern Company, Southern Company Services, Inc., Georgia Power Company, and Arthur Andersen & Co. (collectively the Carr appellees) have violated 18 U.S.C. § § 1962(a), (b), and/or

(c) by engaging in prohibited racketeering activities, including, but not limited to, using income derived from the rate-payers through a scheme of racketeering activity, maintaining an interest in or control of an enterprise engaged in or affecting interstate commerce through a pattern of racketeering activity, and conducting the enterprise's affairs through a pattern of racketeering activity. The Carr appellants further allege that the Carr appellees violated 18 U.S.C. § 1962(d) by conspiring between themselves and with others to violate § § 1962(a), (b), and (c).

The specific acts of racketeering alleged by the Carr appellants, which they contend constitute mail fraud under 18 U.S.C. § 1341, wire fraud under 18 U.S.C. § 1343, and violations of 18 U.S.C. § 1952 (transportation in aid of racketeering enterprises), include the following:

(a) the mailing of Georgia Power Company's periodic filings and submissions that included fraudulent accounting for maintenance spare parts; (b) the mailing to Georgia Power Company's customers of millions of monthly billing statements that included fraudulent rate charges, overcharges, and increases to rate-payers derived from the Carr appellees' fraudulent accounting for maintenance spare parts; (c) the mailing of Georgia Power Company's Forms 3115 to the IRS to defraud the IRS; (d) the participation in the preparation of false filings and submissions to the Georgia PSC, the Federal Energy Regulatory Commission, and the Securities and Exchange Commission and in the preparation of financial statements, reports, audits, and cost of service data that the Carr appellees knew or reasonably should have anticipated would be mailed to the Georgia PSC, among others, which materials were predicated in part on fraudulent accounting for maintenance spare parts; (e) the participation in the preparation, mailing, and telephonic discussion by the Georgia Power Company's audit committee of annual examinations of the affairs of the company, which examinations were predicated in part on fraudulent accounting for maintenance spare parts; (f) the participation in the preparation of false annual reports that the Carr appellees knew or reasonably should have anticipated would be mailed to the PSC, which reports were predicated in part on fraudulent accounting for maintenance spare parts; (g) the preparation and mailing by Arthur Andersen & Co. to The Southern Company, Southern Company Services, Inc., and Georgia Power Company on numerous occasions of fraudulent

accounting information relating to or constituting fraudulent filings and submissions, financial statements, reports, audits, federal tax returns, and cost of service data that the Carr appellees knew or reasonably should have anticipated would be mailed to the Georgia PSC, among others, which materials were predicated in part on fraudulent accounting for maintenance spare parts; (h) the participation in numerous telephone calls between the Carr appellees and other co-conspirators and between the Carr appellees and the Georgia PSC for the purpose of creating and perpetuating the scheme and conspiracy relating to the maintenance spare parts; and (i) the use of facilities in interstate commerce to promote the Carr appellees' unlawful activities.

[**9]

The appellants' argument rests on the assumption that they enjoy a legal right to have been charged a lower rate than they actually were charged; the appellants, unless they enjoy such a right, have suffered no legally cognizable injury by having paid the higher rate. We conclude that the appellants do not possess this right; therefore, they have failed to state a claim upon which relief can be granted under RICO.

A.

We find support for our conclusion that the appellants have not suffered a legally cognizable injury sufficient to predicate a RICO civil action in a line of Supreme Court cases that developed what has come to be known as the "filed rate doctrine." The origin of the filed rate doctrine can be traced back to *Texas & Pacific Railway v. Abilene Cotton Oil Co.*, 204 U.S. 426, 27 S. Ct. 350, 51 L. Ed. 553 (1907), in which the Supreme Court addressed the issue of whether a shipper could maintain a common law action for damages against a common carrier for "the exaction of an alleged unreasonable rate, although the rate collected and complained of was the rate stated in the schedule filed with the Interstate Commerce Commission...." *Id.* at 436, 27 S. Ct. at 353. [**10] The Court held that the shipper could not maintain such an action. After acknowledging that, at common law, a shipper had a right of action for damages against a carrier who refused to carry goods except upon the payment of an unreasonable sum, *id.*, the Court held that the Interstate Commerce Act implicitly had changed the common law, *id.* at 436, 27 S. Ct. at 353-54, and that the shipper's only redress was through the Interstate Commerce Commission (ICC) which had the power to alter established rates. *Id.* at 448, 27 S. Ct. at 358. The Court reasoned that the existence of a shipper's right to recover damages on the basis that the

established rate was unreasonable was "wholly inconsistent with the administrative power conferred upon the ICC, and with the duty, which the [Interstate Commerce Act] casts upon that body, of seeing to it that the statutory requirement as to uniformity and equality of rates is observed." *Id.* at 440-41, 27 S. Ct. at 355 .

Following *Abilene Cotton*, federal courts have applied the filed rate doctrine in a variety of contexts to bar recovery by those who claim [**11] injury by virtue of having paid a filed rate. *See, e.g., Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 43 S. Ct. 47, 67 L. Ed. 183 (1922) (plaintiff may not recover under federal antitrust laws for asserted injury related to paying the [*1489] rate approved by the ICC); *H.J. Inc. v. Northwestern Bell Tel. Co.*, 954 F.2d 485 (8th Cir.), *cert. denied*, --- U.S. ---, 112 S. Ct. 2306, 119 L. Ed. 2d 228 (1992) (filed rate doctrine precludes suit under RICO to recover claimed damages relating to allegedly fraudulent rate approved by the Minnesota Public Utilities Commission). In *Keogh*, the Supreme Court held that a private shipper could not recover damages under the federal antitrust laws against carriers who allegedly had fixed rates in violation of those laws. As in *Abilene Cotton*, the rates at issue had been filed with the ICC. The Court held that the shipper's payment of the approved rates could not give rise to an injury to business or property prerequisite to recovery under the antitrust laws. *Keogh*, 260 U.S. at 162-63, 43 S. Ct. at 49-50 . The Court [**12] reasoned:

Section 7 of the Anti-Trust Act gives a right of action to one who has been "injured in his business or property." Injury implies violation of a legal right. The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate, as between carrier and shipper. The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier.

Id. at 163, 43 S. Ct. at 49 (citation omitted).

More recently, the Supreme Court reaffirmed the rule of *Keogh*. In *Square D. Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 106 S. Ct. 1922, 90 L. Ed. 2d 413 (1986), the plaintiffs alleged that they had been forced to pay excessive rates for interstate shipping because the defendants collectively had engaged in price-fixing, in violation of the Sherman Act, pursuant to an agreement filed with the ICC. The plaintiffs sought treble damages, measured by the difference between the rates they paid and the rates that they allegedly would have paid [**13] in a freely competitive market. The Supreme Court noted that the rates at issue were "duly submitted, lawful rates under the Interstate Commerce Act," *id.* at 417, 106 S. Ct. at 1927 , and, following the

rule of *Keogh*, held that even if the plaintiffs' allegations of price-fixing were true, the plaintiffs could not have been injured in their business or property within the meaning of the antitrust laws by paying the rate approved by the ICC. *Id.* at 416-17, 423-24, 106 S. Ct. at 1926-27, 1930-31 .

The seminal case applying the filed rate doctrine in the context of electric utility rates is *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 71 S. Ct. 692, 95 L. Ed. 912 (1951). The dispute in *Montana-Dakota Utilities* arose from a series of contracts entered into between the parties, both of whom were electric utilities companies. The contracts established rates that each paid to the other for electric power. The rates established were filed with and accepted by the Federal Power Commission which the Federal Power Act, 16 U.S.C. [**14] § 824e(a) (1988), charged with fixing reasonable electric utility rates. n7 The plaintiff alleged that the defendant's fraud in connection with the setting of these rates deprived it of its right under the Federal Power Act to have reasonable rates and charges for electric power. It sought as damages the difference between the filed rates and the rates that would have been set absent the defendant's alleged fraud. The Supreme Court affirmed the dismissal of the claim, ruling that the plaintiff had not established a cause of action under the Federal Power Act because it had no right under the Act to pay any rates other than the rates approved by the Federal Power Commission. *Id.* at 251-55, 71 S. Ct. at 695-97 . The Court explained:

n7 Congress has terminated the Federal Power Commission and has transferred its powers to the Secretary of Energy and the Federal Energy Regulatory Commission. 42 U.S.C. § § 7151(b), 7172(a), 7291, 7293 (1988).

The problem is whether it is open to the [**15] courts to determine what the reasonable [*1490] rates during the past should have been. The petitioner, in contending that they are so empowered ... regards reasonableness as a justiciable legal right rather than a criterion for administrative application in determining a lawful rate.... It is not the disembodied "reasonableness" but that standard when embodied in a rate which the Commission accepts or determines that governs the rights of buyer and seller. A court may think a different level more reasonable. But the prescription of the statute is a standard for the Commission to apply and, independently of Commission action, creates no right which courts may enforce.

Petitioner cannot separate what Congress has joined together. It cannot litigate in a judicial forum its general right to a reasonable rate, ignoring the qualification that it shall be made specific only by exercise of the Commission's judgment, in which there is some considerable element of discretion. *It can claim no rate as a legal right that is other than the filed rate....*

Id. at 251, 71 S. Ct. at 695 (emphasis added).

As the cases discussed above illustrate, the filed rate [**16] doctrine recognizes that where a legislature has established a scheme for utility rate-making, the rights of the rate-payer in regard to the rate he pays are defined by that scheme. To determine whether the appellants in the cases at hand have alleged a cognizable injury to their business or property within the purview of RICO, we examine the rate-making schemes in Alabama and Georgia which define the rights these appellants enjoy in regard to the rates they pay for electric power.

B.

It is settled under both Alabama and Georgia law that a consumer does not have a property right in the utility rate he pays. *See Alabama Metallurgical Corp. v. Alabama Pub. Serv. Comm'n*, 441 So. 2d 565, 570 (Ala.1983) ("a consumer has no property right in a given level of utility rates"); *Georgia Power Co. v. Allied Chem. Corp.*, 233 Ga. 558, 212 S.E.2d 628, 631 (1975) ("consumer has no 'property' right in the rate he pays for utilities"). In both states, regulation of utilities and setting of utility rates is purely a legislative function. *Alabama Metallurgical*, 441 So. 2d at 570; *Georgia Power Co. v. Georgia Pub. Serv. Comm'n*, 196 Ga. App. 572, 396 S.E.2d 562, 568 (1990). [**17] Thus, the only "rights" that the appellants have in relation to utility rates are those that the legislature of Alabama or Georgia provide.

Alabama and Georgia each have elaborate administrative schemes to ensure that rates for electricity are just and reasonable for the affected utilities and for the public. *See Ala.Code* § 37-1-1 to-157 (1975) (Supp.1991); *O.C.G.A.* § 46-2-1 to-157 (1982) (Supp.1991). In Alabama, the legislature has delegated the responsibility for the determination of utility rates and of what constitutes a fair rate of return to the Alabama PSC. *Alabama Power Co. v. Alabama Pub. Serv. Comm'n*, 422 So. 2d 767, 769 (Ala.1982). Thus, the PSC has exclusive authority to set electrical power rates. *Ala.Code* § 37-1-31. Whenever a utility wishes to change an existing rate, it must file a new rate schedule with the PSC. *Id.* at § 37-1-81(a). The new rate becomes effective after thirty days or at a later date specified in the rate schedule unless the PSC disapproves the rate. *Id.* Further, the PSC can suspend or disapprove a rate at any

time so long as it acts in accordance with procedures prescribed by the legislature. *Id.*

Upon written complaint [**18] by a rate-payer that an effective or proposed rate is unfair, the Alabama PSC has the duty to investigate the reasonableness of the challenged rate. *Id.* at § 37-1-83. If the rate-payer is dissatisfied with the PSC's disposition of his complaint, he may appeal the PSC's action directly to the Alabama Supreme Court. *Id.* at § 37-1-140 (Supp.1991). The role of the Alabama judiciary is to ensure that the PSC has carried out its regulatory [*1491] function within constitutional limits. *Alabama Metallurgical*, 441 So. 2d at 570. Thus, a "court's inquiry ordinarily goes no further than to ascertain whether there is evidence to support the findings of the PSC." *Alabama Power*, 422 So. 2d at 769 (quoting *Alabama Gas Corp. v. Wallace*, 293 Ala. 594, 308 So. 2d 674, 679 (1975)). Alabama courts neither make rates nor substitute their judgment for that of the PSC. *Continental Tel. Co. v. Alabama Pub. Serv. Comm'n*, 427 So. 2d 981, 984 (Ala.1982). Indeed, the Alabama Supreme Court has stressed that the judiciary has no authority to set utility rates. *Alabama Metallurgical*, 441 So. 2d at 570. [**19]

The scheme for regulating utilities and setting utility rates under Georgia law is similar to the Alabama scheme discussed above. The General Assembly of Georgia has vested the Georgia PSC with "exclusive power to determine what are just and reasonable" electric power rates. *O.C.G.A.* § 46-2-23(a) (Supp.1991). An electric utility must file a rate schedule with the PSC at least thirty days before a new rate is scheduled to go into effect. *Id.* at § 46-2-25(a). The PSC, upon written complaint or upon its own initiative, may then conduct a hearing concerning the proposed rate. *Id.* at § 46-2-25(b).

Georgia's Assembly sought to ensure that consumers of utility services are adequately represented in proceedings affecting utility rates and services. *See* 1981 Ga.Laws 122. Thus, anyone with an interest in the rate-determination proceeding may file a motion to intervene in the proceeding. *Id.* at § 46-2-59. A person who has exhausted the administrative remedies available before the PSC and who is "aggrieved" by the PSC's rate-making decision may seek judicial review of the decision first in the Superior Court of Fulton County, and, then, in the Georgia Court of Appeals or the Georgia [**20] Supreme Court. *Id.* at §§ 50-13-19 to -20 (1990). n8 Georgia courts recognize, however, that "the legislative function of rate-making ... is essentially a matter for the Public Service Commission, and not the judiciary." *State Farm Fire & Casualty Co. v. Southern Bell Tel. & Tel. Co.*, 150 Ga. App. 622, 258 S.E.2d 198, 199 (1979), *rev'd on other grounds*, 245 Ga. 5, 262 S.E.2d 895 (1980). Accordingly, a court reviewing the

reasonableness of a utility rate "shall not substitute its judgment for that of the [PSC] if there is any evidence to support its findings." *Lasseeter v. Georgia Pub. Serv. Comm'n*, 253 Ga. 227, 319 S.E.2d 824, 829 (1984).

n8 Section 50-13-20 of the Official Code of Georgia provides: "An aggrieved party may obtain a review of any final judgment of the superior court under [the Georgia Administrative Procedure Act] by the Court of Appeals or the Supreme Court, as provided by law." O.C.G.A. § 50-13-20 (1990).

[**21]

The rate-setting schemes in both Alabama and Georgia are incompatible with a rate-payer's cause of action to recover damages measured by the difference between the filed rate and the rate that would have been charged absent some alleged wrongdoing. Allowing consumers of the Utilities' services to recover damages for "fraudulent" rates or otherwise "erroneous" rates would disrupt greatly the states' regulatory schemes and, in the end, would cost consumers dearly. For the appellants in these cases to recover, they first would have to establish that the rates set by the PSC were in fact unreasonable. Thus, the trial judge, or a jury, would have to determine what rate should have been set by the PSC. Regardless of what the PSC has determined is a reasonable rate, a trial court would be empowered to set, in effect, a new rate. n9

n9 A trial court's judgment awarding damages in such a case would not directly set a new rate; in effect, however, the judgment would do so indirectly -- in the form of money damages -- as the ensuing discussion demonstrates.

[**22]

The court's damages award would have the effect of retroactively reducing the rate for electric power; the Utilities would, in essence, be forced to refund to each of their customers the amount allegedly overcharged. n10 [**1492] Moreover, if the "erroneous" rate were still in effect when the court determined it to be erroneous, the Utilities might be forced to adopt the court's rate or risk future liability.

n10 As we have noted, *see supra* note 4, a successful plaintiff under RICO recovers his damages threefold. *See* 18 U.S.C. § 1964(c).

Thus, if the appellants in the cases at hand were successful in prosecuting their RICO claims, the Utilities would be forced to refund three times the amount allegedly overcharged.

Of course, it is the Utilities' present and future customers who would get stuck with the bill in the end. The Utilities' litigation costs, the awarded damages and attorneys' fees, and any revenue lost because of an erroneous court-set rate would become part of each Utility's rate base. It is likely that the [**23] PSCs would take all of this into account when setting a future rate for electricity, especially if the PSC disagreed with the district court's determination of a reasonable rate. Even if the PSCs would not allow the Utilities to recoup in a new rate all of the costs stemming from the appellants' suit, the Utilities still would recoup those costs at the expense of future customers by cutting the quality of service they provide to those customers.

There is another way in which damage awards for "erroneous" rates would undermine the states' regulatory schemes. Alabama and Georgia both have chosen to establish procedures that allow public participation in the rate-making process. Allowing plaintiffs to collect damages measured by the difference between the filed rate and the rate a court finds reasonable would encourage consumers of a utility's services to sit out the state's rate-making process and then to repair to court to play litigation lottery. There could be no end to the number of strike suits that would be brought as eager lawyers, using the class action vehicle, circumvent the states' rate-making mechanisms -- all at the expense of consumers.

Rather than provide for a right [**24] to recover damages, Alabama and Georgia have structured their rate-making schemes so that the PSCs can provide a remedy for the defendants' fraud that will adequately compensate the appellants while not undermining the PSCs' authority to set reasonable rates: in both Georgia and Alabama, the PSC can set a prospective rate low in order to compensate consumers for excessive rates they paid in the past that were procured by fraud.

It is true that, under Alabama law, a PSC cannot declare retrospectively that a rate it previously approved was unreasonable and, therefore, unlawful. *See* Ala.Code § 37-1-97; *T.R. Miller Mill Co. v. Louisville & Nashville R.R. Co.*, 207 Ala. 253, 92 So. 797, 801 (1921). Also, even if the PSC or a court declares that a previously approved rate was excessive, it may not order the utility to refund the excess to consumers. *See, e.g., Foshee v. General Tel. Co.*, 295 Ala. 70, 322 So. 2d 715, 717 (1975); *State v. Alabama Pub. Serv. Comm'n*, 293 Ala. 553, 307 So. 2d 521, 539 (1975). Alabama law, however,

directs the PSC to set prospective rates that are "reasonable and just [**25] to both the utility and the public." Ala.Code § 37-1-80 (Supp.1991) (emphasis added). Rate-payers, as persons affected by an excessive rate obtained by fraud, may file a complaint with the PSC, *id.* § 37-1-83; if the PSC, upon investigation of the complaint, determines that the rate is indeed excessive or unfair, it must set a reasonable rate -- one that is fair to both public and utility -- to be followed in the future, *id.* § 37-1-97. It would seem that a reasonable rate in a case in which the past rate was unreasonable because the utility defrauded the PSC would be low enough to ensure that consumers' future bills compensate them for the excess they paid in the past. n11

n11 This is consistent with the rule that the PSC may not order the utility to make direct restitutions to consumers. The utility's administrative costs involved in making such restitutions -- calculating how much has been paid to each past consumer, locating that consumer, and sending exact payment -- would be huge in comparison to the payments. If the utility were allowed to include those expenses in its rate base for future rate setting proceedings, consumers might end up paying more (in future, higher rates) than they gained through the restitutions. Alternatively, if the utility were barred from including those expenses in its rate base, it most likely would recoup its administrative costs by reducing the quality of service to consumers. If the PSC, however, calculated the utility's gain from its fraud and dropped future consumers' rates across the board to reflect that illegal gain, the utility's administrative costs would be minimal. Of course, this method of making consumers whole would not be as exact as direct restitutions, but it would adequately compensate them without the problem we have outlined above.

[**26]

To be sure, Alabama law entitles utilities to a fair net return. See Ala.Code § 37-1-80 [*1493] (Supp.1990) (utilities must get "such just and reasonable rates as will enable [them] at all times to fully perform [their] duties to the public and will, under honest, efficient and economical management, earn a fair net return on the reasonable value of [their] property devoted to public service"). Moreover, rates of return "should be prospective, rather than retrospective in nature," *Alabama Metallurgical*, 441 So. 2d at 569, and "must correspond to the actual needs of the company during the

time they are in effect," *Alabama Power Co.*, 422 So. 2d at 773. See also, e.g., *Alabama Gas Corp. v. Alabama Pub. Serv. Comm'n*, 425 So. 2d 430, 436 (Ala.1982) ("in determining the reasonableness of rates, it is necessary to consider the effect of rates in light of the utility's present situation").

Although this might suggest that the PSC could never award future low rates because of past misconduct, the Alabama Supreme Court has indicated that past misconduct -- improper or dishonest management -- is a relevant consideration in determining [**27] whether a rate provides a fair return to a utility. In *Continental Telephone Company v. Alabama Public Service Commission*, 376 So. 2d 1358 (Ala.1979), overruled on other grounds by *Alabama Gas Corp. v. Alabama Pub. Serv. Comm'n*, 425 So. 2d 430 (Ala.1982), for instance, the Alabama Supreme Court stated that "improper management may always be considered by the [PSC] in determining a fair rate of return." *Id.* at 1368. Similarly, the court has noted that "a utility is under a duty ... to manage its business honestly, efficiently, and economically. If the company performs these functions, it is entitled to a rate of return that will be fair to it and fair to the consuming public." *Continental Tel. Co. v. Alabama Pub. Serv. Comm'n*, 479 So. 2d 1195, 1214-15 (Ala.1985) (emphasis added); cf. *Continental Tel.*, 427 So. 2d at 988 (PSC "required to grant only those rates consistent with good management practices"); *Alabama Power Co.*, 422 So. 2d at 773 (implying that evidence "that the basic data submitted [to the PSC] by the [utility] were inaccurate or that the [utility] was guilty of inefficient [**28] or dishonest management" should be considered by the PSC in determining a reasonable rate of return on the utility's investment); *Birmingham Elec. Co. v. Alabama Pub. Serv. Comm'n*, 254 Ala. 140, 47 So. 2d 455, 460 (1949) (standards for reasonable rate of return "presuppose[] efficient, economical and honest management").

Likewise, Georgia has recognized that the PSC may consider dishonest or improper management in setting the rate for a utility's services. See *Georgia Power Co.*, 396 S.E.2d at 569 (PSC may exclude from calculation of utility's investment in public service "what might be found to be dishonest or obviously wasteful or imprudent expenditures"). While, like Alabama law, Georgia law forbids the PSC from retroactively declaring filed rates illegal or awarding reparations for excesses paid by consumers, see *Georgia Pub. Serv. Comm'n v. Atlanta Gas Light Co.*, 205 Ga. 863, 55 S.E.2d 618, 631 (1949), as in Alabama law, nothing in Georgia law forbids the PSC from setting prospective rates that are low enough to compensate consumers for excesses paid in the past because a utility defrauded [**29] the PSC. Georgia law requires the PSC to set rates that are "just and

reasonable," O.C.G.A. § 46-2-23(a), "for the utility ... for present customers of the utility ... for future customers of the utility, and ... in the entire public interest...." *Georgia Power Co.*, 396 S.E.2d at 568 (quoting *Georgia Power Co. v. Georgia Pub. Serv. Comm'n*, 231 Ga. 339, 201 [*1494] S.E.2d 423, 425 (1973)). Certainly, the PSCs would be acting in the public interest by taking into account the defendants' alleged fraud when setting future rates.

Given that the PSCs are equipped to take the defendants' fraud into account in setting future rates, a court's award of damages against a utility for "fraudulent rate-making" would be unnecessarily disruptive to the state's scheme of utility regulation.

In sum, the legislatures of both Alabama and Georgia have provided by law that the PSCs shall establish the legal rate for a utility's services. A consumer of a utility's services has the right to participate in the rate-setting process within the parameters set up by the legislature. The consumer, however, has no legal right to pay any rate other than the [**30] one established by the PSC.

The appellants in the instant cases paid utility rates established by the PSCs. They had no legal right to pay any other rate. Since "injury implies violation of a legal right," *Keogh*, 260 U.S. at 163, 43 S. Ct. at 49, the appellants suffered no legally cognizable injury by virtue of paying the filed rate. Thus, the appellants have failed to state a claim upon which relief can be granted under RICO.

C.

The appellants raise two issues regarding the application of the filed rate doctrine to the cases at hand that merit some discussion. First, the appellants submit that the filed rate doctrine is a federal doctrine that applies only to rates approved by federal regulatory agencies. They contend that the filed rate doctrine and the principles underlying it are, therefore, wholly inapposite to the instant cases since the rates in question in these cases were approved by state, not federal, regulatory authorities. We disagree.

Where the legislature has conferred power upon an administrative agency to determine the reasonableness of a rate, the rate-payer "can claim no rate as a legal right that is other than the filed [**31] rate...." *Montana-Dakota Util.*, 341 U.S. at 251, 71 S. Ct. at 695. This principle, which is central to the filed rate doctrine and to our decision today, applies with equal force to preclude recovery under RICO whether the rate at issue has been set by a state rate-making authority or a federal one. See *H.J. Inc.*, 954 F.2d at 494 ("the filed rate doctrine applies

whether the rate in question is approved by a federal or state agency"). n12

n12 Moreover, the filed rate doctrine principles that the Supreme Court explicated in the context of adjudicating claims under the federal antitrust laws apply as readily in the context of a RICO adjudication. Congress modeled the civil remedy provision of RICO, 18 U.S.C. § 1964(c), after section 4 of the Clayton Act, 15 U.S.C. § 15(a) (1988 & Supp. II 1990), *Holmes v. Securities Investor Protection Corp.*, -- U.S. ---, ---, 112 S. Ct. 1311, 1317, 117 L. Ed. 2d 532 (1992); see also *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 489 n. 8, 105 S. Ct. 3275, 3281 n. 8, 87 L. Ed. 2d 346 (1985), the provision pursuant to which the plaintiffs in *Keogh* and *Square D* sought to obtain trebled damages. Indeed, both statutes confer standing to bring a private civil action in the exact same language: only upon a person "injured in his business or property...."

Congress passed RICO in 1970, 48 years after the Supreme Court held in *Keogh* that one is not "injured in his business or property" when one pays the rate set by an agency with rate-making authority. We presume that Congress, when it conferred standing under RICO to one "injured in his business or property," intended that this language conferring standing would be interpreted just as § 4 of the Clayton Act had been. As the Supreme Court stated recently: "We may fairly credit the 91st Congress, which enacted RICO, with knowing the interpretation federal courts had given the words earlier Congresses had used first in § 7 of the Sherman Act, and later in the Clayton Act's § 4. It used the same words, and we can only assume it intended them to have the same meaning that courts had already given them." *Holmes*, --- U.S. at ---, 112 S. Ct. at 1317-18 (citations omitted).

[**32]

The appellants contend also that the filed rate doctrine should not apply where a regulated entity allegedly has defrauded an administrative agency to obtain approval of a filed rate. Again, we disagree. A regulated entity's alleged fraud does not create a right to a reasonable rate [*1495] that exists independently of agency action. Thus, even if the filed rate is obtained through fraud, it remains true that one does not suffer the predicate "injury to business or property" by paying the filed rate. Cf. *H.J. Inc.*, 954 F.2d at 489 ("the impact [a

civil action] will have on agency procedures and rate determinations," rather than the defendant's underlying conduct, controls whether the filed rate doctrine applies).
n13

appellants have not suffered an injury cognizable under RICO, we do not address these arguments.

[**33]

n13 The appellees argue that the district courts' dismissals of these cases should be affirmed on the basis of *Burford* abstention, the primary jurisdiction doctrine, and the clear statement doctrine. In light of our holding that the

II.

Based on the foregoing, we AFFIRM the district courts' dismissals of the appellants' claims.

IT IS SO ORDERED.

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January 2, 2001

Mr. Thomas M. Dorman
Executive Director
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211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED
JAN 03 2001
PUBLIC SERVICE
COMMISSION

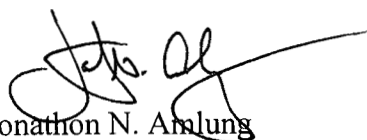
RE: IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.,
Case No. 99-484

Dear Mr. Dorman:

Please find enclosed for filing an original and ten (10) copies of IgLou's Response to BellSouth's Motion for Extension of Time in the above-referenced matter. In addition, IgLou will soon be filing a brief in response to BellSouth's Motion for Reconsideration in the above-referenced matter.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,


Jonathon N. Amlung

Enclosures

cc: Parties of record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JAN 03 2001
PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.,)	
)	
Complainant)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Defendant)	

IGLOU'S RESPONSE TO BELLSOUTH'S MOTION
FOR EXTENSION OF TIME

Comes now Complainant, IgLou Internet Services, Inc., by and through Counsel, and for its Response to BellSouth's Motion for Extension of Time states as follows:

IgLou objects to an extension of time for BellSouth to comply with any part of the Commission's November 30, 2000, Order. IgLou filed its Complaint in this case on November 12, 1999. Prior to the filing of its Complaint, IgLou tried unsuccessfully to resolve these issues with BellSouth for several months. Since that time, IgLou has faced countless delays from BellSouth in resolving anything associated with the problems recognized by this Commission.

Further delay in this case will continue to cause irreparable harm to IgLou and the rest of the Commonwealth. IgLou asserts that this Commission recognized the importance of broadband deployment throughout the Commonwealth, including the potential advantages of a retail tariff. The Commission's Order speaks for itself. BellSouth should be required to comply with the Order in a timely manner. BellSouth is a company with virtually unlimited resources. It is disingenuous to suggest that

BellSouth does not have the resources to comply with the Commission's Order in a timely fashion.

Respectfully submitted,



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General Attorney

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January 3, 2001

RECEIVED

JAN 03 2001

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

As requested by the Commission's November 30, 2000 Order, BellSouth is providing the Commission with a copy of the ADSL disclosure script used by BellSouth Service Representatives. Customers inquiring generally about ADSL service are handled by Service Representatives using the script provided in Attachment 1. As noted in the Commission's order, BellSouth has made changes in the screen prompts used by Service Representatives in discussing ADSL with customers that are inquiring generally about ADSL service. This ensures the customer is aware that they can check with their Internet Service Provider (ISP) about ADSL based Internet services.

Sincerely,



Dorothy J. Chambers

Attachment

cc: Parties of Record

241153

BellSouth Service Representatives follow disclosure guidelines regarding ADSL under the following condition: Inbound call where the customer inquires **generally** about ADSL service.

For example the customer says:

- "Do you offer ADSL service?", or
- "Can you tell me if I can get ADSL in my area?"

Rep Response	If...	Action...
"I'll be glad to help you with that. Do you currently have an Internet Service Provider?"	Yes	"You can check with your Internet Service Provider about their ADSL product offerings. BellSouth also has services that will meet your needs and we will be glad to talk to you about our FastAccess ADSL Service offering. Would you like to know more about FastAccess ADSL Services from BellSouth Internet Service?"
	No	Offer FastAccess Internet Service.

The ISP referral notification does not apply to **outbound** sales calls nor **inbound** calls:

- Specifically requesting FastAccess ADSL information
- Related to specific FastAccess ADSL promotion offers
- Where customer mentions BellSouth Internet Services

Where the service representative or agent is proactively discussing the customer's business communications needs, and uncovers the fact that FastAccess ADSL is an appropriate recommendation to solve the customer's business solution.

BellSouth Telecommunications, Inc.
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General Attorney

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RECEIVED

December 22, 2000

DEC 22 2000

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
PSC 99-484

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Motion for Extension of Time to Respond to the Commission's Request for Information on a Retail Offering.

Sincerely,


Dorothy J. Chambers

Enclosures

cc: Parties of Record

240699

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

DEC 22 2000

PUBLIC SERVICE
COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
Complainant)	
v.	)	CASE NO. 99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Defendant)	

BELLSOUTH TELECOMMUNICATIONS, INC.
MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc., ("BellSouth"), by counsel, respectfully requests reconsideration and clarification of the Commission's Order issued November 30, 2000. Although the Commission's Order correctly determined on the factual record before it that BellSouth has complied with all accounting and other safeguards and was appropriately handling customer calls regarding ADSL services, the Commission's findings and order create a potential conflict with services tariffed at the federal level and regulated exclusively by the FCC. As discussed herein, BellSouth requests the Commission reconsider its order, modify the requirement that BellSouth file intrastate wholesale DSL tariffs based upon the resolution proposed herein to resolve the issue and the jurisdictional conflict inherent in the November 30, 2000, Order.

PROCEDURAL BACKGROUND

IgLou Internet Services, Inc. ("IgLou") filed a formal complaint on November 12, 1999, against BellSouth alleging a wide variety of anti-competitive, unlawful, and discriminatory conduct as well as alleged unlawful subsidization of exempted services with non-exempt revenue. The Commission developed an extensive record in this case. Following an informal conference on February 11, 2000, the parties exchanged data and responded to data requests. BellSouth provided significant supporting documentation on the factual issues, for example, producing over 1,500 pages of materials in response to IgLou's data requests. This Commission then held a formal hearing on May 26, 2000, which included both direct and rebuttal testimony by both parties. Pursuant to the Commission's Order following the hearing, both parties filed briefs in this case.

On November 30, 2000, this Commission issued a 13-page order which discussed IgLou's allegations, BellSouth's response, and also the allegations of an intervenor, Richard Breen. The Commission then analyzed the evidence of record, reaching certain factual findings and issued the Order that is the subject of this Motion for Reconsideration and Clarification.

ARGUMENT

This Commission's November 30, 2000, Order found a problem with the practical result of BellSouth's wholesale ADSL tariff

filed at the FCC.¹ The Commission stated that the effect of the wholesale tariff of BellSouth was to unreasonably discriminate against Kentucky independent Internet Service Providers (ISPs). The Order also stated that in regard to the provision of ADSL service in Kentucky, BellSouth has provided preferential and discriminatory service to itself to the detriment of other customers, specifically the small ISPs. See Order at 11. The November 30, 2000, Order, then ordered BellSouth to modify its regional wholesale discount levels to Kentucky-specific levels and to file these modifications in an intrastate wholesale tariff.

BellSouth seeks reconsideration of these aspects of the Commission's Order because (1) if BellSouth were to file an intrastate wholesale ADSL tariff, as the Commission seeks, it would not lead to the result the Commission intends because it could not be used by ISPs to provide Internet connectivity (which is an interstate service); (2) the Commission does not have the authority to require BellSouth to file a revised interstate tariff with the FCC; (3) even if the Commission had such authority, an interstate tariff with Kentucky-specific discounts would be an impermissible discrimination from an FCC perspective;

¹ As noted, in its November 30, 2000, Order, this Commission correctly recognized that BellSouth's operations comply with the specified accounting safeguards and Cost Allocation Manuals regarding regulated and non-regulated accounts; that IgLou's allegations regarding alleged violations of accounting safeguards were not supported; and that with its current scripts, BellSouth was properly handling inquiries from customers on ADSL related calls. November 30, 2000, Order at 11 and 12.

and (4) these aspects of the order are not in accord with the record before the Commission. Moreover, BellSouth believes that despite the arguments by IgLou of its difficulty in competing with larger ISPs, it has failed to establish that its difficulties are the result of discriminatory or unfair treatment by BellSouth.

I. BELLSOUTH PROPOSES A RESOLUTION TO MEET THIS COMMISSION'S STATED CONCERNS AND TO AVOID A JURISDICTIONAL CONFRONTATION.

Despite BellSouth's disagreement with the Commission's conclusions regarding the impact of BellSouth's wholesale ADSL tariff, BellSouth recognizes and wholeheartedly supports this Commission's position with respect to the importance of broadband infrastructure. In an effort to comply with the Commission's intent to advance the public interest by encouraging independent ISPs to participate in the DSL market, BellSouth proposes to file at the FCC a revised tariff that provides DSL at the rates shown in Attachment 1.

The result of this proposed FCC filing would be to significantly collapse the wholesale tiers in the current BellSouth FCC ADSL wholesale tariff. The proposed FCC filing establishes volume prices ranging from \$32.00 at the lowest volume commitment level to \$29.00 at the highest volume commitment level. These changes would result in pricing for the smallest ISPs that is lower than pricing that could conceivably result from the Commission's November 30, 2000, Order. Moreover,

by making the pricing changes in the FCC tariff, this pricing would be applied across the entire BellSouth region. The proposed filing also recognizes the demand for volume pricing from national and regional ISPs such as EarthLink, Telocity and MindSpring. As discussed infra, the pending merger of America OnLine and Time Warner with the open access conditions imposed by the FTC creates more options for national and regional ISPs and exacerbates the demand for volume pricing by the large ISPs.

This resolution, in lieu of filing state tariffs, will moot any jurisdictional issues arising from the Commission's November 30, 2000, Order. BellSouth assures the Commission, that if this resolution is acceptable, it will move expeditiously to file the tariff revisions at the FCC. BellSouth respectfully suggests sufficient time then be allowed for IgLou and other ISPs to utilize these revised interstate tariffs.

BellSouth believes the resolution proposed herein fairly responds to the concerns raised by IgLou and noted by this Commission. BellSouth believes this proposed resolution should benefit all concerned.

II. BELLSOUTH'S WHOLESALE ADSL TARIFF IS SUBJECT TO FCC JURISDICTION.

BellSouth has proposed the resolution suggested above because of the potential jurisdictional conflict if the matter is not resolved in some such manner, and if this Commission does not otherwise reconsider its decision. In this Commission's November 30, 2000, Order, the Commission recognized that pursuant to an

FCC tariff, BellSouth's offering of ADSL service to ISPs is through the regulated wholesale tariff offering BellSouth has filed at the FCC. November 30, 2000, Order at 6-7. The Commission also recognized that the FCC has determined that ADSL, a broadband technology used to transfer high bandwidth digital signals over existing copper pairs, is an interstate access service subject to the FCC's jurisdiction.² This Commission also noted that while the FCC has stated that dial-up connections and intrastate local area networks ("LAN") connections are matters for state jurisdictions, the connection to the Internet is an FCC interstate matter.³

Of course, this Commission's conclusions are correct that ADSL is an interstate service. Further, there is ample support for the fact that the FCC has assumed jurisdiction of these services. The FCC has determined that an ADSL service offering that permits Internet Service Providers to provide their end-user customers with high-speed access to the Internet⁴ is an interstate service and is properly tariffed at the federal

² The Commission's Order cited GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC transmittal number 1148, CC Docket No. 98-79, Released October 30, 1998, at 6, Note 3.

³ See KY PSC Order of November 30, 2000, N 4, at 6, citing Second Report and Order (CC Docket No. 98-147, November 2, 1999).

⁴ The Internet has been defined as "an international network of interconnected computers that enables millions of people to communicate with one another in 'cyberspace' and to access vast amounts of information from around the world". Reno v. ACLU, 521 U.S. 844 (1997).

level.⁵ In the GTE case, the FCC specifically rejected an argument advanced by NorthPoint, much like the argument IgLou has made here before this Commission, that "the possibility of a price squeeze warrants the [Federal Communications] Commission's transfer to the states of its ratemaking authority with respect to interstate DSL services such as the one at issue here".⁶

In the present case, IgLou is making the same argument, that is, that because of a perceived "pricing squeeze" this Commission should take jurisdiction of rates with respect to interstate ADSL services. Not only has the FCC rejected this argument as to GTE's tariff, but in a November 30, 1998, decision, the FCC also specifically concluded that BellSouth's offerings, like the service addressed in the GTE DSL order that permits ISPs to provide their end-user customers with dedicated high-speed access to the Internet, **are identical** to those designated in the GTE Transmittal No. 1148. Thus, for the same reasons set out in the GTE ADSL order, the FCC concluded **BellSouth's offerings are**

⁵ GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, released October 30, 1998. See also, In The Matter of Implementation of the Local Competition Provisions in the Telecomm. Act of 1996 Inter-Carrier Compensation for IS-Bound Traffic, 14 F.C.C.R. 3689 (1999), vacated and remanded sub nom. Bell Atl. Tel. Co. v. F.C.C., 206 F.3d 1 (D.C. Cir. 2000) (ISP Ruling). (Vacating and remanding to the FCC to provide an explanation for its use of the end-to-end analysis as controlling for reciprocal compensation purposes; while Court recognized the FCC historically has been justified in relying on end-to-end analysis in determining whether a particular communication is jurisdictionally interstate, 206 F.3d at 1, and also recognized soundness of the end-to-end analysis for jurisdictional purposes, Court stated FCC had not explained why the same analysis should be used for the purposes of reciprocal compensation.)

⁶ Id. at 1.

interstate services properly tariffed at the federal level.⁷ In its November 30, 1998, decision, the FCC again rejected the argument that the possibility of a "price squeeze" warranted the FCC's transfer to the states of the FCC's ratemaking authority with respect to interstate DSL services, for the same reasons stated in the GTE DSL order.

The FCC has noted that the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, (1996 Act or Act) recognizes the inseparability, for purposes of jurisdictional analysis, of the information service and the underlying telecommunications. Thus, Section 3(20) of the Act defines "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications". In *The Matter of Implementation of the Local Competition Provisions in the Telecomm. Act of 1996 Inter-Carrier Compensation for IS-Bound Traffic*, 14 F.C.C.R. 3689 (1999), vacated and remanded sub nom. *Bell Atl. Tel. Co. v. F.C.C.*, 206 F.3d 1 (D.C. Cir. 2000) (ISP Ruling). See, 47 U.S.C. § 153(20). See also, 47 C.F.R. § 64.702(a) (enhanced services are provided "over common carrier transmission facilities used in interstate communications"). Thus, in analyzing ISP traffic, the FCC has determined that ISP traffic is a continuous transmission from the end-user to a

⁷ Bell Atlantic Tel. Cos., FCC 98-317, CC Docket No. 98-168, 161, 167, and 103, released November 30, 1998.

distant Internet site for jurisdictional purposes. ISP Ruling at 3699. Of course, the United States Supreme Court recently reaffirmed the plenary authority of the FCC. AT&T Corp. v. Iowa Util. Bd., 525 U.S. 366 (1999).

Moreover, the FCC's determination that Internet calls are within the interstate jurisdiction is consistent with the way the FCC traditionally has determined the jurisdictional nature of communications. See, Petition for Emergency Relief and Declaratory Ruling filed by BellSouth Corporation, 7 F.C.C. Rcd. 1619 (1992) (BellSouth MemoryCall) (FCC determined the entire transaction constituted one interstate call because "there is a continuous path of communications across state lines between the caller and the voice mail service"). Id. at 1620. See also, Teleconnect Co. v. Bell Tel. Co. of Penn., E-88-83, 10 F.C.C. Rcd. 1626 (1995) (Teleconnect), aff'd. sub. nom. Southwestern Bell Tel. Co. v. F.C.C., 116 F.3d 593 (D.C. Cir. 1997) (Nationwide 800 Travel Service using AT&T's MegaComm 800 Service is a single end-to-end call even though the call is initiated by an end-user from a common line open end, routed through a LEC to an AT&T MegaComm line and then transferred from AT&T to Teleconnect by another LEC at which point Teleconnect routes the call through the LEC to the end-user being called. Id. at 1627-28); In the Matter of Southwestern Bell Tel. Co., CC Docket No. 88-180, Order Designating Issues for Investigation, 3 F.C.C. Rcd. 2339, 2341 (1988) (Southwestern Bell Tel. Co.) (F.C.C. rejected

argument that a credit card call should be treated as two calls for jurisdictional purposes and concluded "switching at the credit card switch is an intermediate step in a single end-to-end communication".)

This Commission has previously and correctly determined that BellSouth's enhanced information services, including dial-up Internet access and BellSouth® FastAccess® ADSL based Internet access service provided to its retail customers fall within the FCC's definition of enhanced or information services. See, Kentucky Public Service Commission Order in Case No. 96-441 (November 14, 1996).

Thus, this Commission's determination in its November 30, 2000, Order that ADSL is an interstate access service subject to the FCC's jurisdiction and that connections to the Internet are an FCC interstate matter are well supported, in accord with long established authorities, and also clearly correct. Kentucky Public Service Commission November 30, 2000, Order at 6.

Because the Commission clearly understands the interstate nature of BellSouth's wholesale ADSL service, BellSouth respectfully requests that this Commission reconsider and clarify the portion of its order that appears to affect BellSouth's

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tariffs filed at the FCC. As discussed above, the FCC's decisions in this arena clearly establish that this service is interstate in nature for jurisdictional purposes. As such, the FCC has preempted state commission action in this area. This Commission's order, as presently written, creates an unavoidable conflict with the regulatory authority of the FCC. For these reasons, this Commission should reconsider and clarify its order. Moreover, adopting the resolution BellSouth has proposed herein will resolve this matter without a jurisdictional conflict.

III. THE FILED RATE DOCTRINE PROHIBITS BELLSOUTH FROM MAKING KENTUCKY-SPECIFIC CHANGES THAT IMPACT TARIFF FILED AT THE FCC.

BellSouth seeks reconsideration and clarification because BellSouth has difficulty determining precisely what the Commission intended in ordering the filing of a Kentucky-specific DSL tariff. If the intent is that BellSouth file such a tariff with respect to intrastate services to be used over intrastate communications facilities, such a state filed tariff could not be used by ISPs to provide ADSL based Internet connectivity to the ISPs customers. Thus, such a state tariff filing would not appear to address the concerns identified by this Commission. However, if the Commission were ordering the filing of a Kentucky-specific tariff that differs from the tariff on file at the federal level, such a dual tariff filing would create a potential jurisdictional conflict and implicate the Filed Rate Doctrine.

Because, as this Commission has correctly recognized, BellSouth's wholesale ADSL tariff is an interstate tariff, BellSouth is required to file it with the FCC. See 47 U.S.C. Section 203(a) (West 1991). Further, under the Filed Rate Doctrine, BellSouth is prohibited from charging anything other than that specified in the federal tariff. Id., Section 203(c). See also, Carter v. AT&T, 365 F.2d 486, 496, (5th Cir. 1966), cert. denied 385 U.S. 1008 (1967); Marcus v. AT&T, 138 F.3d 46, 56 (2d Cir. 1998). The Filed Rate Doctrine prohibits a customer, such as a Kentucky ISP, from obtaining additional or different rates not expressly covered by the federal tariff. Maislin Indus. U.S. v. Primary Steel, 497 U.S. 116 (1990); Transportation Data Interchange, Inc. v. AT&T Corp., 920 F. Supp. 86 (D.Md. 1996); Cooperative Communications, Inc. v. AT&T Corp., 867 F. Supp. 1511 (D.Utah 1994).

This Commission's order that BellSouth modify its regional wholesale discount levels as reflected in the FCC tariff in order to file a Kentucky-specific ADSL tariff for a wholesale service appears to conflict with the interstate nature of the wholesale ADSL tariff on file at the FCC. As such, the effect of this Commission's order flies directly in the face of the Filed Rate Doctrine. In essence, to file such a state-specific tariff would allow Kentucky ISPs to obtain more favorable, preferential, and discriminatory rates. BellSouth respectfully requests this Commission to reconsider and clarify its Order so as to avoid

creating a state-specific tariff that conflicts with BellSouth's tariff on file with the FCC and that would violate the well settled Filed Rate Doctrine. Again, BellSouth would note that its proposal to amend its interstate tariffs resolves any question concerning the "Filed Rate" Doctrine and any questions about the efficacy of an intrastate DSL tariff.

IV. THE RECORD DOES NOT SUPPORT A FINDING OF DISCRIMINATION.

BellSouth respectfully suggests the record fails to support a finding that the effect of BellSouth's wholesale ADSL tariff at the FCC is discriminatory. There is insufficient evidence of record to support any such finding even if it were within this Commission's jurisdiction. In addition, the very fact that BellSouth has provided its DSL service in accordance with an approved FCC tariff mitigates any allegation of discrimination.

The record makes clear that ADSL is a complex service for the ordinary end user, requiring coordination between the end-user's Internet provider and the ADSL provider. Tr. at 250-251. Not only the record in this case, but multiple news articles, establish the numerous problems experienced by many providers in bringing high-speed connectivity to market. BellSouth's model for a wholesale tariff was designed to try to minimize such problems for end-users and to provide for coordination of ADSL service with Internet applications by the Internet Service Provider who has a higher level of expertise than typical end-user customers.

Moreover, the high-speed Internet access market continues to rapidly develop and change. Recent Federal Trade Commission (FTC) conditional approval of the merger of America OnLine (AOL) and Time Warner is representative of such developments. The open access condition imposed by the FTC creates additional competitive alternatives to BellSouth's ADSL service for ISPs. In the consumer market, cable modem service, such as AT&T's @HomeTM and Time-Warner's Road RunnerTM services, are the most popular alternative to DSL. Cox Direct at 12. Cable modem customers number around two million nationwide, while DSL customers are less than one million. In the Louisville area, InterMedia provides cable modem service to over 3,000 subscribers through their At Home service. Taylor Direct at 7-8. In addition to these technologies, direct satellite broadcasts and wireless services are providing increasing options to customers seeking high-speed connections to the Internet.

All ISPs entering the high-speed Internet connectivity market must compete with these various technologies. In addition to BellSouth's wholesale ADSL tariff, ISPs have many other alternatives to provide high-speed Internet connections for their customers. These options include access through Data CLECs such as Covad, NorthPoint, and Rhythms, who are deploying Digital Subscriber Line Access Multiplexers (DSLAMS) in Kentucky to make

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Road RunnerTM is a registered trademark of Warner Brothers

DSL available on a wholesale basis. Taylor Direct at 8, Lines 9-11. Furthermore, IgLou, like other ISPs, can take advantage of various aggregator contracts such as that offered through the Florida Internet Service Providers Association "FISPA". Several Kentucky based ISPs have taken advantage of this opportunity and have been offering their customers ADSL based Internet services since the first half of this year.

In addition, in accordance with the FCC mandate for "line sharing," BellSouth and other incumbent local exchange companies must provide Data CLECs with access to the high frequency portion of the local loop where the local exchange company is providing voice service to a customer. The FCC has recognized that line sharing should result in lower costs, faster deployment of DSL services, and a wider range of options. In the matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd. 20912, 20916 (1999). As the FCC news release, dated November 18, 1999, stated: "This Order is intended to ensure that as many companies as possible will be able to deploy new technologies on a faster, more cost-effective basis and should accelerate the ability of residential and small business customers to access competitive broadband services from their

choice of providers." BellSouth promptly reached a regional agreement with Covad to do just that. Cox Direct 12-13.

BellSouth recognizes the difficulties ISPs, such as IgLou, have identified in competing in the DSL market. While BellSouth believes that the problems of smaller ISPs competing are the result of market forces in a rapidly developing landscape and not the result of any unfair or illegal conduct, nevertheless, BellSouth has proposed a resolution that addresses the issues the Commission has identified. The proposed resolution also will avoid the expense, delay, and rancor which could be associated with a jurisdictional dispute. For these reasons, BellSouth urges the Commission to reconsider its decision based upon the resolution BellSouth has proposed.

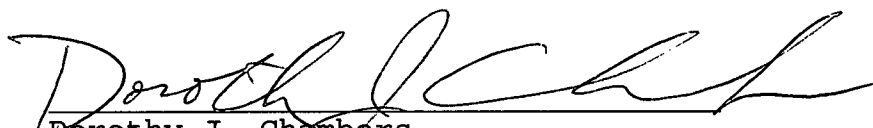
CONCLUSION

BellSouth believes this Commission correctly determined it does not regulate the Internet. This Commission also correctly chose not to order revisions to BellSouth's FCC wholesale ADSL tariff since to do so would intrude upon the interstate nature of this service and the tariffs filed at the federal level. However, this Commission's Order, as it now stands, requiring BellSouth to file a Kentucky-specific ADSL tariff in Kentucky that differs from the wholesale tariff on file at the FCC would create a preferential and discriminatory service that impermissibly favors Kentucky ISP customers, such as IgLou. Any

change to the pricing structure of the FCC tariff can and must be made by a filing at the FCC.

For the foregoing reasons, BellSouth respectfully urges this Commission to grant reconsideration and modify its previous order based upon the proposed resolution suggested herein.

Respectfully submitted,



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240013

KY PSC Order 99-484 Alternative

Current FCC Tariff Volume Commitment Range	Current FCC Tariff Price Per Virtual Channel	KY PSC IgLou Order Proposed Volume Commitment Range	BellSouth Proposed FCC Tariff Price Per Virtual Channel
51 to 5,000	\$37.00	51* to 250	
5,001 to 7,500	\$34.00	251 to 375	
7,501 to 10,000	\$32.00	376 to 500	\$32.00
10,001 to 40,000	\$30.00	501 to 2,000	\$30.00
40,000 +	\$29.00	2,000 +	\$29.00

*51 minimum entry level per BellSouth FCC Tariff

Pricing shown above relates to BellSouth ADSL Service (256 Kbps x 1.5 Mbps ADSL) as indicated in BellSouth's FCC No. 1 Tariff Section 7.5.21 A 1

accurate response to the questions posed by the Commission. The issues that need to be addressed include: billing, order flow, establishment of appropriate help desk support, cost studies, and development of pricing data. Some of the problems that must be considered include the following:

- All billing for DSL services currently is directed to ISPs. A retail service would require establishing a new Universal Service Order Code (USOC) and associated process changes that impact billing and provisioning. Changes to billing systems typically take a long lead time.

- With respect to order flow, a new service order entry system would need to be developed. Existing systems are designed for wholesale services only.

- The Information Technology organization must participate in this process in order to obtain an estimate on the cost of changing systems as well as the timeframe when this type of work could be done.

- Designing a mix of wholesale and retail services is extremely complex as the Company would need to work out new order flows and interfaces as well as provide necessary training to staff. Again, significant Information Technology resources, which are already committed through the second quarter of 2001, are implicated.

- End to End Testing of a retail service to ensure the accuracy of ordering, billing and provisioning of the service would have to be completed.

- With respect to a help desk, BellSouth is not currently staffed to support a retail help desk. ISPs presently perform Tier 1 help desk functions. BellSouth needs to estimate the volume of calls expected and what additional staffing and training resources would be necessary to handle anticipated calls. Where an end-user must call two providers, for example, BellSouth and the end-user customer's separate ISP, help desk support for the retail service would be fragmented. At present, the retail customer calls only his or her ISP.

- In addition, cost studies would need to be updated and pricing data would need to be obtained.

BellSouth respectfully seeks an extension to February 15, 2001, to respond to the Commission's request to detail the requirements of a retail DSL tariff and related questions. This request is made so that BellSouth can reasonably investigate the questions posed by the Commission and fully and accurately respond to the Commission.

Respectfully submitted,



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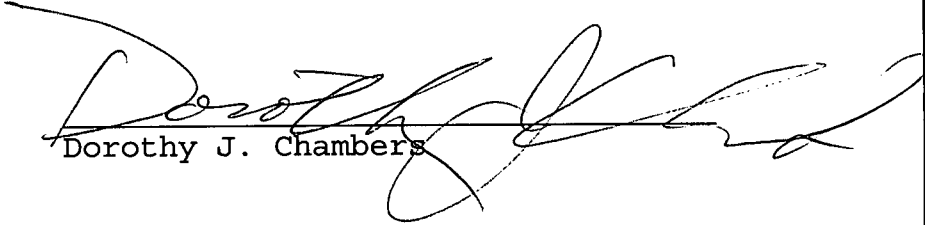
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 22nd day of December 2000.


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CERTIFICATE OF SERVICE

RE: Case No. 1999-484
BELLSOUTH TELECOMMUNICATIONS, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on November 30, 2000.

See attached parties of record.

Stephanie J. Bell

Secretary of the Commission

SB/sa
Enclosure

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
VS.	)	CASE NO.
	)	99-484
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	

O R D E R

On November 12, 1999, IgLou Internet Services, Inc. ("IgLou"), an enhanced service provider, filed a formal complaint against BellSouth Telecommunications, Inc. ("BellSouth"). IgLou is a Kentucky-based Internet Service Provider ("ISP") that provides Internet access to thousands of Kentucky residents. BellSouth was subsequently ordered to satisfy the matters complained of, or file a written answer to, IgLou's complaint. A public hearing was held May 26, 2000. Both parties presented evidence and had an opportunity for cross-examination of witnesses. Post-hearing briefs were also filed.

The issues raised by the complaint transcend the private dispute between the parties to this case. They are major ones for this Commonwealth, implicating concerns involving the growth of competition in our telecommunications market, as well as ease of access to information technology that is crucial in determining Kentucky's future. We have jurisdiction over these matters pursuant to KRS 278.260 (empowering the Commission to address complaints regarding utility service) and KRS 278.280

(empowering the Commission to prescribe proper utility practices to replace those found unreasonable).

IgLou's Allegations

IgLou asserts that BellSouth currently maintains dominant control of the telecommunications market that it serves in Kentucky and it thereby controls the dominant technology -- Asynchronous Digital Subscriber Line ("ADSL") -- that allows customers the ability to connect to the Internet at high speeds and with high capacity. IgLou argues that BellSouth's occupation of the position between an ISP and its end-users enables it to exploit this position to benefit BellSouth's own unregulated ISP operations, BellSouth.net, to the detriment of its competitors and the competitive market in general.

IgLou also argues that BellSouth provides better service and better rates to its own Internet operations than it does to competitors such as IgLou. IgLou hinges its complaint on KRS 278.170(1):

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

IgLou asserts that BellSouth's marketing strategy and business practices in connection with its ADSL offerings constitute (1) an unreasonable preference in favor of its own ISP offering; (2) a cross-subsidy between regulated and nonregulated services in violation of KRS 278.514; and (3) an unreasonable leveraging of its monopoly power. IgLou asks the Commission to require BellSouth to offer all Kentucky ISPs the same

benefits and terms it offers to itself in regard to the deployment of ADSL technology. IgLou's arguments are supported on the record by representatives of other ISPs.

IgLou asserts that BellSouth provided DSL service to itself prior to having made it available to any of its competitors. Thus, according to IgLou, BellSouth beat its competitors to the market by providing a service to itself while intentionally withholding the service from its competitors.

IgLou also asserts that BellSouth has structured its wholesale DSL tariff to ensure that only the largest market providers, including, of course, BellSouth's own Internet service operations, can obtain the best discount available. The tariff provides for major discounts based on a large volume of service spread over the nine-state region. According to IgLou, given this tariff price differential, a Kentucky-based ISP simply cannot compete with BellSouth in providing Internet service.

IgLou explains that the Federal Communications Commission ("FCC") tariff under which DSL is offered prescribes a penalty when an end-user fails to complete his contract term. If IgLou's customer fails to complete a contract term under the wholesale FCC tariff, then IgLou must pay BellSouth the commitment penalty. BellSouth's ISP operations must also pay the penalty when one of its customers fails to complete a contract; however, that penalty is, of course, paid to BellSouth itself.

IgLou alleges many instances in which BellSouth has actively provided better service to itself than to its competitors, including BellSouth's upgrading of its network to serve one of its own customers before serving one of IgLou's customers. Moreover, IgLou charges that BellSouth unfairly competes with other ISPs by actively marketing customers away from competitors when those customers contact BellSouth regarding

regulated telephone service for which BellSouth retains a near-monopoly. For example, IgLou asserts that, when customers contact BellSouth regarding DSL service or any other service provided in conjunction with Internet service, the customer is immediately forwarded to BellSouth's ISP operations rather than simply being informed about the issue at hand or, in the alternative, being informed that there are competing ISPs.

IgLou also asserts that BellSouth improperly mixes its regulated and unregulated services to the detriment of the competitive market and that its regulated services cross-subsidize its unregulated services, in violation of KRS 278.514. IgLou asks the Commission to require BellSouth to change its discriminatory and anti-competitive practices and to assess damages against BellSouth.

BellSouth's Response

In response, BellSouth asserts that it has followed all cost allocation rules and that its regulated services do not subsidize its Internet service. It acknowledges its practice of routing of DSL inquiries directly to its own ISP operations; however, it has agreed to alter this practice. BellSouth has provided an acceptable script which its employees now follow when queried concerning DSL service. Thus, a portion of IgLou's joint marketing concerns have been addressed.

The remainder of BellSouth's response to IgLou's allegations largely consists, however, of assertions that IgLou's allegations are hearsay and/or cannot be taken seriously. BellSouth also contends that, because the claims of discrimination are based upon the terms and conditions of its FCC tariff, this Commission has no authority to address those claims. BellSouth offers to consider Commission proposals for

alterations to its FCC tariff when it next revises the tariff.¹ Finally, BellSouth contends that IgLou already has reasonable options, including becoming a telecommunications carrier or joining an ISP association, by which it can lower the price it must pay for high speed access for its customers.

Intervenor's Allegations

On August 25, 2000, Richard Breen moved to intervene in this case, alleging claims that underscore those of IgLou: he claims that BellSouth has failed to furnish him adequate, efficient and reasonable service. Breen asserts that he attempted to receive high-speed Internet access service from both BlueStar Communications Inc. and Adelphia Telecommunications Inc., and that these utilities could not provide his service because BellSouth would not provide them the necessary network upgrades. He further alleges that BellSouth employees told him that the facilities were ready and in place, but that delay after delay occurred. He has been unable to receive service, and asserts that on one occasion when he contacted BellSouth, he was simply told that DSL service is not available for his office phone number. Mr. Breen's office is located on Breckinridge Lane in Louisville. Mr. Breen's complaint will be addressed in a separate proceeding, Case No. 2000-409.²

¹ BellSouth post-hearing brief at 23.

² Case No. 2000-409, Richard Breen v. BellSouth Telecommunications, Inc.

DSL Service and the Interstate Tariff

DSL is a broadband technology used to transfer high bandwidth digital signals over existing copper pairs. One of many uses for the service is access to the Internet. An end-user's twisted pair connects into BellSouth's network, terminating at a DSL-equipped wire center. The traffic is then routed to BellSouth's Asynchronous Transfer Mode Service using frame relay interface capabilities. The subscriber's use of the local exchange plant for circuit switched intrastate and interstate voice and data calls is unaffected by the DSL service.

The FCC has determined that DSL is an interstate access service subject to its jurisdiction.³ In reaching this decision, the FCC distinguished circuit-switched dial-up Internet connections from dedicated Internet connections. The FCC has stated that dial-up connections and local area network ("LAN") connections are matters for state jurisdiction, but that the connection to the Internet is an FCC interstate matter.⁴

The FCC also asserts that a vital ISP market benefits the public interest and that its policies are meant to ensure that ISPs and their customers will obtain DSL at low prices:

We believe that our conclusions will encourage incumbents to offer advanced services to ISPs at the lowest possible price. In turn, the ISP Providers, as unregulated information service providers, will be able to package the DSL Service with their Internet service to offer affordable, high-speed access to the Internet to residential and business consumers. As a result, consumers will ultimately benefit

³ GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, released October 30, 1998.

⁴ Congress's goals with respect to advanced services have been implemented by the FCC. See Second Report and Order (CC Docket No. 98-147, November 2, 1999).

through lower prices and greater and more expeditious access to innovative, diverse broadband applications by multiple providers of advanced services. We note that our conclusions herein do not change the regulatory status of the ISP, which we have previously concluded to be an information service provider rather than a telecommunications carrier. We believe that maintaining the non-carrier status of ISPs, in this instance, benefits the public interest.⁵

The FCC Order also describes the two distinct ways incumbent local exchange carriers ("ILECs") market and provide DSL service: (1) directly to residential and business end-users (retail); and (2) to ISPs who package DSL as part of a high-speed Internet service (wholesale).

Retail

ILECs file tariffs with the FCC offering single lines of DSL services to end-user customers. The advertising for these services makes clear the single line DSL offerings are designed for and offered to the ultimate end-user because the ILEC will be performing functions such as marketing and billing.

ILECs utilizing the retail business model for tariffing DSL must offer the service to competing local exchange carriers ("CLECs") at the resale discount. However, the FCC concluded that advanced services sold to ISPs are not subject to the discounted resale obligations contained in the 1996 Telecommunications Act.

Wholesale

ILECs also enter into arrangements directly with ISPs pursuant to which the ISPs purchase large volumes of DSL lines at various discounts based on the number of lines purchased and the duration of the plan. The entities obtaining the bulk DSL services

⁵ Id.

perform certain functions with respect to the DSL service supplied to them, including provisioning all customer premises equipment and wiring, providing customer service, and marketing, billing, ordering, and repair. DSL service sold under the volume and discount plan is not a finished end-user product and is not subject to resale obligations.

Discussion

The record demonstrates that BellSouth's unregulated FastAccess ADSL Internet Service is provided to end-users and not to ISPs. An end-user may not, however, order FastAccess in conjunction with any ISP other than BellSouth's own operations: BellSouth.net. ISPs must purchase BellSouth regulated wholesale ADSL service and use it to create their own ADSL Internet service offerings.⁶

A large part of BellSouth's defense in this case has been based on its contention that IgLou has reasonable options that will enable it to obtain DSL at a lower price than it can now obtain regardless of whether BellSouth changes its practices. BellSouth contends, for example, that IgLou should join an association of ISPs to order DSL in the aggregate. But such action still may not enable Kentucky-based ISPs to qualify for the lowest price and the ISPs would be forced to pay a surcharge not required by BellSouth.⁷ BellSouth also suggests that IgLou should order DSL from a CLEC. But there is evidence in the record that resale DSL market is not generally available. Finally, BellSouth suggests that IgLou file for CLEC status, as such entities may purchase unbundled network elements ("UNEs") to avoid the voluminous volume-

⁶ For a description of BellSouth's Internet operations, see BellSouth's response to IgLou data requests, Item No. 1.10 and 1.19.

⁷ Transcript of Evidence ("T.E.") at 29, 163, and 273-274.

discount tariff requirements. Such action would, however, involve IgLou's assumption of a line of business that it has no desire to assume. Like the other options urged by BellSouth, this option would entail additional expense and administrative burdens that small ISPs can ill afford. In summary, the Commission finds that each option suggested by BellSouth entails unnecessary burdens upon small competitors and/or is unrealistic. Moreover, even if the options offered by BellSouth were reasonable, BellSouth's suggestion of these self-help remedies loses sight of IgLou's primary charge: that BellSouth is burdening, and ultimately may be destroying, many of its competitors by means of providing utility service in a discriminatory manner.

In short, it appears that the wholesale tariff of BellSouth unreasonably discriminates against most Kentucky independent ISPs and will not advance DSL service in Kentucky. IgLou is clearly correct in its contention that smaller ISPs simply cannot purchase the services its customers request in the volume necessary to receive the lowest tier price. BellSouth's FCC tariff is extremely complicated and contains severe pricing disparities between rates for which BellSouth qualifies and rates for which its average competitor could qualify. In addition, the tariff requires a term commitment with associated penalties for early termination. Under the current tariff, ISPs must market DSL service to a large regional customer base to secure, and guarantee under penalty, a minimum of 40,000 lines to take advantage of the lowest tier price. This tariff makes it extremely difficult, if not impossible, for the small independent ISP wishing to take advantage of BellSouth's currently proposed broadband rollout to compete against a regional ISP. Given this Commission's frequently reiterated position in favor of telecommunications competition, together with its support for the proposed

broadband rollout,⁸ we can only find the practical result of BellSouth's DSL tariff unacceptable.

We must also note that Verizon South, Inc. ("Verizon"), formerly known as GTE South Incorporated, has chosen to sell DSL very differently and that, as a result, independent ISPs have a more realistic opportunity to compete in areas served by Verizon.⁹ Cincinnati Bell, Inc., meanwhile, sells DSL at retail directly to end-users who want it.¹⁰ No 40,000 line commitment is necessary to receive a \$29.95 residential rate for 768 kbps/384 kbps "TurboSpeed" service.¹¹

This Commission has previously stated that it does not purport to regulate the Internet *per se*. However, the issue here has to do with intrastate utility service over intrastate communications facilities. See 47 U.S.C. 152(b). Although DSL is used to connect to the Internet, other uses for this service exist and will evolve as a broadband infrastructure is deployed throughout the Commonwealth. DSL is a fundamental piece of a broadband infrastructure that will support future advanced services. Open, non-discriminatory access to this infrastructure is imperative for the development of

⁸ See Case No. 99-434, The Review of BellSouth Telecommunications, Inc.'s Price Regulation Plan.

⁹ See GTE Telephone Operating Companies Tariff, FCC No. 1, Section 16.6, DSL Solutions; Testimony of Susan Ashdown, T.E at 60 (asserting that Kentucky ISPs are able to "make a limited go of it in GTE territory" because "GTE does not have these absurd tariffs where they have to commit to a 40,000 line volume to – in order to obtain a reasonable discount").

¹⁰ See CBT General Exchange Tariff, PSCK No. 3, Section 55.

¹¹ Id. at 7th Revised Page 4.

competition and evolution of advanced services. Accordingly, we do not concede that the FCC has preempted any state action here. Nor do we believe that the practical result of BellSouth's FCC tariff reflects the FCC's stated intention of endorsing ISP competition. Finally, we do not believe that such business practices comport with the goals of Congress as stated in the Joint Conference Report associated with the 1996 Telecommunications Act, in which Congress indicated that it would require Bell Operating Companies to provide equal access and nondiscriminatory service to interexchange carriers and information service providers.¹²

The development of a broadband infrastructure and the resulting high-speed access market is critically important to Kentucky's economic future. Pursuant to KRS Chapter 278, this agency has been entrusted with oversight of this market, and we have specific authority to address complaints in regard to it and to ensure that unreasonable and discriminatory practices do not impede its development.

We therefore reach the following conclusions: in regard to IgLou's allegations regarding violation of accounting safeguards, we find for BellSouth. BellSouth's operations appear to comply with specified safeguards and with its cost allocation manual regarding regulated and nonregulated accounts. Second, we deny IgLou's demand for damages. This Commission has no jurisdiction to provide such a remedy.

Next, we find that, in regard to provision of DSL service in Kentucky, BellSouth has provided preferential and discriminatory service to itself to the detriment of other customers, specifically the small ISPs, in violation of KRS 278.170. Therefore, pursuant to KRS 278.280, we order BellSouth to alter its practices as follows.

¹² Joint Conference Report at 122.

BellSouth must continue to require its employees to follow the new script when queried regarding DSL service. In addition, it must advise inquirers of the availability of other ISPs on all DSL-related calls. Even more crucially, BellSouth must change the terms and conditions pursuant to which it effects DSL in Kentucky.

Specifically, BellSouth must modify its regional wholesale discount levels to Kentucky-specific levels and eliminate or greatly reduce the tariff penalties. These modifications shall be filed in an intrastate wholesale tariff so that this Commission can monitor the provision of this intrastate service. The current 40,000 threshold for the best price must be lowered so that within Kentucky all competitors have an opportunity to receive DSL for a comparable price. It is unreasonable, discriminatory, and destructive to the competitive market for BellSouth to provide itself DSL for \$29.00 when its in-state competitors cannot qualify for this price without assuming other costs and burdens that would result from aggregating or entering the business of providing telecommunications themselves.

Kentucky represents roughly 5 percent of BellSouth's nine-state region line count. To calculate a state-specific level BellSouth must multiply the number of lines required to receive the discount by 5 percent. Such calculations should produce reasonable Kentucky-specific aggregate discount levels that independent ISPs can meet.

Although we conclude that we need not require BellSouth to file a retail DSL tariff at this time, we will closely monitor the market to determine whether the wholesale tariff ordered herein adequately serves Kentucky's consumers while moving Kentucky

forward in this technological age. Moreover, BellSouth should file a written explanation detailing the requirements necessary for it to provide DSL pursuant to a retail tariff. Such explanation should also address the public interest issues involved in a retail tariff that would empower consumers to employ DSL as they please.

Having reviewed the record and having been otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. Within 30 days of the date of this Order, BellSouth shall file a Kentucky-specific DSL tariff as prescribed herein for wholesale service, together with associated cost support.

2. Within 30 days of the date of this Order, BellSouth shall file a plan for complying with all of the marketing directives contained herein, including the script BellSouth plans to use to advise customers of the availability of other ISPs.

3. Within 30 days of the date of this Order, BellSouth shall file a written explanation detailing the requirements of a retail DSL tariff and the related public interest issues as described herein.

4. Those portions of IgLou's complaint alleging violations of accounting safeguards and seeking monetary damages are hereby denied.

Done at Frankfort, Kentucky, this 30th day of November, 2000.

By the Commission

ATTEST:



Executive Director