

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

In the Matter of)	
)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities)	CC Docket No. 02-33
)	
Universal Service Obligations of Broadband Providers)	
)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements)	CC Docket Nos. 95-20, 98-10
)	

**COMMENTS OF THE
RUBY RANCH INTERNET COOPERATIVE ASSOCIATION**

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Summary

Adoption of the FCC's proposal – redefining DSL Internet connectivity to be an information service rather than a telecommunications service – would represent the biggest setback ever to the availability of broadband Internet access in rural and other underserved areas. Adoption of this proposal would thus be incompatible with the Congressional directive that the FCC “encourage the deployment on a reasonably and timely basis” of broadband capabilities to “all Americans.”¹

In fact, the FCC does not have the flexibility to refine DSL Internet connectivity to be an information service rather than a telecommunications service. With Internet access (whether broadband or narrowband), an end-user receives a transparent transmission path that the end-user utilizes to reach any destination on the Internet. Because the entity providing this Internet connectivity does not change the form or content of the customer's transmissions, the service provider is necessarily providing a telecommunications service, not an information service.

The Coop was formed to provide DSL broadband Internet access to a small neighborhood in an unincorporated part of Summit County, Colorado because the incumbent LEC, Qwest, has decided that we do not merit its own DSL services. We are able to provide our DSL services only because we can access Qwest subloops as unbundled network elements (“UNEs”), subloops we need to connect our homes with our DSLAM, located in a barn in our neighborhood. Although we provide Internet connectivity exclusively, the FCC's proposal would apparently reclassify our service as an information service rather than a telecommunications service. Such a reclassification would apparently mean, however, that we would no longer be eligible to obtain subloops as UNEs, because under the Act, UNEs can only be obtained by telecommunications carriers. Such a reclassification would presumably enable Qwest to “pull the plug” – thereby relegating us to third-party dial-up Internet access services at a maximum speed of 26 kbps. Such a result is not in the public interest and is certainly not consistent with the Congressional mandate that the FCC “encourage the deployment on a reasonably and timely basis” of broadband capabilities to “all Americans.”

¹ Section 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, Title VII, Feb. 8, 1998, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157 nt.

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The Ruby Ranch Internet Cooperative Association (“Coop”) submits these comments in response to the FCC’s proposal to refine DSL Internet connectivity to be an information service.²

I. INTRODUCTION

Some commenters, and apparently even the FCC, tend to focus on “how much” broadband competition there is, seemingly assuming that there is competition everywhere and that all that is needed going forward is regulatory fine-tuning with respect to the *amount* of competition. These commenters, and indeed the FCC itself, seem to miss that for most geographic locations in the US, there is not only “no broadband competition”, but “no broadband.” In these areas where the number of broadband providers is either zero or one, representing most of the United States,

² See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Notice of Proposed Rulemaking*, FCC 02-42 (Feb. 15, 2002)(“*Broadband Internet Access NPRM*”).

it is frustrating and insulting to see the FCC deliberating on the fine-tuning of competition rules. It is likewise frustrating to see the FCC proposing cutbacks of the 1996 Act, an Act which represents the *only* avenue for broadband access for many Americans.

The FCC's dream world is, apparently, a world in which every American can freely select between an ILEC DSL provider and a cable television Internet access provider, the two being in cut-throat competition with each other, driving prices ever downward and performance ever upward. That world does not exist. Most of the geographic area of the United States is still unserved by cable in 2002, and of the homes that are "passed" by cable, most are served by cable companies that do not provide cable modem Internet access. A wide majority of homes having telephone service are unserved by ILEC DSL. (Qwest, for example, admits that fully 64% of its customers can't get DSL.)³ Thus, most of the geographic area of the United States has *no* DSL and *no* cable modem service.

This is not a situation where the problem is that there is "no broadband competition." This is a situation where the problem is "no broadband service."

The Ruby Ranch Internet Cooperative Association exists to serve one of the myriad neighborhoods of the United States where there is no broadband service at all. And if the FCC carries out its apparent plan, cutting off access to unbundled subloops, then our neighborhood will revert to having "no broadband service."

II. IT IS NOT CLEAR WHAT THE FCC PROPOSES TO DO

Even after several readings, the Coop has had difficulty discerning what exactly the FCC proposes in its rulemaking. The FCC says it proposes to redefine "telecommunications service"

³ Qwest acknowledges that its DSL services are available to only 36 percent of customers. *See* Qwest Comments, Docket No. 01-338, at 47 (April 12, 2002).

in a way that excludes DSL. But in practical terms, what would this mean for those who wish to provide DSL where the ILECs chooses not to provide it? It is possible to imagine at least two different consequences depending on what the FCC means by its proposed change.

A. Changing what services ILECs would be obligated to provide for resale. ILECs are required to “offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers.”⁴ At present, ILECs provide in limited areas “finished” DSL service to subscribers, which they are currently required to offer for resale by others.⁵ It may be imagined that the FCC’s new proposed definition of telecommunications services to the exclusion of DSL would merely mean that ILECs would no longer be required to provide their DSL services for resale. In such an event, ILEC UNEs such as unbundled loops and subloops would still be available to other DSL providers. Such a change would have no effect upon facilities-based DSL providers (providers such as the Coop that use their own DSLAMs along with UNEs to provide DSL).

B. Changing who is entitled to rent UNEs under the Act. Under the Act, the entities permitted to rent UNEs are telecommunications carriers if the UNEs will be used for the provision of “a telecommunications service.”⁶ But if the FCC’s new proposed definition of telecommunications services to the exclusion of DSL were meant to redefine which entities are to be permitted to rent UNEs, then (as discussed below) the Coop would no longer be able to rent UNEs, and indeed, it would appear no Internet access provider would be able to rent UNEs. The FCC, at the stroke of a pen, would eviscerate the 1996 Act.

⁴ 47 U.S.C. § 251(c)(4).

⁵ Qwest, with some 13 million residential customers, acknowledges that its DSL services are available to only 36 percent of customers. *See* Qwest Comments, Docket No. 01-338, at 47 (April 12, 2002).

⁶ *See* 47 U.S.C. § 251(c)(3).

Given the Congressional mandate – “the Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”⁷ – it is difficult to imagine that the FCC is proposing to exclude all non-ILEC Internet access providers from taking advantage of a core provision of the 1996 Act (the UNE statute), a provision needed by organizations like the Coop to be able to provide advanced telecommunications capability in areas that ILECs choose not to serve. This is a subject that even ILECs appear to acknowledge. Indeed, as Qwest advised the Commission only last year:

[I]t is also important to keep in mind that CLECs need access to ILEC loops in order to provide DSL services. It would be a serious mistake in today’s marketplace, to allow a situation to develop whereby CLECs were unable to make efficient and cost-effective use of ILEC subloops. Such a situation would harm both CLECs and ILECs alike.⁸

Given the Congressional mandate, it is also difficult to imagine that the FCC is (alternatively) proposing to restrict resale of ILEC “finished” DSL services – given the evidence from consumers that independent DSL providers provide superior service compared to ILECs.⁹ As a University of California Professor as advised the Commission, “by reclassifying DSL as an in-

⁷ Section 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, Title VII, Feb. 8, 1998, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157 nt.

⁸ Qwest Comments, Docket No. 98-147, at 3 (Feb. 27, 2001).

⁹ *See, e.g.*, Susan Henmes Email (April 17, 2002)(Independent providers “tend to be cheaper, more efficient, and much more responsive. In our areas, PacBell would become the only provider. They are horribly slow and unresponsive and the areas in which I am already forced to deal with them. Please let the smaller ISP’s have a chance to compete.”); Urban Cabbage Email (April 12, 2002)(“The difference between the independent and the TELCO as regards to price, options and speed was significant. The independent was cheaper, faster and responsible to user problems. The TELCO was very rigid in their offerings and did not seem to want my business, never returning my phone calls and/or not answering their phones. The independent (Omsoft) answers the phones immediately with friendly courteous real live employees, something the TELCO has never done.”).

formation service, the ability of individuals and businesses to take full advantage of the benefit of electronic communications would be lost.”¹⁰

III. THE CLASSIFICATION OF DSL INTERNET CONNECTIVITY AS AN INFORMATION SERVICE IS INCOMPATIBLE WITH THE FACTS AND THE ACT

The FCC tentatively concludes that Internet connectivity is an information service rather than a telecommunications service. This conclusion is incompatible with the facts.

A. A DSL INTERNET CONNECTIVITY SERVICE DOES NOT CHANGE THE FORM OR CONTENT OF AN END-USER'S TELECOMMUNICATIONS

Whether a service provider is deemed to provide a telecommunications service or an information service depends on whether the service provider changes the form or content of the information specified by the user. The statute provides:

Telecommunications Service:	Information Service:
“The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(46).	“The term ‘information service’ means the offering of a capability for generating, acquiring, storing, transforming processing, retrieving utilizing, or making available information via telecommunications, and includes electronic publishing, <i>but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.</i> ” 47 U.S.C. § 153(20).
Telecommunications:	
“The term ‘telecommunications’ means the transmission, between or among points specified by the user, of information of the user’s choosing, <i>without change in the form or content of the information as sent and received.</i> ” 47 U.S.C. § 153(43).	

¹⁰ Andrew Waterhouse Letter (April 19, 2002).

An entity providing DSL Internet connectivity does not change the form or content of its customers' transmissions. The information that an end-user specifies (a set of "0s" and "1s") is the same information that a DSL Internet connectivity provider transmits to the destination chosen by the end-user. Similarly, the information that the destination server specifies is the same information that the DSL Internet connectivity provider transmits to the end-user. The end-user delivers to the DSL provider packets in the Internet protocol ("IP"), and the DSL provider transmits those same IP packets to the destination chosen by the end-user.¹¹ The IP packets received from the destination server are identically transmitted back to the end-user. Indeed, customers would be very unhappy if a DSL provider changed the "form or content" of their communications, because such a change would necessarily preclude customers from receiving the desired information from the desired destination. Such changes by a carrier would lead to garbled email messages or unintelligible web pages.

DSL Internet connectivity is nothing more than the establishment of a transmission path between an end-user and a destination on the Internet. The provision of this connectivity, or transmission functionality, constitutes a telecommunications service under the Communications Act.

¹¹ As Mr. Bedore correctly explains, "I send TCP/IP packets from my network to my router/modem. They are converted to bits and sent over the DSL line to my ISP access point where the bits are converted back to TCP/IP packets and routed to the appropriate internet host. This is exactly the process the data goes through when/if I use a dial-up modem to connect to an ISP. The data is transformed as it travels to the ISP but the bits going in at my end and the bits going out at the other to the ISP are identical." Clifford Bedore Comments (March 18, 2002).

B. THE FCC IS MISTAKEN IN BELIEVING THAT DSL INTERNET CONNECTIVITY INVOLVES MORE THAN PURE TRANSMISSION

The FCC concludes that “providers of broadband Internet access services provide end-users with more than pure transmission.”¹² Neither of the two facts that the FCC recites supports this conclusion.

The FCC first states in order to retrieve files from the World Wide Web, “an end-user must have the capability to interact with information stored on the facilities of the provider of the wireline broadband Internet access service.”¹³ But as one commenter correctly notes, this assertion is “just plain wrong”:

If you consider that Verizon is the wireline broadband Internet access service, it is flatly wrong since I do not interact with the information stored on Verizon servers except as I might surf to their site like I might go to www.fcc.gov or hp.com. You [the FCC] seem to be confusing the fact that Verizon provides ISP services/web services for both dial-up and DSL users with the fact that they also provide data pipes to other ISPs for both dial-up and DSL. These are two distinct separate services much like electricity has both generation and distribution services and these can be bundled or unbundled.¹⁴

Second, the FCC states that a DSL provider *may* offer its customers with a web hosting service.¹⁵ Web hosting, however, is an entirely different function from Internet connectivity; and either service may be provided without the other. For example, one may provide web hosting without providing Internet connectivity. Only a tiny percentage of American consumers accessing the Internet create their own Web pages, and those who have often store their information on

¹² *Broadband Internet Access NPRM* at ¶ 21.

¹³ *Id.*

¹⁴ Clifford Bedore Comments (March 18, 2002).

¹⁵ *See Broadband Internet Access NPRM* at ¶ 21 (“[T]o the extent to which a provider offers end-users the capability to store files on service providers computers to establish ‘home pages’ on the World Wide Web, the consumer is utilizing a ‘capability for . . . storing . . . or making available information’ to others.”).

their own servers or on servers maintained by someone other than their Internet service provider. The fact that a DSL provider may offer additional functions and capabilities that are classified as information services does not change the nature of an Internet connectivity service – namely, the provision of transmission paths to other destinations on the Internet.

The FCC provides a more complete explanation for its belief that Internet connectivity is an information service in its more recent *Cable Modem Order*.¹⁶ For example, the FCC notes that Internet connectivity providers use a domain name system (“DNS”), where a domain name (*e.g.*, www.rric.net) is converted or translated into an IP address (*e.g.*, 206.168.115.162). However, this translation function is no different than the translation function LECs perform when a customer dials directory assistance, dials the digits 9-1-1 which the ILEC converts into the 911 authority’s seven-digit telephone number, or when a telecommunications carrier offers voice dialing whereby a customer can say, “call home,” to reach his residence without having to dialing the digits of his home telephone number. The FCC has never classified these other translations functions as information services. At most, the DNS translation function constitutes a “capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service,” and as a result, is expressly excluded from the scope of the information services definition.¹⁷

IV. THE FCC’S NEW “INTEGRATION THEORY” MAKES NO SENSE

Some DSL providers (like the Coop) offer an Internet connectivity function only – which, as noted above, is a telecommunications service. Other DSL providers offer their customers ad-

¹⁶ See *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Declaratory Ruling*, FCC 02-77 (March 15, 2002)(“*Cable Modem Order*”).

¹⁷ 47 U.S.C. § 153(20).

ditional functions, including e-mail and Web hosting, or may provide their own information (e.g., welcome screens) – functions properly classified as information services under the Act. The FCC states without explanation that it “view[s] wireline broadband Internet access services as not consisting of two separate services, but as a single integrated offering to the end-user,”¹⁸ and that therefore a DSL Internet connectivity telecommunications service is converted into an information service so long as the service provider offers at least one information service in addition to an Internet connectivity telecommunications service. This view appears inconsistent with FCC’s “functional approach” analysis, because regulatory classifications are no longer based on the functions provided, but are rather based on the type and number of services offered (e.g., whether the provider offers an information service in addition to a raw Internet connectivity capability).

The FCC takes this “integration theory” to the next step in its *Cable Modem Order*, where it ruled that a firm providing only the Internet connectivity function is also an information service provider.¹⁹ Under this new “integration theory,” a DSL provider offering telecommunications services exclusively will nonetheless be classified as an information service provider because *other* DSL providers offer information services in addition to telecommunications services.

The FCC’s “integration theory” makes no sense for if applied uniformly, there will likely be no telecommunications services remaining in this country. Telecommunications carriers such as providers of voice telephone service offer a variety of information services and enhanced network features, including voice mail and voice-activated dialing. Under the FCC’s “integration

¹⁸ *Broadband Internet Access NPRM* at ¶ 21.

¹⁹ *Cable Modem Order* at ¶ 38 (“[A]n Internet access service is an information service . . . regardless of whether subscribers use all of the functions provided as part of the service, such as e-mail or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service.”)(emphasis added).

theory,” these telecommunications carriers would no longer be providing a telecommunications service, because the provision of one information service “contaminates” the entire package of services such that the entire package becomes an information service. And, under the theory of *the Cable Modem Order*, telecommunications carriers providing no information services would nonetheless be classified as information services providers because *other* telecommunications carriers would be classified as information services providers. In short, the uniform application of the “integration theory” necessarily leads to the result that there are no longer any telecommunications services or telecommunications services providers in this country.

V. THE FCC’S POLICY OBJECTIVES ARE BEST ACHIEVED BY CLASSIFYING DSL INTERNET CONNECTIVITY AS A TELECOMMUNICATIONS SERVICE

The FCC has identified four policy goals for this proceeding. As discussed below, these objectives are best achieved by classifying DSL Internet connectivity as a telecommunications service rather than an information service.

A. Broadband Service to All Americans. The FCC’s “primary policy goal [is] to encourage the ubiquitous available of broadband to all Americans.”²⁰ There are thousands of neighborhoods across the country where broadband Internet access is not available because the incumbent LEC and cable company have decided not to provide the service.²¹ There are thousands more where no competition exists because either the incumbent LEC or the cable company has decided not to provide the service. In most instances, the most effective way (and in some instances, the only way) for neighborhoods to self-provision DSL service is to lease subloops

²⁰ *Broadband Internet Access NPRM* at ¶ 3.

²¹ For example, Qwest acknowledges that its DSL services are available to only 35 percent of its 13-plus million residential customers. See Qwest Comments, Docket No. 01-338, at 47 (April 12, 2002).

from the incumbent LEC.²² Today, neighborhoods can obtain access to ILEC subloops under the unbundled network element statute. An ILEC's obligation to provide subloop UNEs, however, extends only to a "telecommunications carrier for the provision of a telecommunications service."²³ If Internet connectivity is deemed to be an information service, it would appear that prospective DSL providers could no longer obtain ILEC subloops under the UNE statute. The FCC's removal of the principal way that neighborhoods can provision their own DSL services (preventing them from leasing subloops as UNEs) is not a step that encourages the ubiquitous availability of broadband to all Americans.

B. Conceptualize Broadband Broadly. The FCC seeks to develop a regulatory framework that "will conceptualized broadband broadly to include any and all platforms capable of . . . [supporting] access to the Internet."²⁴ This objective is reached by classifying all providers of Internet connectivity in the same way, whether as telecommunications services providers or information services providers.

C. Reduced Regulation. The FCC states that broadband services should exist in "a minimal regulatory environment that promotes investment and innovation in a competitive market."²⁵ The FCC can achieve this objective by exercising its authority under Section 10 of the Act to forbear from enforcing upon competitive providers of DSL service any or all of the common carrier obligations that the Act imposes on telecommunications carriers.²⁶ There is no rea-

²² It is sometimes suggested that wireless networking could serve this need for most or all areas unserved by cable companies or ILECs. In many areas, however, including our neighborhood, the topography makes wireless networking unusable.

²³ 47 U.S.C. § 251(c)(3).

²⁴ See *Broadband Internet Access NPRM* at ¶ 4.

²⁵ See *Broadband Internet Access NPRM* at ¶ 5.

²⁶ See 47 U.S.C. § 160(a).

son to subject competitive providers of DSL service to common carrier regulation. It may, however, be appropriate to impose some regulation on RBOC DSL services.²⁷

D. Regulatory Parity. The FCC seeks to develop an analytical framework that is “consistent, to the extent possible, across multiple platforms.”²⁸ This objective can be achieved by classifying the provision of all Internet connectivity services as telecommunications services.²⁹

VI THE COOP: WHO WE ARE

The Ruby Ranch neighborhood is a residential neighborhood of 41 homes in unincorporated Summit County, Colorado. Neither the incumbent LEC (Qwest) nor the principal cable company (AT&T) provides broadband Internet access in our neighborhood – or for that matter, anywhere in Summit County.³⁰ Qwest’s voice telephone service is of such poor quality that the fastest modem Internet speeds available to neighborhood residents using dialup service is 26 kbps.

About one year ago, neighborhood residents formed the Ruby Ranch Internet Cooperative Association, a non-profit corporation, to provide “always on,” high-speed Internet access to

²⁷ See, e.g., Chase 3000 Comments (April 26, 2002)(noting that Colorado and Nebraska ILECs charge higher prices for DSL in areas where they face no competition).

²⁸ See *Broadband Internet Access NPRM* at ¶ 6.

²⁹ The FCC should, however, remove a disparity in the current market that is distorting competition. It is reported that some ILECs are using universal service dollars to purchase and maintain DSLAMs. See, e.g., Central Texas Telephone Ex Parte (April 12, 2002). Not surprisingly, such a subsidy would enable an ILEC to charge less for its DSL services than the prices for DSL services that are not subsidized. See Matt Larsen Comments (April 26, 2002). Such a disparity should be eliminated.

³⁰ There are many areas in the West where Qwest chooses not to provide its DSL services. See, e.g., Microlink D BBS Letter (April 19, 2002)(Qwest has spotty coverage in Colorado); Konrad Roeder Comments (Feb. 25, 2002)(identifying several areas in Colorado where Qwest does not provide DSL service); Old Colorado City Communications Comments (April 25, 2002)(Qwest does not provide DSL in westside Colorado Springs); CommSpeed Letter (April 22, 2002).

ourselves.³¹ We purchased a DSLAM and DSL modems, but we cannot provide our service without leasing subloops from Qwest to connect our DSLAM with individual houses. We expected (naively in retrospect) that Qwest would facilitate our rental of its subloops because:

- We are good customers of Qwest (averaging three lines per household);
- Qwest has ample subloops within our neighborhood available for lease (it is using only 120 of the 400 available subloops);
- Our rental of unused subloops would enable Qwest to enjoy a return on an investment that it would not otherwise realize;
- Qwest would be able to expand the capacity of its serving central office because we would move Internet traffic from dialup lines connected to its serving switch to our separate DSL network; and
- We would not compete with Qwest given Qwest's decision not to offer DSL to our neighborhood.

Qwest nonetheless refused to lease its subloops the Coop needed on reasonable terms and conditions.³² Qwest has taken similar unreasonable positions with other small DSL providers.³³

Qwest's unreasonable positions, coupled with its "take it or leave it" bargaining strategy, forced the Coop into an arbitration proceeding where, among other things, Qwest lied under oath and flagrantly contravened explicit FCC requirements.³⁴ Though its bad-faith tactics, Qwest was

³¹ Details concerning our Coop are available at www.rric.net.

³² Among other things, Qwest initially demanded that the Coop, with its 12 initial customers and with no desire to collocate on Qwest premises, obtain an \$11 million insurance policy – while simultaneously telling the Colorado FCC in other proceedings that no insurance is necessary if the competitive carrier does not collocate on any Qwest premises. Qwest demanded that Coop pay a quote preparation fee of \$1,709 (later reduced to \$1,109) to install a screw terminal block that it has conceded would cost approximately \$150. Qwest initially demanded we pay \$21.32 monthly for subloops with a length of less than one mile when its central office is four miles away and Qwest charges only \$14.92 for complete dial tone service.

³³ *See, e.g.*, Community Internet Systems Response (April 2, 2002)(describing the problems encountered with ILECs in bring DSL service to rural Nebraska).

³⁴ For example, Qwest stated under oath that its cross-connection box did not have sufficient capacity to accommodate the screw terminal block the Coop needed – until the Coop showed Qwest a photograph of its box demonstrating that it had ample spare capacity. As a second example, although the FCC has explicitly ruled that an interconnecting carrier may ask the ILEC to provide cost support, Qwest refused to provide for seven months the cost support that the Coop repeatedly requested, waiting until one week before the date of the arbitration hearing to hand over limited cost-support data.

successful in delaying the Coop from launching its services for nearly a year. The arbitration proceeding has been completed, and the Coop is finally scheduled to launch service around June 1, 2002.

The Coop is able to launch its broadband services only because it is today classified as a telecommunications carrier and as a result, is able to obtain subloops as UNEs pursuant to Section 251(c)(3) of the Act.³⁵ If, however, the FCC adopts its tentative proposal, the Coop apparently would be classified instead as an information service provider – although the Coop provides *no* information services. Such a classification would preclude the Coop from taking advantage of the UNE statute and would presumably enable Qwest to “pull the plug” – thereby relegating neighborhood residents once again to 26-kbps modem service.

Congress made clear in its 1996 Act that would-be providers of DSL should be able to rent UNEs such as unbundled loops and subloops from ILECs on reasonable and nondiscriminatory terms. As the Coop has learned, and as others have described, Qwest has developed to an art form its ability to appear to meet the letter of the 1996 Act while flouting the spirit of that law. Despite Qwest's efforts, the Coop will be able to bring DSL to a neighborhood that Qwest feels is unworthy of Qwest's DSL service, solely because of the 1996 Act. It would be a great tragedy if the FCC were to carry out its apparent plan of denying the Coop (and other would-be DSL providers) the ability to rent such UNEs.

³⁵ The UNE statute requires Qwest to provide subloops as UNEs, but only “to any requesting telecommunications carrier for the provision of a telecommunications service.” 47 U.S.C. § 251(c)(3).

VI. CONCLUSION

For the foregoing reasons, the Ruby Ranch Internet Cooperative Associations respectfully requests that the FCC confirm that so long as a DSL provider does not change the form or content of its customers' communications, the DSL provider should be classified as a provider of telecommunications services rather than of information services, and thus should be entitled to access to UNEs such as subloops and unbundled loops.

Respectfully submitted

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