Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
BellSouth Telecommunications, Inc.	)	WC Docket No. 03-251
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	)	
Competitive LEC UNE Voice Customers	)	

COMMENTS OF THE TEXAS OFFICE OF PUBLIC UTILITY COUNSEL IN RESPONSE TO THE NOTICE OF INQUIRY CONCERNING THE BUNDLING OF LEGACY AND ENHANCED SERVICES

The Texas Office of Public Utility Counsel ("TOPC")[1] submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Inquiry ("NoI") in the above-captioned proceeding. Although BellSouth Telecommunications, Inc. does not appear to be a local exchange company in the State of Texas, TOPC files these comments because the Notice of Inquiry does not appear to be restricted in geographic scope. Furthermore, the largest incumbent local exchange company in Texas has for years tied services in the manner described in the NoI, and the Commission may intend for determinations following this NoI to apply in Texas.

[1] TOPC is a state agency created by the Texas Legislature to represent the interest of residential and small commercial consumers involving telephone and electric utility issues. Public Utilities Regulatory Act, Tex. Gov't Code Ann. § 13.001 (Vernon 1998 & Supp. 2005).

The NoI asks for comment on how bundling benefits consumers. Optional bundling can often benefit consumers, especially when bundles provide discounts. The real question, however, is not whether bundling benefits consumers, but whether forced bundling harms consumers. Forced bundling by definition limits customer choice under all circumstances. In addition, it can severely harm competition when, as is the case here, a provider that does not yet dominate a relatively new service (DSL service) compels residential and small business customers to also purchase a "universal service" for which the provider exercises overwhelming dominance (local telephone service).

Incumbent LECs' dominant provider status appears likely to become even more unassailable as UNE-P disappears by early 2006. This will particularly harm residential customers. In Texas, 71% / 78% / 84% (suburban / urban / rural) of residential CLEC lines are provided by UNE-P.[2]

Both the marketplace and incumbent LECs' regulatory positions demonstrate that competition has been insufficient to provide sufficient incentives for incumbent LECs to disaggregate bundles to maximize consumer choice. The lack of incentive is also demonstrated in incumbent LEC statements to the investor community, such as in Verizon's statement that various forms of bundling (along with building out its network and expanding its portfolio of services) will help "counter the effects of competition."[3]

Some of the harms to customers occur because SBC's anti-competitive tying practices in Texas cause harm to customers indirectly by causing increased costs to

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[2] Public Utility Commission of Texas (PUCT), *Report to the 79th Texas Legislature: Scope of Competition in Telecommunications Markets of Texas* at 14 (January 2005).

[3] Verizon 2003 Annual Report at 14, available online at: http://investor.verizon.com/financial/quarterly/pdf/03VZ_AR.pdf

competitors, which in turn likely increases the costs paid by customers.[4] For example, when a competitive LEC attempts to place an order for a new local voice service customer, SBC's ordering systems do not immediately reject the order, but instead eventually return an error notification to the competitive LEC. This delay in processing can cause additional expense and embarrassment for the competitive LEC, very possibly resulting in the loss of a customer. If a competitive LEC attempts to anticipate this possibility by requesting the customer to discontinue its DSL service from the incumbent LEC, the customer might understandably simply cancel its order with the competitive LEC. If the customer contacts the incumbent LEC to discontinue DSL service, the customer will likely receive a retention (or "winback) offer. Furthermore, the chilling effect of all these difficulties may be under-reported, given that competitive LECs are likely stop a marketing call once it reveals that a customer has incumbent LEC DSL service, and given that customers may have been informed by the incumbent LEC regarding forced bundling and therefore may not have even considered alternative local voice providers.

Because this form of tying by incumbent LECs often involves long-term contracts that lock-in customers for a year or multiple years, this forced bundling can effectively eviscerate State laws or regulations that prohibit or limit long-term contracts for local voice service.

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[4] In late 2002 and early 2003, the PUCT began its Project No. 26943, *Investigation into the Availability of SBC's DSL Service to End Users Subscribing to CLEC Voice Service*. Though the PUCT ultimately took no action in that matter, it conducted a workshop and accepted comments. Some of the comments in this filing are drawn from the comments made in that project, and therefore some comments regarding SBC processes may no longer be correct or relevant, though they appear to be the most recent statements made by SBC to the PUCT regarding SBC's processes in Texas on this issue.

This form of tying also may result in an "all or none" effect that effectively limits small business customer choices. Many small business customers are unwilling to maintain two separate accounts – one with the incumbent LEC for a DSL line tied to a local voice line, and one with a competitive LEC for all the customer's other lines. This arrangement is particularly unattractive for customers desiring rotary service or a hunting arrangement. Such complications can be unduly complex and costly for the customer, the incumbent LEC, and the competitive LEC. In addition, the customer may well lose many of the benefits that otherwise accrue with bundling.

Last, but certainly not least, TOPC concurs entirely with the Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein Dissenting in Part, Approving in Part.

Respectfully submitted,

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