



March 16, 2005

BY ELECTRONIC FILING

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

Re: Ex Parte

In the Matter of BellSouth Telecommunications, Inc. Emergency 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:

MCI, Inc. is submitting this ex parte letter to express its continued opposition to BellSouth's Emergency Request for Declaratory Ruling in the above-referenced proceeding. The Commission should not formally sanction – and preempt state commission authority in the process – BellSouth's anticompetitive practice of refusing to provide DSL service to consumers who choose to receive their voice service from a competitive provider.<sup>1</sup> This practice effectively “locks-in” BellSouth voice customers who receive BellSouth DSL, because they cannot turn to a competitive provider such as MCI for voice service unless they cancel their existing DSL service, something many persons are unwilling to do.<sup>2</sup> It also hinders the deployment of VoIP services, because consumers with BellSouth DSL may be discouraged from subscribing to a VoIP service if they have to also maintain and pay for their regular landline local service.

Although BellSouth stated in its Comments in this proceeding that other carriers may resell its voice service on the same line on which it provides DSL, that is hardly a viable opening for true competition.<sup>3</sup> Resale has not proven to be a viable entry method for any carrier seeking to serve the mass market.

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<sup>1</sup> Comments of MCI (filed Jan. 30, 2004).

<sup>2</sup> Changing to a new broadband provider may require the customer to obtain and install new equipment, activate new e-mail addresses (and inform contacts of the change), and incur disconnect and new connection fees. Customers are often unwilling to even contemplate such changes for the purpose of switching voice providers.

<sup>3</sup> BellSouth Reply Comments, p. 37 n.31 (filed Feb. 20, 2004).

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BellSouth's petition is motivated by the fact that several state commissions have required incumbent carriers to provide DSL (upon request) to persons who receive voice service from a competitive carrier. However, an FCC decision preempting those commissions, and other state commissions that may rule similarly in the future, would impermissibly intrude upon state jurisdiction. State jurisdiction is premised on the fact that this matter involves the regulation of local voice telephone service, and state commissions have clear authority over local telephony and the conditions limiting competition in the service.<sup>4</sup> While preemption is appropriate when a state rule negates a valid federal policy, that is not the case here. To the contrary, as MCI detailed in its Comments, the state rulings conflict with neither the *Triennial Review Order*, the FCC's regulatory treatment of "information services," the FCC's treatment of federally tariffed services, nor any other federal rule.<sup>5</sup> Nor do they violate any provision of the *Triennial Review Remand Order*.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions regarding MCI's position in this proceeding.

Sincerely,

/s/ John R. Delmore  
John R. Delmore

cc: Christopher Libertelli  
Matthew Brill  
Jessica Rosenworcel  
Dan Gonzalez  
Scott Bergmann  
Ian Dillner

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<sup>4</sup> See 47 U.S.C. § 152(b).

<sup>5</sup> Comments of MCI, pp. 17-27 (filed Jan. 30, 2004).