ment of advanced telecommunications services.[45] Under this separate affiliate scheme, any affiliate providing DSL services will have to buy UNEs and collocate under the same terms that competing providers currently operate, thus forcing the ILECs to participate on a level playing field. In such a situation, the DSL solutions offered by the affiliates will be more likely to derive from the same wholesale input costs as competing providers.[46]

ACI and FirstWorld do caution that the affiliate option will not reduce and or eliminate the opportunity for imposing price squeezes. An ILEC, even in an affiliate situation, would still have the opportunity to blur the lines between ILEC and affiliate on UNE and collocation costs, thus offering their affiliates prices that are lower than those offered to competitors. Since the effectiveness of the affiliate scheme as a check against price squeezes depends on affiliate safeguard that the Commission has yet to determine, any action by the Commission to defer its authority over Respondents' DSL tariffs to the states, as such action would be premature.

III. CLASSIFYING RESPONDENTS' SERVICES AS INTERSTATE NEITHER INVOKES MUTUAL COMPENSATION CONCERNS NOR DIMINISHES ILECs' OBLIGATION TO PROVIDE UNEs, INCLUDING DSL-CAPABLE LOOPS, UNDER THE ACT

Some parties have erroneously argued that classifying and tariffing Respondents' services as interstate would allow ILECs to avoid their obligations to pay mutual or reciprocal compensation[47] to CLECs for the origination and termination of "dial-up" calls from end users to ISPs.[48]

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[45] Advanced Services NPRM ¶83-88.

[46] Implementation of the Non-Accounting Safeguards of Sections 271 and 271 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Notice of Proposed Rulemaking, 11 FCC Rcd 18877 (1996). "If a BOC charges its competitors prices for inputs that are higher than the prices charges, or effectively charged, to the BOC's affiliate, then the BOC can create a 'price squeeze.' In that circumstance, the BOC affiliate could lower its retail price to reflect its unfair cost advantage, and competing providers would be forced either to match the price reduction and absorb profit margin reductions or main their retail prices at existing levels and accept reductions in their market shares. If the price squeeze was severe enough and continued long enough, the BOC affiliate's market share could become so large, and the competitors so weakened, that that affiliate could unilaterally raise and sustain a price above competitive levels by restricting its output."

[47] Section 251 of the 1996 Act requires that LECs "establish reciprocal compensation arrangements for the transport and termination of telecommunication services." 47 U.S.C. § 251(b)(5).

This is simply not the case. Rather, as noted above DSL technology can be used to provide both interstate and intrastate services, and in the ILECs' application is used to provision a dedicated special access service. Thus, a finding that Respondents' DSL services are jurisdictionally interstate will not prevent CLECs from collecting mutual compensation in the instances where DSL technology is used in conjunction with UNEs to provide intrastate services. More importantly, a Commission decision to classify these DSL services as interstate special access will obviously have no impact on mutual compensation for switched, dial-up Internet traffic delivered to ISPs over the PSTN, to which the "10% rule" is plainly inapplicable. Consequently, as GTE observes, there is no conflict between classifying DSL services as interstate and the many state commission decisions requiring ILECs to pay mutual compensation on Internet traffic delivered to ISP on a switched basis over local exchange services.[49]

Nor is there any conflict between the classification of these DSL services are jurisdictionally interstate and the ability of CLECs to use unbundled loops and other UNEs for the provision of competing DSL services. The Commission has made clear that UNEs can be used for the provision of either interstate or intrastate services, for instance in the provision of interstate switched access services. At this sensitive point in the development of DSL competition, any ambiguity on this point could provide the ILECs with increased incentives to delay and obstruct interconnection by CLECs, because DSL requires access to unbundled loops, collocation and other UNEs. Therefore, ACI and FirstWorld urge that the Commission expressly reaffirm the obligation of ILECs to provide UNEs, including DSL-capable loops, for the provision of interstate DSL services[50] The Commission has already explained that ILECs must unbundle DSL-

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[48] ALTS Petition on GTE's ADSL tariff at 9; c*spire communications Petition on GTE's ADSL tariff at 2.

[49] GTE Direct Case at 7.

[50] Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum and Order, CC Docket No. 98-147 (rel. Aug. 7, 1998).

compatible loops for use by CLECs in offering DSL services.[51] The final order in these investigations should reaffirm that this unbundling obligation exists regardless of the jurisdictional classification of the DSL services provided by the CLEC, including the use of DSL technology for offering interstate services.

[51] Advanced Services NPRM ¶ 53.

CONCLUSION

For all these reasons, the Commission should (i) classify the ILEC Respondents' DSL services as interstate special access; (ii) retain its tariffing authority over interstate DSL services, without deferring to state commissions; (iii) address ILEC DSL price squeezes by rejecting interstate DSL tariffs reflecting retail rates inconsistent with UNE inputs costs, allowing ILECs the choice of either lowering their UNE rates or eliminating the cross-subsidization of their retail DSL services; and (iv) expressly reaffirm the obligation of ILECs to provide UNEs, including DSL-capable loops, for the provision of interstate services.

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