



**Patrick H. Merrick, Esq.**  
Director – Regulatory Affairs  
AT&T Federal Government Affairs

Suite 1000  
1120 20th Street NW  
Washington DC 20036  
202 457 3815  
FAX 202 457 3110

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**Via Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Notice of Ex Parte Presentation*: CC Docket Nos. 01-92 and 96-262.

Dear Ms. Dortch;

Yesterday, April 21, 2004 Robert Quinn Jr.(AT&T), Henry Hultquist (MCI) Richard Metzger (Lawler, Metzger and Milkman, representing MCI) and I met with Darha Smith and Matthew Brill, Senior Legal Advisor to Commissioner Kathleen Q. Abernathy. AT&T and MCI urged the FCC to clarify that the CLEC Access Order prohibits the billing practice proposed by NewSouth in its recent written *ex parte* submissions and to deny the US LEC petition. All parties in this proceeding agree that clarification is necessary to avoid unnecessary litigation in June, when the CLEC Access Order requires that all non-rural CLECs tariff their access rates at levels equivalent to the competing Incumbent Local Exchange Carrier (ILEC).<sup>1</sup> The Commission's rules prohibit CLECs from assessing through tariffs interstate access charges for services not provided and allowing CLECs, like NewSouth, to charge for a tandem switch function that they do not provide cannot be supported by Commission rule or rational public policy.

In addition, both companies also reviewed the circumstances surrounding the US LEC petition. Similar to the situation presented above by NewSouth, US LEC simply seeks the ability to impose additional access charges on interexchange carriers, when in fact, the CLEC provides no access service or functionality. Where a CLEC simply inserts itself between the CMRS provider and the ILEC tandem, it provides no genuine access function and should not be permitted to charge the interexchange carrier access

The positions expressed by both companies were consistent with those expressed in their previous filings in the above referenced proceedings.

Consistent with the Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the proceedings.

Sincerely,

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<sup>1</sup> Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket 96-262, Para 54.

Patrick H. Smith

cc: Matthew Brill