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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;

On Tuesday, May 4, 2004 Robert Quinn Jr.(AT&T), Richard Metzger (Lawler, Metzger and Milkman, representing MCI) and I met with Scott Bergmann, Legal Advisor to Commissioner Jonathan S. Adelstein. 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).¹ Both AT&T and MCI noted that the Commission's rules prohibit CLECs from tariffing interstate access charges for elements not provided. Thus, CLECs, like NewSouth, cannot be allowed to charge for a tandem switch function, when they do not provide that function. Such an "about-face" change in Commission rules and policy simply cannot be supported by 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Smith". The signature is written in a cursive style with a large initial 'P'.

cc: Scott Bergmann (via e-mail)