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June 19, 2003

VIA ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWB-204
Washington, DC 20554

Re: Ex parte, WC Docket No. 02-33, Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities

On Wednesday, June 18, 2003, Robert Quinn and the undersigned, representing AT&T, met with Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps. The purpose of the meeting was to discuss (1) the continuing market power enjoyed by the Bell Companies in the broadband market; (2) the classification of DSL transport as a common carrier offering; and (3) the impact of the Commission's *Computer Inquiries* requirements on the Bell companies' ability to compete in the broadband market. The attached written ex parte letter, dated June 18, 2003, describing the topics covered in our discussion was provided to Ms. Rosenworcel.

Consistent with section 1.1206 of the Commission's rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,

ATTACHMENT

cc: J. Rosenworcel
W. Maher
J. Carlisle
M. Carey
B. Olson
D. Cooper
T. Natoli

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June 18, 2003

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex parte, Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services
CC Docket Nos. 02-33 and 01-337 and CS Docket No. 02-52

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits this *ex parte* presentation in the above entitled proceedings to respond to the May 23, 2003 submission by Qwest,[1] among others. As AT&T has demonstrated, the Bells retain market power over the provision of broadband services, and their broadband services, including DSL, are telecommunications services that must continue to be offered on a common carrier basis. Moreover, Qwest and the other Bells have not demonstrated that the ONA and CEI requirements of the Commission's *Computer Inquiry* rules adversely affect the Bells' ability to compete.

I. The Bells Continue to Enjoy Market Power.

A. Mass Market Services

By any measure, the Bells are still dominant in the mass market for both retail and wholesale broadband services. The Bells' DSL service is often the sole broadband option in some residential areas. For example, in California, "SBC, and other incumbent LECs, continue to be the sole providers of broadband transmission service to nearly half of all residential customers in the state who have access to broadband service."[2] Satellite and wireless do not yet provide a viable broadband option. As

[1] Letter dated May 23, 2003 from Cronan O'Connell, Qwest, to Marlene H. Dortch, FCC ("Qwest Ex Parte").

[2] Reply Comments of the People of the State of California and the California Public Utilities Commission, filed July 1, 2002 in CC Docket. No. 02-33, at 2.

EarthLink reports, satellite broadband services generally offer only a one-way high-speed connection, are significantly more expensive than DSL, and "are useful only as a last resort for the rare end user willing to endure the quality and price drawbacks."[3] In addition, fixed wireless services "are not now, nor will they be in the foreseeable future, viable alternatives" to incumbent LEC DSL service.[4]

Qwest attempts to create the illusion of ubiquitous broadband retail competition by listing (at p. 9-11) the names of various broadband providers. But, the reality is that most of these providers offer limited service in limited areas. For example, Suburban Broadband offers services only in certain communities along the Colorado Front Range,[5] and because the range of its service is more limited than other technologies, it can only be practically implemented in relatively small neighborhoods, *i.e.*, communities smaller than 12 square miles.[6] Similarly, Ricochet is only available in San Diego and Denver, and its speeds are far lower than those available via DSL or cable modem service.[7]

As spotty as the availability of competitive alternatives is at the retail level, it is virtually non-existent at the wholesale level, where ISPs have no real alternative to the Bells. As EarthLink demonstrates in its 4/29/03 *ex parte*, data LECs ("DLECs"), satellite, terrestrial wireless, power line communications, and cable transmission do not currently offer – and will not offer within the foreseeable future – common carriage alternatives for wholesale broadband transmission.[8] As explained above, satellite and wireless do not have the capabilities or the coverage to provide viable alternatives to DSL. Broadband over power lines is still in its infancy, and it is not clear whether it will prove commercially feasible. Even where a few DLECs, primarily Covad, offer DSL, they do not have "the capacity or even the geographic coverage to function as a substantial alternative to the ubiquity of the BOC DSL offerings."[9] As of December 31, 2002, only five percent of ADSL arrangements were provided by DLECs.[10] Cable modem service likewise does not provide a viable wholesale alternative to ISPs. Even EarthLink, which has been the most successful in obtaining wholesale cable access, has such access limited to one cable network and two cities on another, covering approximately 20-25% of the cable market nationwide.[11]

The Bells mass market dominance is even more pronounced in the small business segment. Here, neither competitive carriers nor ISPs can serve small businesses without access to the Bells last mile facilities. Cable companies do not even provide the type of voice and high-speed data access required by competing carriers, and in all events do not have facilities that actually connect to most small businesses.

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3 Letter from Kenneth R. Boley on behalf of EarthLink, dated April 29, 2003, to Marlene Dortch, FCC ("EarthLink 4/29/03 *Ex Parte*") at 7.

4 *Id.* at 8.

5 http://www.suburbanbroadband.net/pricing.htm

6 http://www.suburbanbroadband.net/faq.htm

7 http://www.ricchet.com/LiveMarkets.aspx

8 EarthLink 4/29/03 *Ex Parte* at 5-9.

9 *Id.* at 5.

10 Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, "High-Speed Services for Internet Access, Status as of December 31, 2002" (rel. Jun. 10, 2003) ("*High-Speed Data Report*") at 3.

11 EarthLink 4/29/03 *Ex Parte* at 8.

Indeed, the record establishes that for 76% of small businesses, the incumbent LEC faces no significant competition in the provision of broadband services.[12] And, analysts' "research suggests that DSL services will continue to outstrip cable to become the undisputed leader in adoption among main office locations in smaller firms."[13] With respect to those small businesses with 100-999 employees, the Bells' dominance is even more apparent. For this market segment, DSL serves 55 times the number of subscribers in main offices (a 98% share) and 12 times the number for branch offices (a 92% share).[14]

In short, despite their attempts to gloss over it, the Bells' continue to dominate: (i) broadband access to mass market customers in local areas across the country; (ii) the provision of wholesale broadband services; (iii) and the provision of broadband services to small business customers.

B. Large Business Services

The Bells continue to exercise market power over broadband services to large businesses through their bottleneck control of special access services. Although AT&T and other competitive carriers would prefer to self-provide these last mile facilities, the sad reality is that the Bells and other ILECs remain the only source for these facilities in the overwhelming majority of situations. For the backbone portion of its network, AT&T almost never self-provides DS1 transport and self-provides DS3 transport only a small minority of the time. For the local loops used to provide connectivity between the customer's premise and the local serving office, AT&T provides only a tiny fraction of its DS1s entirely on its own network. Indeed, AT&T "has a theoretically available, facilities-based alternative [to ILEC special access] in only about five percent of the buildings in which AT&T purchases special access."[15] The remainder is provided almost exclusively by using ILEC facilities.

As demonstrated in AT&T's Special Access Petition, the Bells have used their control over special access to reap monopoly rents, put competitors in a price squeeze, and foreclose competitive broadband offerings. Where the Commission has mistakenly granted the Bells special access pricing relief, they have responded by increasing – rather than decreasing – their rates for special access, which by itself demonstrates that a competitive market does not exist for this last mile access. Indeed, a study filed with the Commission on June 12, 2003, concludes that the Bells are reaping at least $5.6 billion in windfall profits annually through this last mile monopoly.[16] This power over an essential input has enabled the Bells to dominate local data markets and, as they

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12 Only 2.5 million of an estimated 10.5 million small and medium businesses are passed by cable infrastructure today. *Ex parte* letter of Edward Shakin, Verizon, submitted in CC Docket No. 02-33 on January 15, 2003 ("Verizon Small Business Letter") at 3.

13 In-Stat/MDR, *All Access: Internet Access in the Small Business Market*, at 13 (Nov. 2002).

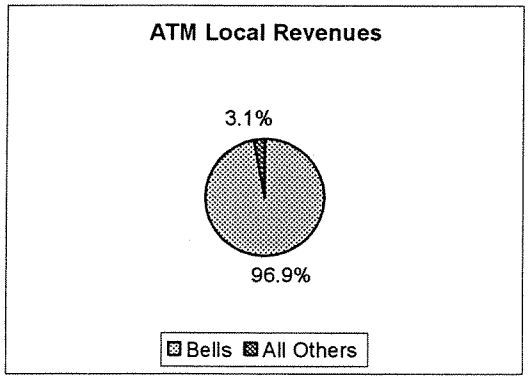
14 In-Stat/MDR, *The Data Nation: Demand for Broadband and Data Services in the Middle Market*, at 24-25 (Oct. 2002).

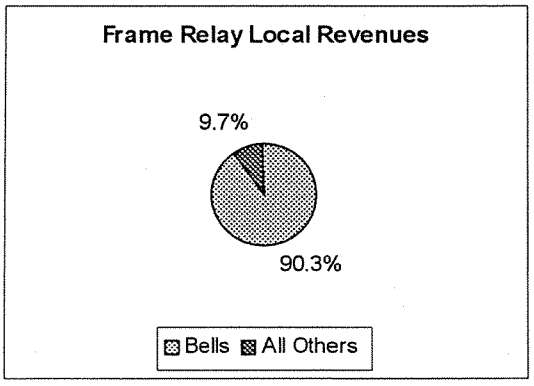
15 AT&T Corp., Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM 10593 (filed Oct. 15, 2002) ("Special Access Petition") at 28.

16 *See* Rappoport, Taylor, Menko, Brand, *Macroeconomic Benefits from a Reduction in Special Access Price* (Jun. 12, 2003), filed in RM Docket No. 10593, at 5.

begin to capitalize on their new-found long distance authority, they will be able to leverage this market power into the interLATA data market..

In its *ex parte*, Qwest nevertheless cites to national market share statistics for ATM and frame relay services to bolster its claim that the Bells lack market power in the provision of broadband services to large business customers. However, such statistics are irrelevant in assessing the Bells' market power because, until recently, the Bells have been restricted to local markets. The more pertinent question is how the Bells have fared in their provision of local data services, and the Qwest *Ex Parte* demonstrates convincingly that the Bells' have used their local bottleneck to dominate local data services. For example, Qwest's own submission shows that the Bells account for 90.3% of frame relay services local revenues, and that no non-Bell accounts for more than 3% of such revenues.[17] The competitive picture is even bleaker with respect to ATM services. There, the Bells account for roughly 97% of ATM local revenues.[18]





Source: Qwest *Ex Parte* at 14-15.

In sum, the Bells have used their control of special access to dominate the local data market and are now poised to leverage this market power into the interLATA data market.

II. The Sale of DSL Transport Is Not Private Carriage.

In its *ex parte*, Qwest argues (at p. 2, 22) that ILECs should have the option to offer volume DSL service to ISPs as either private or common carriage service. But a Commission holding adopting Qwest's proposal would be clear legal error and bad public policy.

There is no legal support (and indeed Qwest cites none) for the reclassification as private carriage of a basic transmission service such as DSL, which today is provided on a common carriage basis. This is a service for which there is widespread and general demand, for which there are no generally available substitutes, and which is used to compete with the Bell's own services. Elimination of this service on a common carriage basis thus would have devastating consequences for independent

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17 Qwest *Ex Parte* at 15.

18 *Id.* at 16.

ISPs. Indeed, the Bells' transparent purpose for seeking reclassification is to enable them to enter into preferential and discriminatory arrangements with their own ISP affiliates or partners. The Commission should not adopt Qwest's blatantly anticompetitive proposal.

A. The Sale of DSL Services Meets the Common Carriage Test.

The traditional two-part test set forth in *NARUC I*[19] for determining whether an offering should be considered private or common carriage has been interpreted as requiring a determination whether: (1) the carrier will "make capacity available to the public indifferently"; or (2) "the public interest requires common carrier operation of the proposed facility."[20] The Bells' wholesale DSL offerings squarely meet both prongs of this test.

1. The Bells Make DSL Services Available to the Public Indifferently.

As an initial matter, no party could seriously dispute that DSL services are telecommunications services within the meaning of the Act. Under the Act, the term "telecommunications" means the transmission . . . without change in the form or content of the information as sent and received."[21] DSL transport unquestionably meets this definition. The transmission of DSL services to an ISP involves no net change in either content or protocol, and the Commission has expressly recognized that xDSL services are "transmission technologies."[22]

Further, DSL services meet the Act's definition of telecommunications service, which the Commission and the D.C. Circuit have held was designed to distinguish common and private carriage.[23] Under that definition, a telecommunications service is the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public . . ."[24] In this regard, there is no dispute that the Bells' networks were built for and have always been operated as common carrier facilities that provide basic transmission services on nondiscriminatory terms to any and all customers.[25] And the Bells' provision of DSL transport services to ISPs and others to date are no different: DSL transport services are basic transmission services that have been available indiscriminately by tariff to any and all requesting

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[19] *National Ass'n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (1975) ("*NARUC I*").

[20] *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921, 924 (1999) (*quoting Cable & Wireless, PLC, Cable Landing License,* 12 FCC Rcd. 8516 ¶¶ 14-15 (1997)).

[21] 47 U.S.C. § 153 (43).

[22] *Deployment of Wireline Services Offering Adv. Telecomm. Capability*, Mem. Op. and Order, FCC 98-188, CC Docket No. 98-147, 13 FCC Rcd. 24012, ¶ 35 (1998) ("*Advanced Services Order*").

[23] *See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities,* Declaratory Ruling and NPRM, FCC 02-77, GN Docket No. 00-185 ("*Cable Modem Declaratory Ruling*") (March 15, 2002) note 205 ("([t]he Commission has repeatedly found in various contexts that the definition of 'telecommunications service' under the Act is equivalent to 'common carrier' service"); *see also Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Comm. Act of 1934*, 11 FCC Rcd. 21905, ¶ 265 (1996); *Cable & Wireless, PLC, Cable Landing License*, 12 FCC Rcd. 81516, ¶ 13 (1997); *Virgin Island Tel. Co. v. FCC*, 198 F.3d 921, 929-30 & n. 8 (D.C. Cir. 1999).

[24] 47 U.S.C. § 153 (46).

[25] *See* Reply Comments of AT&T Corp., dated July 1, 2002, at 23.

ISPs. Indeed, Qwest itself admits the common carrier nature of its DSL offering, stating: "Qwest allows any ISP to purchase Qwest DSL Host service for access to end users."[26]

Moreover, the fact that wholesale DSL offerings appeal to a class of prospective purchasers does not preclude common carriage classification. ISPs are as much a member of the public as any other purchaser and carriers need not serve the entire public to be considered "common" carriers.[27] Rather it is sufficient, if as here, the carrier serves that portion of the public that would have an interest in the service. Further, the Commission and the D.C. Circuit have made clear that common carrier services include wholesale services and that the term "telecommunications carrier" was not intended to make a retail/wholesale distinction.[28] The ISP's use of the service as an input for its Internet access service does not alter the fact that it orders and receives the standalone DSL transmission service "directly" and as a member of the "public." It is not surprising, therefore, that the Commission has twice held that standalone broadband services that ISPs obtain at wholesale are "telecommunications services" under the Act.[29]

Qwest finally claims that its wholesale DSL offerings are not by nature common carriage because they are often tailored to the particular needs of the ISP, are medium to long term commitments by nature, and are sold to sophisticated customers.[30] This contention, however, does not withstand scrutiny. First, these factors, even if true, do not distinguish DSL from the multitude of other high speed transmission services, such as T1 and frame relay services, that the BOCs have offered on a common carriage basis since their inception and could not credibly argue should be reclassified now. Second, as noted above, Qwest admits that its offerings are available to all ISPs. Thus, even if they are tailoring some of their offers to meet particular ISPs' needs, those offers (as they should be) are available to all similarly situated ISPs. Moreover, the fact that Qwest offers contracts that are medium to long term in nature does not by itself render the service by nature private carriage. Most contract tariff offerings, whether DSL related or not are medium to long term in nature. That fact does not render such an offering private carriage. Similarly flawed is Qwest's claim that its wholesale DSL customers are sophisticated, and thus, presumably would not need the protections afforded by a requirement that wholesale DSL be offered indiscriminately. While the large ISPs that the Bells seek to favor through the re-classification sought here may indeed be sophisticated, many of the smaller ISPs, who would be most damaged by the lack of DSL services on a common

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26 Qwest *Ex Parte* at 5.

27 *See NARUC I*, 525 F.2d at 641 ("[o]ne may be a common carrier though the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population").

28 *Virgin Island Tel. Co.*, 198 F.3d at 930 (citing *Non-Accounting Safeguards Order* ¶¶ 263-265).

29 *See Advanced Services Order* ¶ 36 (holding that it is irrelevant that the incumbent LEC is providing only a wholesale transmission service that is used by ISPs as an input to the retail services they provide, and that the DSL-enabled transmission path is a telecommunications service); *Deployment of Wireline Services Offering Adv. Telecomm. Capability*, Second Report and Order, FCC 99-330, CC Docket No. 98-147, 14 FCC Rcd. 19237 (1999) ¶ 21 ("although bulk DSL services sold to [ISPs] are not retail services . . ., [they] are telecommunications services, and as such, incumbent LECs must continued to comply with their basic common carrier obligations with respect to these services").

30 Qwest *Ex Parte* at 20.

carriage basis, are relatively unsophisticated start-ups that lack the bargaining power to negotiate favorable terms and conditions for themselves.[31]

In short, there is no question that the wholesale DSL services that the BOCs make available today are telecommunications services that are offered to the public indifferently and thus meet the first prong of the *NARUC I* test. And, as shown below, the public interest requires that the services be made available on a common carriage basis. There is thus no basis for the reclassification requested here.

2. The Public Interest Requires Common Carrier Provision of DSL Transport.

Under this prong of the *NARUC I* test, the Commission must determine whether there is a public interest reason to require facilities to be offered on a common carrier basis. Here, the Commission has focused on the availability of alternative common carrier facilities – a critical factor in assessing market power.[32] On this score, it is indisputable that the Bells retain significant market power in the provision of broadband transport services and that there are not adequate available alternative facilities. Thus, the reclassification of bulk DSL service as private carriage – which would carry with it the unlimited power to withdraw the service or to discriminate in its provision – would have devastating consequences for independent ISPs.[33]

Qwest argues that ILECs lack market power in the provision of DSL services because they face "extensive" competition from CLEC, wireless, satellite and cable providers.[34] But the record in this proceeding clearly shows that none of these services provides a viable alternative for independent ISPs.

CLECs that provide wholesale DSL service to ISPs cannot serve as a viable alternative to wholesale DSL services provided by the RBOCs. In the first place, they are few and far between and their numbers have dwindled in recent years as a result of financial turmoil in the CLEC industry.[35] Moreover, the remaining CLECs have the capacity to serve only a fraction of the areas that the incumbents can serve. And, as a result of the Commission's announced decision in the *Triennial Review* proceeding to deny CLECs access to incumbent-owned fiber-fed loops and to eliminate line sharing, CLECs' ability to provide DSL alternatives to ISPs will be greatly diminished.

Similarly, as discussed above (at 2), satellite, wireless and power line broadband providers are not yet viable, ubiquitous alternatives in the provision of broadband services or capabilities at retail, wholesale or to small business customers.

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31 Earthlink 4/29/03 *Ex Parte* at 11. Nor can Qwest distinguish even the largest ISPs from other large enterprise customers that the ILECs serve on a common carriage basis.

32 *Cable Landing License Order* at ¶¶ 30-31.

33 Indeed, the reason the Bells seek to re-classify their bulk DSL services as private carriage is so that they can refuse to deal with individual ISPs that do not agree to the onerous terms the Bells will demand once they obtain relief. As Verizon has noted, "a private carrier by definition is free to decline service to a given customer if it cannot agree to terms with that customer . . . ." Letter from William Barr, Verizon, to Michael Powell, FCC, dated November 22, 2002, at 6.

34 Qwest *Ex Parte* at 21.

35 *See* EarthLink 4/29/03 *Ex Parte* at 5-6.

Nor do cable modem services provide a viable alternative. Because cable systems were not initially designed for two-way services, cable companies and ISPs are still exploring how to structure their arrangements in a way that is both scalable and commercially viable. Thus, cable companies are just beginning to experiment with the provision of Internet access service using multiple ISPs[36] and have "thus far offered [wholesale cable access] services only on a limited basis."[37]

The lack of competition from these alternative suppliers is widely recognized. Indeed, in commenting on Commission's announced elimination of line sharing in the *Triennial Review* proceeding, Commissioner Abernathy acknowledged the inability of cable, wireless and satellite to serve as near-term competitive alternatives to ILEC-provided broadband services.[38]

In short, application of the Commission's public interest test for common carriage shows that there are no viable alternatives to the Bells' wholesale DSL offer. The public interest therefore requires that wholesale DSL services be offered on a common carriage basis.

B. No Precedent Supports the Bells' Request to Reclassify Bulk DSL Services as Private Carriage

Qwest argues that the Commission's classification of wholesale broadband transmission services to ISPs by cable companies as private carriage warrants re-classification of ILEC-provided bulk DSL services.[39] But the Commission's holding in the cable context does not support the outcome sought here. In the first place, unlike ILEC networks, cable networks were not initially designed for two-way transmission services. Thus, from their inception, broadband services were not required to be provided on a common carriage basis. As noted above, the Commission has recognized these technical barriers, which it acknowledged prevent cable companies from offering standalone broadband services on a nondiscriminatory basis.[40] Moreover, the consequences of determining that wholesale services could be provided on a private carriage basis are much different for cable companies and ILECs because ILECs have incentives – that the cable companies do not have – to discriminate in the provision of broadband services. An ILEC's unique position as the dominant provider of local telephone facilities used to provision narrowband internet access services and legacy broadband services such as T1 gives it anticompetitive incentives to resist deployment of newer, cost-based broadband services. The Bells themselves have noted that the advent of DSL has lowered second line demand, and has thus caused them to carefully time the deployment of new services. Thus, while increasing broadband

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36 *See* AT&T Comments at 30-31.

37 Earthlink 4/29/03 *Ex Parte* at 8.

38 Commissioner Abernathy stated:

> "I recognize that, in time, intermodal competition from sources like cable, wireless and satellite will be very beneficial for consumers, but in the short term, as some of these new broadband platforms are still getting off the ground, I think line sharing would have provided a much-needed competitive alternative, but I was in the minority on that point."

Remarks by FCC Commissioner Kathleen Q. Abernathy to the Women's High Tech Coalition (May 6, 2003) (as prepared for delivery) at 4.

39 Qwest *Ex Parte* at 20.

40 *Cable Modem Declaratory Ruling* ¶ 15.

deployment is unambiguously positive for cable companies, the ILEC's incentive to balance the costs of cannibalizing older services in favor of new ones does not exist for cable companies.[41]

Moreover, neither Qwest nor any other ILEC filing comments in this proceeding has cited (nor could they) a single case in which the Commission has re-classified an existing common carrier service for which there is widespread and general demand and has no generally available substitutes. Indeed, the Commission has only excluded existing incumbent LEC offerings from the category of common carriage where the service itself did not comprise telecommunications. Thus, the fact that customer premises equipment, enhanced services, and billing and collection services do not comprise the provision of telecommunications was the basis for the Commission's elimination of Title II regulation of these services.[42] Thus, there are no cases that provide authority for re-classifying ILEC-provided telecommunications services as private carriage.

Indeed, once the Commission has determined that the nature of an offering is common carriage, the Commission has no "significant discretion" to determine otherwise. In *NARUC I*, the D.C. Circuit rejected the notion that the Commission could determine whether to confer common carrier status on a given entity in light of the regulatory goals it seeks to achieve.[43] Chairman Powell has also echoed the D.C. Circuit's holding:

> "[T]he Commission is not permitted to look at the consequences of different definitions and then choose the label that comport with its preferred regulatory treatment. That would be contrary to law. The Commission must apply the definition and then accept the regulatory regime that adheres to that classification and that which Congress chose when it adopted the statute."[44]

The case law solidly establishes the common carrier nature of the Bells' wholesale DSL offer, and there is no basis for reclassifying this service as private carriage. On the record here, it would be clear legal error for the Commission to grant the reclassification sought.

III. The Commission's *Computer Inquiry* Requirements Do Not Adversely Affect the Bells' Ability to Compete.

As shown above, the Bells and other ILECs enjoy market power based on their control of the last mile bottleneck, and possess the ability and incentive to abuse this power to harm their information services competitors.. The concerns that led the

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[41] *See* Letter dated May 1, 2003 from Frank S. Simone, AT&T, to Marlene Dortch, FCC, CS Docket No. 02-52, *Appropriate Treatment for Broadband Access to the Internet over Cable Facilities.*

[42] Comments of AT&T Corp. dated May 3, 2002 at 25 (citing cases).

[43] *NARUC I*, 525 F.2d at 644 ("[a] particular system is a common carrier by virtue of its functions, rather than because it is declared to be so").

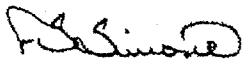
[44] Separate Statement of Chairman Michael K. Powell, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77, GN Docket No. 00-185, CS Docket No. 02-52 (rel. Mar. 15, 2002).

Commission to impose the *Computer Inquiry* rules on the Bells are still valid today. Indeed, now that the Commission has decided in its *Triennial Review* decision to restrict competitive LEC access to broadband network elements, ISPs are even more dependent on nondiscriminatory access to Bell transport to reach their customers.

The Bells nevertheless claim – but have not demonstrated – that the *Computer Inquiry* requirements hamper their ability to compete in the provision of broadband services. This contention is belied by the Bells success in the marketplace. The most recent Commission report on the deployment of advanced services shows that the Bells' growth rate exceeds that of cable companies.[45] Moreover, at the retail level, the Bells can – and do – offer their DSL Internet access services without tariffs. Qwest's claim that the *Computer Inquiry* "tariffing" requirement delays its ability to respond to retail cable promotions therefore rings hollow. In order to ensure that ISPs continue to have access to the basic transport they need to introduce innovative services, the Commission must retain the core *Computer Inquiry* requirement that the Bells offer their underlying transport on a nondiscriminatory, stand-alone basis.

AT&T does not object to efforts to eliminate unnecessary regulation that at the same time preserves this core *Computer Inquiry* obligation. AT&T therefore supports the EarthLink, MCI, AOL proposal[46] that would streamline the CEI and ONA requirements, while preserving the core Bell obligation to make the underlying transport component of their information services available on a nondiscriminatory, stand-alone basis.

Sincerely,



cc: C. Libertelli
M. Brill
D. Gonzales
J. Rosenworcel
L. Zaina
S. Bergmann
W. Maher
J. Carlisle
M. Carey
B. Olson
D. Cooper
T. Natoli

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[45] For the last six months of 2002, the provision of advanced services via ADSL increased by 52%, while the provision of advanced services over cable increased by 22%. *High-Speed Data Report* at 3.

[46] *See Ex Parte* Presentation of EarthLink, MCI and AOL Time Warner Inc., CC Docket Nos. 02-33, 95-20, 98-10 (Apr. 30, 2003).