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February 20, 2004

VIA ECFS

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

RE: BellSouth Telecommunications, Inc. Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers, WC Docket No. 03-251

Dear Ms. Dortch:

Comcast Phone, LLC ("Comcast Phone") respectfully files this letter in response to the Commission's *Order* issued on December 30, 2003 in the above-captioned matter and the comments filed January 30, 2004. Subsidiaries of Comcast Phone are competitive providers of facilities-based residential local exchange services in several major metropolitan areas of the U.S.

In its Petition, BellSouth has requested a declaratory ruling that state regulators may not require it to provide "broadband" services, at wholesale or retail, to end-user customers who obtain voice service from a competitive local exchange carrier ("CLEC") using BellSouth loops provided as unbundled network elements ("UNEs").[1] Although Comcast Phone is a CLEC in a number of states, it does not use incumbent LEC ("ILEC") UNEs. Nevertheless, Comcast Phone is affected negatively by the types of practices that BellSouth is seeking to have this Commission sanction. In Comcast Phone's experience, the ILECs' practice of effectively terminating ILEC

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[1] *In the matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers, Emergency Request for Declaratory Ruling* (filed Dec. 9, 2003) ("*BellSouth Request*").

DSL service when a customer chooses a CLEC for voice service adversely affects facilities-based CLECs like Comcast Phone as well.[2]

The initial comments filed in response to BellSouth's Petition relate mainly to BellSouth territory, where Comcast Phone has not tracked the practices above closely. However, the reports by CLECs as to the ill effects of BellSouth's practice of terminating the ILEC DSL service of customers who choose to take voice service from a CLEC are consistent with Comcast Phone's experience as a facilities-based CLEC in other ILEC territories — mainly, in those areas served by Verizon.[3]

In Verizon territory, Comcast Phone has had telephone number porting requests rejected because the customer has ILEC DSL service.[4] In such cases, the mere presence of ILEC DSL service on the customer's account results in the rejection by the ILEC of the porting request.[5] Verizon rejects such local service requests ("LSRs") despite the fact that Comcast Phone is a facilities-based provider and Verizon retains the entire loop upon which to continue to provide DSL.[6] The failure to timely process a completed LSR solely because of an ILEC's internal business practices contravenes the obligation to provide number portability under Section 251(b)(2) of the Communications Act and Part 52 of the Commission's rules.[7] These provisions do not permit denial of a port request because of other services that a customer may have purchased. To the contrary, the rules clearly establish that the only exception to the porting obligation is "technical feasibility."[8] No issues of "technical feasibility" arise in the case of a customer with DSL that has chosen a CLEC for voice service.

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[2] Comcast Phone takes no position at this time on the question of the scope and potential exclusivity of this Commission's jurisdiction.

[3] Comcast Phone notes that Verizon filed comments supporting BellSouth's petition. *See* Comments of Verizon, *passim.*

[4] Comcast Phone is not alone in facing this burden. *See, e.g.,* Comments of AT&T Corp. and the Comptel/Ascent Alliance at 9 & Attachment A (Declaration of Sarah DeYoung) at ¶ 13.

[5] *See* Verizon East Online CLEC Handbook: Number Portability When Line Sharing (DSL) is Present: "If a LSP wishes to port a number, and if Line Sharing (DSL) is present on the account, the Line Sharing Arrangement (DSL) *needs to be disconnected prior to the porting activity*" (emphasis added). http://www22.verizon.com/wholesale/lsp/products/0,5747,4-8136---Detailed+Information,00.html.

[6] For example, Comcast Phone encountered this problem almost 200 times in a recent period of less than thirty days. As competition for voice service intensifies, and penetration of ILEC DSL service increases, the significance of this problem will only grow.

[7] In fact, the Commission's policy is that consumers should be permitted to change carriers while keeping their telephone number "as easily as they may change carriers without taking their telephone number with them. ... *Accordingly, we conclude that carriers may not impose non-porting related restrictions on the porting out process.*" (emphasis added). *In the Matter of Telephone Number Portability Carrier Requests for Clarification of Wireless-Wireless Porting Issues,* CC Docket No. 95-116, Released October 7, 2003, at ¶ 11.

[8] *See* 47 U.S.C. 251(b)(2) (portability to be provided when "technically feasible"); *see also* 47 C.F.R. § 52.23(e) (requiring carriers seeking waivers of deployment deadlines to "demonstrate through substantial, credible evidence" that they cannot provide portability).

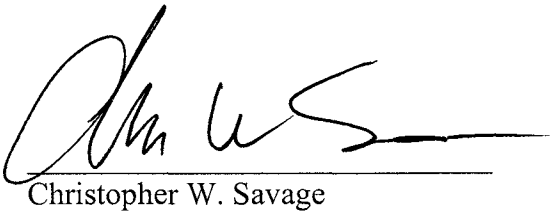
As a result of the situation outlined above, Comcast Phone has suffered delays and additional costs in serving new voice customers, because Comcast Phone must go back to those customers and seek to convince them to give up an unrelated service, *i.e.,* ILEC DSL service. In many cases, when potential customers become aware that they will have to give up their DSL service to obtain Comcast Phone's voice services, they decide to remain with the ILEC. Even when Comcast Phone can convince a customer to switch to its voice services, the costs of customer acquisition are increased because Comcast Phone must return to the customer and explain the problem. Moreover, Comcast Phone must send the prospective customer back to the ILEC to cancel the DSL service, providing an additional sales opportunity for the ILEC to win back the customer.

There can be no doubt that the restrictions imposed by ILECs, whatever their merits when UNEs are involved, are completely artificial when applied to facilities-based providers such as Comcast Phone. Comcast Phone is not seeking to provide voice service over the same loop that the ILEC uses to provide DSL service. Rather, Comcast Phone provides residential telephone service over its own loops, and the ILEC retains complete control over the loop it has been using to provide DSL. As a result, any claims of problems in the context of an ILEC providing services on the same physical loop used by a CLEC simply do not occur here.

In sum, BellSouth seeks a ruling that it may refuse to offer DSL service to end users who receive their voice service from CLECs using BellSouth UNE loops. That narrow ruling would not directly affect Comcast Phone, which does not rely on UNE loops. However, Comcast Phone is adversely affected by the practice of certain ILECs of linking a subscriber's purchase of interstate ILEC DSL service to the subscriber's purchase of intrastate ILEC POTS. For the reasons described above, the Commission should not accept this practice as a basis for an ILEC's refusal to port numbers for facilities-based competitors.

Respectfully submitted,

COMCAST PHONE LLC

By: 

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