

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
BellSouth Telecommunications, Inc. )  
Request for Declaratory Ruling that State )  
Commissions May Not Regulate Broadband ) WC Docket No. 03-251  
Internet Access Services by Requiring )  
BellSouth to Provide Wholesale or Retail )  
Broadband Services to Competitive LEC )  
UNE Voice Customers )

**REPLY COMMENTS OF ITC^DELTACOM COMMUNICATIONS, INC.**

ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom

(“ITC^DeltaCom”), submits these reply comments in the above-captioned proceeding.

Comments in this proceeding show that BellSouth is “tying” not “bundling” its regulated voice services with its non-regulated retail DSL service offering. Bundling is where a company offers a suite of products or services at usually a reduced price as opposed to pricing each service individually. Cable providers in the BellSouth region such as Knology, Comcast and others offer bundled services of internet, local, long distance, and cable services at a price that is less than the price of each individual service. However, and this is the main point of this case, the cable providers are not saying to consumers – “we won’t sell you high speed access to the internet unless you also buy our cable and/or voice products.” If the Commission intends to accord the same regulatory treatment to BellSouth’s

broadband services as that which exists with the cable providers, then this Commission must also look at the behavior patterns and market power of these providers. Does this Commission really want to send the message to all broadband providers that it is appropriate to tie the availability of one product to another?<sup>1</sup>

**I. THE COMMISSION SHOULD FIND BELL SOUTH'S ACTIONS IN TYING ITS REGULATED VOICE SERVICE TO DSL IS NOT IN THE PUBLIC INTEREST AND HARMS COMPETITIVE CHOICE**

The Georgia, Florida, and Louisiana Public Service Commissions' did not lightly issue their orders requiring BellSouth to continue providing retail xDSL services where the consumer choose an alternative local provider.<sup>2</sup> These state commissions have dealt with consumer complaints regarding the inability to obtain stand-alone xDSL service from local voice service. Attached as Exhibit A are sample consumer complaints that were filed with the Florida Public Service Commission prior to the issuance of the Florida orders prohibiting the disconnection

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<sup>1</sup> For example, if this Commission finds that BellSouth is not required to offer stand-alone DSL service to an end user who chooses Vonage as a replacement for its voice service, what would prevent the cable providers from taking the same position as BellSouth? BellSouth argues that there are multiple broadband providers and therefore the broadband market is competitive. (BellSouth Comments at page 11). However, if this Commission signals to the industry that a broadband provider such as a cable company can tie the provision of its cable service to its broadband service then competitive alternatives such as Vonage will cease to exist. Indeed, all companies with their own broadband capabilities will be encouraged to condition the sale of their broadband services upon the purchase of other services.

<sup>2</sup> *In the Matter of BellSouth Telecommunications, Inc. 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*, Memorandum Opinion and Order and NOI, WC Docket No. 03-251, ¶ 9-15 (Rel. 3/25/05) citing state commission rulings in BellSouth region.

of xDSL service to consumers who choose an alternative local provider. These consumers frame the issue well:

I do not think I [should] have to be forced to keep my residential local telephone service with BellSouth, in order to keep my residential DSL Fast Access Internet Service with BellSouth. I think this is wrong, immoral, and probably even illegal, under the Federal Telecommunications Act of 1996. I am initiating this complaint with the FPSC first. If this can not be resolved, I will then initiate a similar complaint with the Federal authorities. (Terrence Del Castillo, Miami, FL Request No. 410656T)

...I noticed that I am required to maintain my voice telephone service with BellSouth or I will los[e] DSL service, and be subjected to penalties. Once again is there some state or federal antitrust violation here. I am tied into BellSouth for a voice telephone service provider, based upon its ability to control its fiber optic network lines. I have been told by several alternative voice telephone providers that they could provide voice telephone services to my family and we would achieve tremendous financial savings based upon their competitive pricing strategy. But alas, once again, I cannot switch over from BellSouth ....

This cannot be permissible. Surely the PSC must have taken some action to prevent such noncompetitive conduct on the part of BellSouth. (Richard Weiner, Davie Florida/Request No. 400823T)

Help!!! I have been a BellSouth customer (as have we all in South Fl.) for a long time +20 years. ...my existing local telephone service plan will no longer be available after March 2002 and I need to sign up for a new plan. ...No big deal. With new companies now selling local service for much less than Bell South, I figured it would be a good time to switch. Wrong. Bell south is telling me that if I switch to another local phone service provider...that I will

lose my Fast Access ADSL service. (Bruce Reisman, Pembroke Pines, FL/Request No. 414337T).

There can be no doubt that consumers want choice. The complaints enclosed in Exhibit A were informal complaints lodged with the Florida Public Service Commission and are offered here so that this Commission can understand the sentiments expressed by consumers and why certain state commissions were forced to act. ITC^DeltaCom obtained these business records from the Florida Public Service Commission pursuant to state public records statutes. No doubt this Commission also received numerous consumer complaints regarding BellSouth's policy of tying its local to its broadband service. Any public interest analysis must include a review of those consumer complaints filed with this Commission as well as the state commissions.

## **II. BELLSOUTH ARGUMENTS IN SUPPORT OF ITS TYING POLICY ARE WITHOUT MERIT**

First BellSouth argues that there is a cost to provide a stand-alone ADSL service. BellSouth, however, does not and has not provided any proof that they are not able to profitably provide stand-alone ADSL service today.<sup>3</sup> Indeed, because certain state commissions have required BellSouth to continue providing

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<sup>3</sup> In the arbitration cases between Bellsouth and ITC^DeltaCom, the issues of whether BellSouth would go below cost or would not be able to profitably serve Fast Access DSL customers who chose ITC^DeltaCom for UNE-P were raised. BellSouth stated that its margin would be reduced but BellSouth did not say that it is unprofitable for BellSouth to continue DSL service to a customer who selects another voice provider. (See Exhibit B – Transcript Docket No. 28841 APSC Vol. 7 at 1543.)

ADSL service where the customer selects an alternative voice provider, BellSouth must have already made those changes necessary to accomplish separate billing for those ITC^DeltaCom voice customers that have ADSL service with BellSouth.<sup>4</sup> Second, BellSouth argues that there are other broadband providers so the fact that they tie their local service to their ADSL offerings is not anticompetitive behavior. The problem with this argument is that the other broadband providers are not tying their products or services together. However, if this Commission signals that such ties are appropriate, more than likely, the other broadband providers will copy the same tactics employed by BellSouth. Third, BellSouth argues that it does not force consumers to buy voice service from BellSouth in order to obtain DSL service because it makes the retail DSL service available if the consumer has resold services from another provider. One problem with this argument is that the consumer did not get the opportunity to choose the method by which they obtain their alternative local service. The decision of how to offer competitive local exchange service is made by the CLEC, not the consumer, and not surprisingly, CLECs cannot offer competitive pricing at resale rates. This Commission's own statistical analysis shows that nationwide (not limited to BellSouth region) resale lines account for only 5,417,000 million lines or 16.5% of the CLEC provided lines nationwide. (See Table 3, Local Telephone Competition Report released July 2005). It is well known that resale is not a long-term strategy and this Commission has forcefully advocated facilities based competition over UNE-P or resale.

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<sup>4</sup> ITC^DeltaCom has several hundred customers served via UNE-P that also have ADSL service with BellSouth. These customers are primarily located in Georgia, Florida, and Louisiana.

### III. CONCLUSION

BellSouth's real motivation is to lock in its local voice customer base. This Commission should not sanction tying arrangements that prevent a consumer from purchasing different services from different providers. The Commission should impose a rule that local voice service may not be tied to an information service if the purchase of the local voice service is a condition precedent to the purchase of the information service.

Respectfully submitted,

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