

Ex Parte
Re: BellSouth Emergency Petition



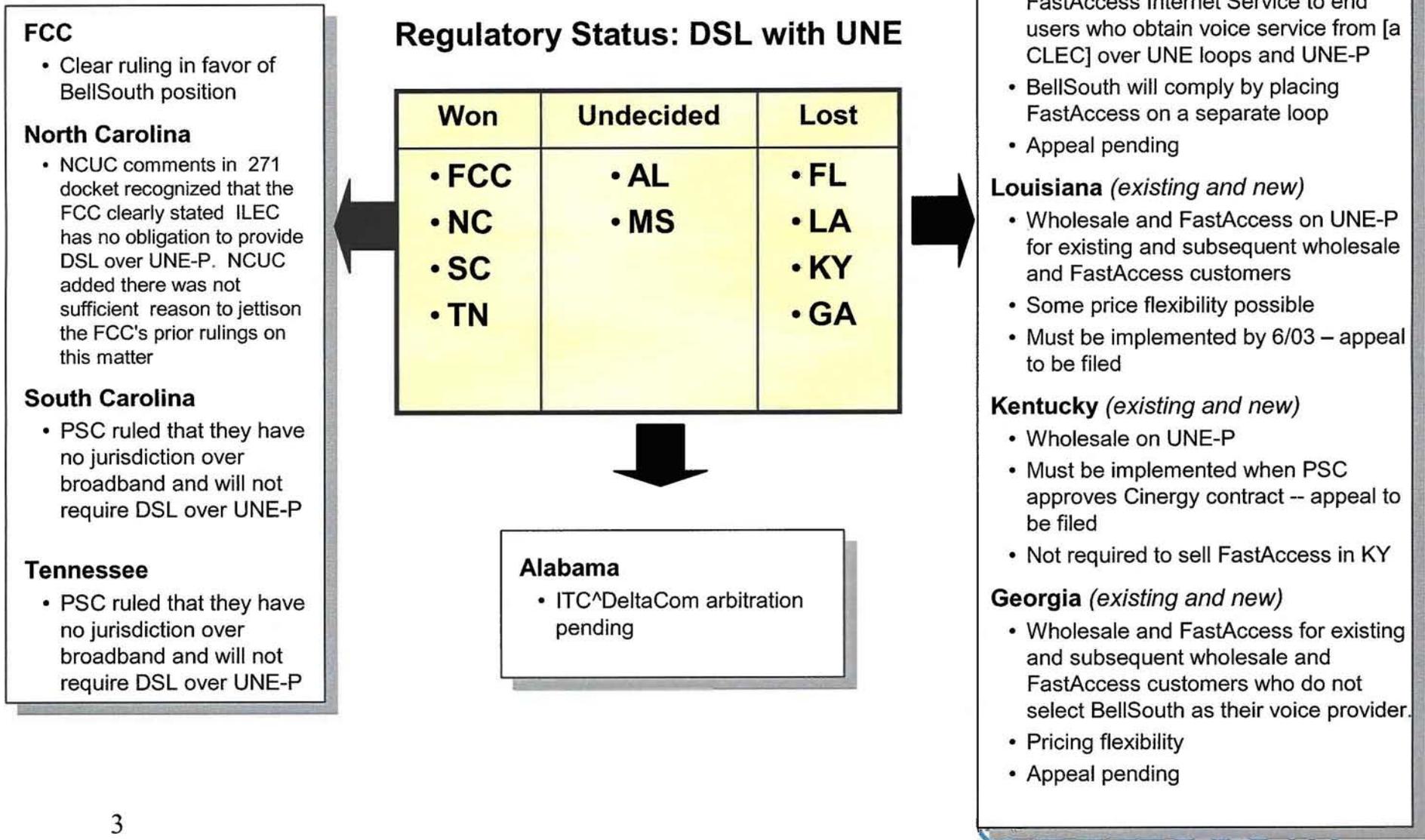
February 18, 2004

 **BELLSOUTH**[®]

>> The FCC Must Act Quickly

- An expedited decision is necessary to enforce Congress' express determination "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. 230(b)(2).
- Absent FCC Intervention, compliance with state regulation of DSL services will cost, on average, \$1500 for each CLEC voice customer who receives BellSouth's DSL or FastAccess.

>> Regulatory Landscape



>> Regulatory Landscape

- **Kentucky - A case in point:**

- **IgLou**

- Complaint case. ISP claimed, *inter alia*, tiered pricing in FCC DSL tariff discriminated in favor of BellSouth's own ISP
 - PSC ordered BellSouth to modify the tiered structure to Kentucky specific levels.
 - At the time, lowest tiered price required volume of 40,000 DSL circuits. PSC ordered BellSouth to lower that threshold "so that within Kentucky all competitors have an opportunity to receive DSL for a comparable price."
 - Rather than continuing to contest the issue, BellSouth removed the tiered pricing from the tariff.

- **Cinergy**

- Required BellSouth to provide wholesale DSL over UNE-P
 - Required BellSouth to include language ensuring that BellSouth provide DSL under the same rates and terms as were in effect on the date of the Commission's order.

>> Regulatory Landscape

BellSouth DSL with UNE Compliance Summary

State	Florida	Louisiana	Kentucky	Georgia
What we're ordered to provide	FastAccess only	Wholesale DSL Transport FastAccess	Wholesale DSL Transport only	Wholesale DSL Transport FastAccess
Type of customer	Existing FastAccess customers only	New and existing wholesale and FastAccess customers	New and existing wholesale customers	New and existing wholesale and FastAccess customer
CLEC Voice Line Type	UNE loop and UNE-P	UNE-P	UNE-P	UNE-P
Pricing	No pricing flexibility	Limited pricing flexibility	No pricing flexibility for wholesale DSL	Limited pricing Flexibility

>> Cost of Compliance

- BellSouth's ability to compete in the broadband marketplace against the dominant provider, cable, is being seriously undermined by the reallocation of resources that BellSouth must commit to implement and comply with these state broadband regulations.
- This reallocation of resources is delaying BellSouth's development and offering of new broadband products in competition with others.
- State regulation of broadband services calls into question the propriety of further broadband investment.
- In addition to the above, BellSouth will also incur the following direct costs to implement the state commission rulings:
 - Design and implementation
 - Interim solutions to meet tight regulatory compliance guidelines
 - Long term solutions to mitigate costs associated with extensive manual processing
 - Manual processing costs
 - Internal customer support groups
 - Training
 - Daily administration
 - System Development
 - Developing Requirements
 - Writing and testing software code
 - Scheduling and prioritizing into pre-existing releases
- Additional costs caused by state broadband regulation:
 - Disruption in product portfolio
 - Lesser service quality
 - Legal/Regulatory Defense

>> Cost of Compliance

Design and Implementation

- **Interim Solutions:**

- Kentucky: Develop process for manual processing of billing adjustments

Cost: \$100k

- Florida: Standalone FastAccess had a dedicated implementation team that worked non-stop for 120 days to implement the interim solution

Cost: \$750k +

- Louisiana: Dedicated project team worked to implement the LA specific solution in 60 days

Cost: \$250k

- Georgia: Dedicated project team is currently developing implementation plans

Cost: \$550k

- **Long Term Solutions:**

- Standalone Wholesale and Standalone FastAccess process requirements being documented and developed for mid year 2004 release in multiple systems

Cost: \$3.7M +

- KY/LA/GA DSL over UNE-P coordinated solution being developed and implemented in multiple systems for EOY 2004

Cost: \$1M +

>> Cost of Compliance

Manual Processing

- **Interim Solutions:**

- Kentucky: Ongoing manual billing adjustments **Cost: \$10k/month**
- Florida: Dedicated internal and outsourced workgroups to handle interim manual process flow **Cost: \$70k/month**
- Louisiana: Additional internal headcount to handle exceptions and “fall out” from interim solution **Cost: \$20k/month**
 - ISPs also must shoulder significant processing costs to handle exceptions and cancellations
- Georgia: Additional internal headcount to handle exceptions and “fall out” from interim solution **Cost: \$40k/month**

- **Long Term Solutions:**

- Staff augmentation to support customers through the Standalone FastAccess process **Cost \$1.5M / year**
- Additional staff required to support the integrated KY/LA/GA DSL over UNE-P solution **Cost \$750k / year**

>> Cost of Compliance

System Development

- State orders have required changes to multiple Pre-ordering, Ordering, Provisioning, Maintenance and Billing Systems and their associated processes
 - Pre-ordering: Loop Qualification, CRM (Web, Agent and API tools)
 - Ordering: SOEG (Web and API), BIAS, CRM (Web, Agent and API tools)
 - Provisioning: BASS, BOM, SOCS, SOER, OPEC
 - Maintenance: eRepair, BONS, SARTool
 - Billing: CRIS, Manual billing adjustments

Lost Product Development Opportunities

- All System Releases are loaded with new product development and network improvements that must be re-prioritized to meet regulatory mandates. This impedes BellSouth's ability to be competitive against cable modem service. Examples of delayed or impacted products are:
 - 3Mb Residential DSL
 - Automated service upgrades
 - Business Class Service Improvements
 - Shared Services model for ISPs
 - Multi-Service Gateways, and G.SHDSL

>> Cost of Compliance

Product Disruption

- All new products (even regulatory mandated products) must be rationalized and presented to the customer as part of a portfolio. Haphazard regulatory rules often do not provide clear guidance on how to handle.
 - Residential vs. Business product compliance
 - Conversion between non mandated and mandated products and vice versa
 - Speed changes and other vertical service coordination (Home Networking, Security, etc.)
 - Non-recurring and recurring pricing to the end-user, ISP and/or CLEC as a result of increased costs
 - Impact on competitive flexibility
 - All new competitive products must be tested for compliance with ever increasing regulation

>> Cost of Compliance

- In order to comply with the State PSC orders, BellSouth has had to rush together entire new products and processes at the expense of customer service quality.
 - In Louisiana, BellSouth did not have sufficient time to develop the proper logic in its Loop Qualification system, and qualification accuracy has suffered. Many end-user customers who cannot get DSL service with UNE-P (because their CLEC has not adopted the available language) falsely qualify in BellSouth's Loop Qualification system. The solution is currently being developed.
 - In Florida, in order to comply with the FL PSC mandate to continue to provide its FastAccess service to customers whose voice service is provided by either a UNE-P, or a UNE-L, BellSouth was forced to implement a StandAlone DSL product in record time. This new product required the creation of a new 'voiceless' line that utilizes custom developed customer premises equipment, and the transition of the end-users FastAccess service to the new facility, prior to the conversion of the voice service to UNE-P or UNE-L. Even though the process is working, and compliant with the FL PSC order, BellSouth has initiated a process improvement team to attempt to streamline the significant number of manual steps involved with this conversion.

>> Cost of Compliance

Legal and Regulatory Defense

- BellSouth has defended its policy in PSCs in most of the states in its Region.
- BellSouth appealed each of the adverse rulings against it, and has filed a Circuit Court appeal of the adverse District Court decision.
- BellSouth expended considerable money in obtaining a dismissal of the antitrust class action suit filed against it (which suit was predicated on the adverse PSC rulings.)

>> Summary

- BellSouth has incurred over \$1.5M in costs to comply with the LA, FL and KY DSL with UNE orders. With interim process support cost averaging over \$100k/month.
- BellSouth is incurring nearly \$1500 in costs for every customer that has maintained their DSL service when converted to either UNE-P or UNE-L service with a CLEC.
- BellSouth is facing over \$5M in additional costs to comply with these improper state orders.

BellSouth urgently requests that the Commission issue a declaratory ruling specifying that:

1. State commission decisions requiring ILECs to provide broadband Internet access to CLEC UNE voice customers are contrary to the Triennial Review Order and thus preempted;
2. State commission decisions requiring the provision of broadband Internet access to CLEC UNE voice customers impose regulation on interstate information services are in contravention of this Commission's orders; and
3. State commission decisions specifying the terms and conditions under which ILECs provide federally tariffed broadband transmission either on its own or as part of a broadband information service intrude on this Commission's exclusive authority over interstate telecommunications and are thus preempted.