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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th St. SW
Washington, D.C. 20554

Re: WC Docket 03-251

Dear Ms. Dortch:

I write to respond to AT&T's *ex parte* letter of April 28, 2004.¹ Although that filing purports to address the arguments made in BellSouth's reply comments, as demonstrated below, it ignores the key points made in those comments and in BellSouth's other filings in this docket.

AT&T's letter provides no basis to conclude that 50 state commissions may impose multiple and inconsistent obligations on interstate broadband services, much less that they may do so in a manner that is directly contrary to this Commission's precedents. The Commission has already resolved the policy issue presented here in the *Triennial Review Order*² – "In the event that the customer ceases purchasing voice service from the incumbent LEC, either the new voice provider or the xDSL provider, or both, must purchase the full stand-alone loop to continue providing xDSL service."³ State commissions are not free to disregard that policy choice. Moreover, even if this were an open issue, it would be an issue within this Commission's exclusive jurisdiction over

¹ Letter from David Lawson, Counsel for AT&T Corp., to Marlene Dortch, Secretary, FCC WC Docket No. 03-251 (FCC filed Apr. 28, 2004) ("AT&T Ex Parte").

² Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), *vacated in part on other grounds and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

³ *Id.* ¶ 269.

interstate communications. The Commission need do no more than reaffirm these two settled propositions to resolve this matter.

1. The Commission Resolved This Issue in the *Triennial Review Order*.

AT&T asserts that the issue resolved in the *Triennial Review Order* is somehow “different” from the one addressed by state commissions in the rulings at issue here. See AT&T Ex Parte Letter at 3. AT&T argues that the *Triennial Review Order* did not consider the competitive effects of incumbent local exchange carrier (“ILEC”) “practices of discontinuing DSL services if a customer were to switch to a competitor’s voice service[s]” and that it did not address what “measures might best advance the [1996] Act’s goals” or “enhance competition.” *Id.*

AT&T is simply wrong. It can make these arguments only by disregarding the arguments that CompTel made to the Commission, the text of the *Triennial Review Order* itself, and on-point judicial precedent interpreting that Commission decision.

First, AT&T fails completely to acknowledge that CompTel requested specifically that the Commission mandate access to the “‘low-frequency’ portion of the loop” UNE because it claimed that such a UNE was necessary to prevent the same kinds of anticompetitive effects that AT&T discusses in its letter. CompTel accused ILECs of engaging in “anti-competitive tying arrangements” and urged the Commission to establish a “low-frequency portion of the loop” UNE in order to “permit subscribers to obtain xDSL and local voice services from the providers they choose.”⁴ Thus, CompTel squarely raised competitive policy issues in its *Triennial Review* comments.

The Commission just as clearly determined that CompTel’s analysis of these policy issues was wrong. The Commission “disagre[ed]” with CompTel’s arguments, and concluded that the right policy result was for a voice CLEC that did not wish to offer DSL to enter into a market-based arrangement with a data CLEC to provide a full package of services to the end-user. See *Triennial Review Order* ¶ 270 (a “narrowband service-only competitive LEC [may] take full advantage of an unbundled loop’s capabilities by partnering with a second competitive LEC that will offer xDSL service”); *id.* ¶ 269 (“In the event that the customer ceases purchasing voice service from the incumbent LEC, *either the new voice provider or the xDSL provider, or both, must purchase the full stand-alone loop to continue providing xDSL service.*”) (emphasis added). As the *Triennial Review Order* explains, allowing a CLEC to rely on the incumbent to provide functionalities to the CLEC’s end-user customer would not only “skew

⁴ Comments of the Competitive Telecommunications Association, CC Docket Nos. 01-338 *et al.*, at 43 (FCC filed Apr. 5, 2002).

competitive LECs' incentives," but also would be contrary to sound telecommunications policy because it would "discourage innovative arrangements between voice and data competitive LECs and greater product differentiation between the incumbent LECs' and the competitive LECs' offerings." *Id.* ¶ 261. The Commission could not have made clearer that this would be contrary to the core goals of the Telecommunications Act of 1996: "We find that such results would run counter to the statute's express goal of encouraging competition and innovation in all telecommunications markets." *Id.* AT&T simply ignores these directly relevant statements – statements that negate its misguided assertion that the Commission had not determined what measures would "best advance the Act's goals." AT&T Ex Parte at 3.

BellSouth's understanding of the *Triennial Review Order* is also strongly fortified by the recent federal court decision in *Levine v. BellSouth Corp.*, 302 F. Supp 2d. 1358 (S.D. Fla. 2004), appeal pending, No. 04-10819-DD (11th Cir.), in which the court dismissed with prejudice an antitrust suit based on the same BellSouth policy at issue here. In reaching that result, the court properly concluded that this Commission, in the *Triennial Review Order*, "already examined possible competitive benefits from requiring ILECs to provide their DSL service to CLEC customers, and it has *determined not only that such a regulatory requirement would bring no benefit, but also that it would discourage investment and innovation and thus harm consumers.*" *Id.* (emphasis added). AT&T again fails to discuss this on-point decision, even though it was featured prominently in BellSouth's reply comments and even though AT&T, represented by the same law firm that filed the ex parte, has participated as an amicus in that case.

Nor is AT&T correct that the Commission's determination in the *Triennial Review Order* is not controlling because the states have required CLECs to purchase a full loop, not only the low-frequency portion. See AT&T Ex Parte at 3-4. The cost of purchasing just the low-frequency portion of the loop played no part in the Commission's analysis in the *Triennial Review Order*. Nor could that have made any difference, given the Commission's finding that "most states" set the cost of the high-frequency portion of the loop at "roughly zero," meaning that essentially all loop costs were assigned to the low-frequency portion. *Triennial Review Order* ¶ 260 & n.774. BellSouth stressed this point in its reply comments (at 13), but yet again AT&T declines to address it in its supposed rebuttal to that filing.

Nor does AT&T acknowledge that other commenters (including commenters that disagree with BellSouth's position) have recognized that the issue presented here is the same one that was presented in the *Triennial Review Order*. Those commenters have conceded that the *Triennial Review Order* resolved the same question at issue here. See Comments of Americatel Corporation, WC Docket No. 03-251, at 15, 4 (FCC filed Jan. 30, 2004) (stating that, in the *Triennial Review Order*, the Commission decided "to permit ILECs to

refuse to provide DSL services to CLEC voice customers” and acknowledging that the *Triennial Review Order*, “bar[red] the states from requiring ILECs to provide DSL service to CLEC customers”); Comments of Catena Networks, Inc., WC Docket No. 03-251, at 6, 7 (FCC filed Jan. 30, 2004) (explaining that the Commission has “already determined these issues” and that the state commission rulings that BellSouth has discussed are “inconsistent” with the *Triennial Review Order*).

AT&T is equally incorrect in asserting that states are free to ignore this Commission’s determinations of federal telecommunications policy. See AT&T Ex Parte at 4. Again, the *Triennial Review Order* undermines AT&T’s claim. The Commission concluded there that, under 47 U.S.C. § 251(d)(3), state commission decisions may not “thwart[]” or “frustrate[]” the Commission’s judgment of national policy by adopting contrary requirements. *Triennial Review Order* ¶ 192. Thus, if a state commission attempted to impose unbundling obligations that the Commission had declined to impose, the Commission stated that it would be “unlikely that such [a] decision would fail to conflict with and ‘substantially prevent’ implementation of the federal regime, in violation of section 251(d)(3)(C).” *Id.* at 17101, ¶ 195. In other words, as the Commission recently told the D.C. Circuit, its decisions in the *Triennial Review Order* “reflect[] a ‘balance’ struck by the agency between the costs and benefits of unbundling [an] element. Any state rule that struck a different balance would conflict with federal law, thereby warranting preemption.”⁵

That reasoning applies directly here. Contrary to AT&T’s baseless assertion, there *is* a “federal rule” here. AT&T Ex Parte at 4. That rule is that ILECs cannot be required to provide DSL service on CLEC voice lines. The Commission expressly considered this issue and refused to impose such an obligation in paragraph 270 of the *Triennial Review Order*. Under the *Triennial Review Order*, states are not free to ignore that determination and impose a contrary policy.

Moreover, and again contrary to AT&T’s assertion, see AT&T Ex Parte at 4, the Commission’s clear determination on this issue reflects a federal policy, which states may not “thwart” or “frustrate.” As discussed above, that federal policy is to encourage CLECs to engage in line splitting or to offer their own broadband service in order to “take full advantage of an unbundled loop’s capabilities,” instead of requiring ILECs provide some functionalities to CLEC end-user customers. *Triennial Review Order* ¶ 270; see *id.* ¶ 261 (requiring ILECs to offer functionalities on a CLEC loop would “discourage innovative arrangements between voice and data competitive LECs and greater product differentiation between the incumbent LECs’ and the competitive LECs’ offerings” and thus would “run counter to the statute’s goal of encouraging

⁵ Brief for Respondents, *United States Telecom Ass’n v. FCC*, Nos. 00-1012 *et al.*, at 93 (D.C. Cir. filed Jan. 16, 2004) (emphasis added; citations omitted).

competition and innovation in all telecommunications markets”). Again, AT&T can make a contrary argument only by disregarding the dispositive portions of the Commission’s order.

2. Even if This Were an Open Issue, It Would Be One Within the Exclusive Authority of This Commission.

This Commission has exclusive jurisdiction over jurisdictionally interstate communications, including those offered under federal tariff.⁶ In the teeth of that settled federal law, AT&T argues that state commissions can regulate services offered under federal tariff, so long as there is no explicit “conflict” between the tariff and the state requirement. AT&T Ex Parte at 9.

Under established precedent, that is the wrong analysis. As BellSouth explained in detail in its reply comments, although a direct conflict does exist here, state regulation of federally tariffed services is preempted *regardless* of the existence of such a conflict. See Reply Comments of BellSouth Telecommunications, Inc., WC Docket No. 03-251, at 29-30 (FCC filed Feb. 20, 2004) (“BellSouth Reply Comments”). For interstate services offered under federal tariff, states may not add to or modify the terms of service in any manner. As Judge Posner has explained, with respect to federal tariffs, “[f]ederal law does not merely create a right; it occupies the whole field, displacing state law.” *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 488-89 (7th Cir. 1998); see *Evanns v. AT&T Corp.*, 229 F.3d 837, 840 (9th Cir. 2000) (filed tariff “conclusively and exclusively enumerate[s] the rights and liabilities as between the carrier and the customer”) (internal quotation marks omitted); *Ivy Broad. Co. v. AT&T Co.*, 391 F.2d 486, 491 (2d Cir. 1968) (“The published tariff rate will not be uniform if the service for which a given rate is charged varies from state to state according to differing state requirements.”). That is why two federal courts

⁶ See 47 U.S.C. § 151 (creating FCC “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio”); *Crockett Tel. Co. v. FCC*, 963 F.2d 1564, 1566 (D.C. Cir. 1992) (Commission has “exclusive jurisdiction to regulate interstate common carrier services”); *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930) (“neither these interstate rates nor the division of the revenue arising from interstate rates [is] a matter for the determination [of the state]”); *NARUC v. FCC*, 737 F.2d 1095, 1111 (D.C. Cir. 1984) (limitation on state authority over interstate services “is essential to the appropriate recognition of the competent governmental authority in each field of regulation”) (internal quotation marks omitted); *New England Tel. & Tel. Co. v. AT&T*, 623 F. Supp. 1231, 1234 (D. Me. 1985) (“It is well settled that the FCC has exclusive jurisdiction over . . . interstate service.”); Third Report and Order, *MTS and WATS Market Structure*, 93 F.C.C.2d 241, 261, ¶ 58 (1983) (“the state[] would not acquire jurisdiction to regulate . . . interstate access even if [the FCC] were abolished”), *aff’d in relevant part, remanded in part*, *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984); Memorandum Opinion and Order, *Petitions of MCI Telecomms. & GTE Sprint*, 1 FCC Rcd 270, 275, ¶ 23 (1986) (stressing the Commission’s “exclusive jurisdiction over interstate communications”).

have recently enjoined state commission attempts to impose obligations related to federally tariffed services.⁷

Again, AT&T makes no effort to distinguish any of these precedents, all of which BellSouth discussed in its reply comments. Nor does AT&T attempt to square its position here with its (correct) statement to the Supreme Court that, even if a federal tariff were in fact silent on an issue, creating a “gap,” that gap must be “filled in’ *uniformly as a matter of federal law,*” not through “state” law.⁸ AT&T’s position is thus both unsupported by precedent and wholly opportunistic.

AT&T is equally wrong in arguing that this Commission’s exclusive authority over BellSouth’s tariffed interstate DSL service does not extend to BellSouth’s FastAccess service, which is a bundled offering of that same tariffed interstate DSL transmission and Internet access functionalities. See AT&T Ex Parte at 10. AT&T offers no logical support for the absurd position that the tariffed transmission service is subject to exclusive FCC authority and a bundled service that includes that transmission (and rides upon it) could not be subject to the same exclusive jurisdiction. Moreover, the Commission’s recent *Pulver*⁹ determination undermines any claim that AT&T might have. There, the Commission determined that, if it were to apply an “end-to-end” analysis to an information service offered over broadband transmission, the result would be that the information service would be treated as “exclusively interstate” and beyond state authority.¹⁰ The same result applies here. Because the Commission has already determined in the *GTE Tariff Order* that DSL transmission is jurisdictionally interstate (under traditional end-to-end analysis) and subject to this Commission’s exclusive jurisdiction, *Pulver* establishes that an information service that rides on that interstate transmission is also “exclusively interstate.”

Additionally, the Commission reiterated in *Pulver* that, even aside from traditional end-to-end analysis, unless an information service is “purely intrastate” or it is “practica[ble] . . . to separate interstate and intrastate components of a jurisdictionally mixed . . . service without negating federal objectives for the interstate component,” Commission jurisdiction is “exclusive.”¹¹ AT&T does not – and cannot – argue either that DSL-based

⁷ *Qwest Corp. v. Scott*, No. 02-3563, 2003 WL 79054 (D. Minn. Jan. 8, 2003); *Illinois Bell Tel. Co. v. Globalcom, Inc.*, No. 03 C 0127, 2003 WL 21031964 (N.D. Ill. May 6, 2003).

⁸ Brief of Petitioner AT&T Corp., *AT&T Corp. v. Central Office Tel., Inc.*, 1998 WL 25498, at *33 (U.S. filed Jan. 23, 1998) (emphasis added).

⁹ Memorandum Opinion and Order, *Petition for Declaratory Ruling That pulver.com’s Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket 03-45, FCC 04-27 (FCC rel. Feb. 19, 2004) (“*Pulver Order*”).

¹⁰ *Id.* ¶ 22.

¹¹ *Id.* ¶ 20.

Internet access is “purely intrastate” or that it is “practica[ble] to separate interstate and intrastate components” of that service. This case is thus indistinguishable from *Pulver* in this regard as well, and AT&T’s argument is multiply flawed.¹²

3. AT&T’s Policy Arguments Are Irrelevant and Incorrect.

Because the Commission has already resolved the relevant policy at issue here in the *Triennial Review Order* – and because, in any event, these issues are within the exclusive authority of this Commission to resolve in a uniform, national manner – AT&T’s policy contentions are beside the point. In any event, they are wrong even on their own terms.

AT&T places particular emphasis on the alleged consequences of granting BellSouth’s petition for development of voice over Internet protocol. The *Triennial Review Order* did not address the circumstance where an end-user customer wants a broadband connection from an ILEC but does *not* want narrowband service from either the ILEC or a CLEC, what some have referred to as “naked DSL.” But the strawman issue raised by AT&T has nothing to do with the relief requested by BellSouth and the Commission need not resolve it here. Rather the key point for present purposes is that any determination as to whether to regulate these interstate services should be made by this Commission and not through multiple, potentially conflicting state determinations.

Moreover, although AT&T claims that forcing ILECs to provide broadband services to CLEC voice service will somehow enhance CLEC incentives to invest in broadband, see AT&T Ex Parte at 6, it has no rational explanation as to how a CLEC is more likely to invest in broadband if ILECs are required to provide those services to CLEC voice customers than if CLECs, either by themselves or through line-splitting, must offer the broadband services that customers want. As this Commission has stated, requiring ILECs to offer functionalities to CLEC customers would “discourage innovative arrangements between voice and data competitive LECs and greater product differentiation between the incumbent LECs’ and the competitive LECs’ offerings.” *Triennial Review Order* ¶ 261. The logic of that conclusion is unassailable. Moreover, and contrary to AT&T’s argument, a CLEC necessarily has a greater incentive to offer broadband services or engage in line splitting if it cannot rely on the ILEC to provide those services, regardless of the amount the CLEC has paid for access to the loop. Compare AT&T Ex Parte at 6.

¹² AT&T also cannot dispute that, even aside from the *Triennial Review Order*, the Commission has established as national telecommunications policy that information services “[will] continue to develop best in an unregulated environment” and that “regulation of enhanced services [is] thus unwarranted.” See *id.* ¶ 17.

Nor is AT&T correct that the burdensome state regulation at issue here cannot affect BellSouth's investment incentives because BellSouth has already invested the resources necessary to provide DSL service throughout much of its region. See *id.* at 5. As the Commission is well aware, currently available forms of DSL are not the last word in broadband technology. Consumer-driven demand for more bandwidth-intensive applications will require continued modifications and upgrades to BellSouth's broadband network. These upgrades will require significant incremental capital expenditures. The threat of costly and inconsistent state regulation undermines the regulatory certainty that is necessary to support a business case for making such investments. See BellSouth Reply Comments at 38.

AT&T's notion that the threat of such regulation does not impede investment incentives in new broadband technologies is directly contrary to this Commission's correct conclusion that such requirements *do* impede investment and thus are contrary to the intent of the 1996 Act. See, e.g., Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019, 3022, ¶ 5 (2002) ("broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market"). Having chosen not to risk its own capital by investing in its own innovative broadband services, a path that is contrary to every incentive that this Commission has attempted to create, AT&T attempts to hobble those facilities-based providers that *have* made the investments necessary to offer their customers something different and innovative.

Further, although AT&T continues to tout its expanding relationship with Covad in the popular press, AT&T attempts to minimize the benefit of that same relationship in this proceeding. In reality, Covad offers DSL service in eleven of the most lucrative urban markets within BellSouth's region, and market forces are prompting AT&T and others to expand their relationships with DLECs such as Covad so as to be able to offer a full suite of voice and data services in competition with BellSouth, cable companies, and others. Indeed, over the past several months, BellSouth has experienced a dramatic increase in the number of provisioned line splitting arrangements as competitive providers partner with one another in order to market bundled service offerings.

As AT&T explained in an April 6 press release announcing the addition of residential DSL service to its bundle of local and long distance services in 11 additional states including Georgia, Florida, North Carolina, Louisiana, Alabama, and Tennessee:

The offer enables consumers to bundle AT&T DSL Service with other AT&T local and long distance services. The ability to bundle AT&T DSL Service is based on a process called line splitting, which involves AT&T "splitting" the loop it buys from the

Bells to offer AT&T local, long distance and DSL service on the same line. Line splitting for large volumes of customers is an innovative process that gives consumers more choice for high-speed Internet access.

With these 11 states, AT&T now offers its voice and data “bundle” in competition with other bundled service offerings in 25 states “with plans to roll out the new service in all states in which it provides bundled local and long distance residential services.”¹³

Covad Communications Group, Inc. also issued a Press Release on April 6, 2004 regarding the expanded relationship with AT&T in which Covad stated:¹⁴

Covad’s nationwide network is the only national DSL footprint. Covad’s network enables ISPs and CLECs alike to partner with Covad for their broadband needs. A growing number of companies nationwide including AT&T, AOL, EarthLink, Sprint, Speakeasy, MCI, MegaPath and XO work with Covad to power their consumer and business broadband offerings.

* * *

Covad’s services are currently available across the nation in 44 states and 235 Metropolitan Statistical Areas (MSAs) and can be purchased by more than 57 million homes and businesses, which represents over 50 percent of all US homes and businesses.

At the same time, Covad is entering the VoIP market in order to provide voice services to its retail broadband customer base.¹⁵ Covad can lease an unbundled loop from BellSouth and provide both a broadband Internet access service as well as VoIP to an end user customer. Indeed, given AT&T’s recent announcements about its VoIP service, one could easily imagine an “innovative arrangement” between Covad and AT&T where they provide both services over

¹³ AT&T’s April 6 Press Release can be found at http://www.harrisdirect.com/cgi/inet/qndigest.trn?research_cde=PRN&key_nmb=NYTU032&trn_key_nmb=PRN040406000307&symbol=T&topic=misc&selection=all_news_sources&cond=NEWSNCOMMHDL

¹⁴ Covad’s April 6 Press Release can be found at http://www.harrisdirect.com/cgi/inet/qndigest.trn?research_cde=BSW&key_nmb=BW5287&trn_key_nmb=BSW040406000307&symbol=COVD&selection=all_news_sources&cond=NEWSNCOMMHDL

¹⁵ See http://www.harrisdirect.com/cgi/inet/qndigest.trn?research_cde=BSW&key_nmb=BW5359&trn_key_nmb=BSW040303000177&symbol=COVD&topic=misc&selection=all_news_sources&cond=NEWSNCOMMHDL

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the same unbundled loop. These sorts of innovations are much less likely to develop in a thicket of state regulation where AT&T need not worry about offering a competitive broadband service. Clearing this underbrush of unnecessary and improper state regulation will further the Commission's goal of encouraging deployment of multiple broadband technologies.

4. BellSouth's Compliance With Newly Imposed State Broadband Regulations Actually Is Costly.

In its March 1, 2004 ex parte, BellSouth provided information to the Commission regarding the extraordinary costs that it was incurring to comply with the multiple and inconsistent state regulations regarding how BellSouth would be forced to provision its broadband services. BellSouth summarized these costs as follows:

- BellSouth has incurred over \$1.5 million in costs to comply with the orders of the state commissions in Louisiana, Florida, and Kentucky. 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 \$5 million in additional costs to comply with these improper state orders.

Even more damaging than incurring the above-stated costs, BellSouth and the overall marketplace have been harmed by the fact that BellSouth has had to divert resources away from the development and deployment of additional innovative broadband services in order to comply with these various state decisions by their effective dates. Thus, the rollout of BellSouth's 3-Meg Internet access offering suffered a delay because it was necessary to divert resources away from this project so as to ensure that new state-imposed broadband regulations could be implemented in a very short time frame.

In response, AT&T asserts that this evidence is "not remotely credible," apparently claiming that BellSouth's compliance with these newly imposed state regulations is free of charge. AT&T ignores the numerous and conflicting differences in each state decision and attempts to minimize the impact of compliance by claiming that all BellSouth need do is obtain a customer's credit card number. AT&T Ex Parte at 7.

In BellSouth's prior ex parte filings in this proceeding, BellSouth has discussed numerous examples of modifications to its provisioning practices that were implemented in order to comply with these newly imposed state broadband regulations. For instance, the Louisiana Commission ordered

BellSouth to continue providing its broadband services to customers that switch voice service to a CLEC only in those situations where the particular CLEC allows the continued use of its loop for that purpose. BellSouth does not have a mechanized system to make such a determination up-front when BellSouth's service reps are attempting to work orders. In order to meet the deadlines imposed by the Louisiana Commission, BellSouth had to implement a manual work-around and will be required to develop and implement an automated function if this ruling is not preempted.

As another example, after the Florida Commission required BellSouth to provide its broadband services over stand-alone unbundled loops (UNE-L), BellSouth determined that the least expensive way in which to comply with that ruling was to create a new "voiceless" DSL line that requires numerous manual steps in the conversion process. BellSouth continues to incur significant costs in order to perfect these new provisioning requirements in a manner that maintains BellSouth's commitment to customer service quality. Moreover — and underscoring the fallacy of AT&T's rhetorical "solution" — the Florida PSC has required BellSouth to offer a third costly billing option for those CLEC voice customers who wish to remain on BellSouth DSL but do not want to be billed on their credit card.

Not unexpectedly, the significant costs of complying with these state commission orders are being incurred to support a service very few customers want. In fact, only 6% of the CLECs in BellSouth's region have even authorized BellSouth to access the high-frequency portion of the loop to provide DSL service to their voice customers. Besides adding even further compliance costs because BellSouth must screen each request to see if it relates to a CLEC that has approved this arrangement or not, this figure underscores that all of these compliance costs are being borne by BellSouth for the benefit of a few CLECs that have chosen not to offer their own Broadband services.

When all of these costs are compared to the relatively few customers that are opting to receive voice service from a CLEC while maintaining their existing broadband service from BellSouth, BellSouth estimates that it will continue to cost approximately \$1500 to provision this service arrangement for each additional customer. This is \$1500 per customer being incurred by BellSouth in regulatory compliance costs, rather than being invested by BellSouth in innovative broadband service offerings. This is \$1500 per customer that BellSouth must stomach so that AT&T does not have to invest in its own broadband service to offer to its voice customers.¹⁶

¹⁶ AT&T's ex parte also mentions BellSouth's recent ex parte regarding the North Carolina Commission's request for further cost information concerning compliance with these state regulations. See AT&T Ex Parte at 8. BellSouth has provided to the North Carolina Utilities Commission all of the cost information that it recently requested. A copy of that filing is attached hereto. BellSouth has not received any further requests for information from the North Carolina Commission.

* * * * *

With its recent filing, AT&T continues to promote the growth of a thicket of state-regulatory underbrush that entirely undermines this Commission's stated policy of encouraging the development and deployment of multiple and competing broadband technologies. Forcing BellSouth to assume the role of broadband provider of last resort for CLEC customers would "discourage innovative arrangements between voice and data competitive LECs and greater product differentiation between the incumbent LECs' and the competitive LECs' offerings."¹⁷

Sincerely,



Glenn T. Reynolds

- Cc: Christopher Libertelli
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Jeff Dygert
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¹⁷ *Id.* ¶ 261.