

**ORIGINAL**

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

In the Matter of )  
Implementation of Section 302 of the )  
Telecommunications Act of 1996 )  
Open Video Systems )

DOCKET FILE COPY ORIGINAL  
CS Docket No. 96-46

**RECEIVED**  
JUL 5 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**PETITION OF AT&T CORP.  
FOR RECONSIDERATION**

Pursuant to Section 1.106 of the Commission's Rules, 46 C.F.R.

§1.106, AT&T respectfully requests that the Commission reconsider that portion of its Second Report and Order in the above-referenced proceeding<sup>1</sup> that permits open video system operators that are also incumbent local exchange carriers ("LECs") to "bundle" (i.e., create single-priced packages of) their video services with local services over which those LECs exercise market power.

In its NPRM, the Commission sought comment on a wide range of rules governing open video systems.<sup>2</sup> AT&T limited its comments to the issue of whether open video system operators should be allowed to offer bundled packages of local and long-distance telephone service, video programming

<sup>1</sup> Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, Second Report and Order, FCC 96-249, released June 3, 1996 ("Second Report and Order").

<sup>2</sup> Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, Report and Order and Notice of Proposed Rulemaking, FCC 96-99, released March 11, 1996 ("NPRM").

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delivery and data transmission. AT&T opposed the bundling of non-competitive services -- including especially local telephone service offered by incumbent local carriers -- with competitive services, because of the potential that such carriers could use their market power to create integrated offers that could not be matched by their cable or local service competitors.<sup>3</sup> These concerns were reflected in the comments of cable operators, which expressed credible fears that the incumbent LECs could utilize their market position with their local service customers unfairly to gain advantages in the video market.<sup>4</sup>

The Commission, in its Second Report and Order, permitted incumbent LECs to bundle local telephone service with video services, on the ground that "the Commission's Part 64 cost allocation rules and any amendments thereto will protect adequately regulated telephone ratepayers from a misallocation of costs that could lead to excessive telephony rates."<sup>5</sup> "[T]o protect consumers in these circumstances" the Commission also imposed on incumbent LECs the obligations to (1) make available local service on an

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<sup>3</sup> See Comments of AT&T Corp., filed April 1, 1996.

<sup>4</sup> See, e.g., Comments of Comcast Cable Communications, Inc., Adelphia Communications Corporation and InterMedia Partners, L.P.; Comments of Continental Cablevision, Inc.; Comments of Cox Communications, Inc.; and Comments of National Cable Television Association, Inc.

<sup>5</sup> Second Report and Order, para. 248.

unbundled basis; and (2) impute the unbundled tariffed rate for regulated services included in a bundled offer.<sup>6</sup>

The Commission did not address on their merits the concerns expressed by the incumbent LECs' potential competitors that the LECs could abuse their market power in local services to disadvantage their local service and cable rivals -- concerns which will not be alleviated by application of the safeguards adopted by the Commission. The Commission's failure to address these legitimate competitive concerns have led to an erroneous decision which the Commission should, on reconsideration reverse.

As long as the incumbent LECs have not satisfied their statutory obligations under Sections 251 and 252 of the 1996 Act to provide cost-based unbundled network elements and interconnection, and as long as effective competition has not emerged, the LECs retain the ability (and incentive) to discriminate in the provision of local services and to leverage unfairly their monopoly status into the emerging video programming market. They can thus foreclose their potential competitors from the local markets by "locking in" customers with bundled offers well before those new entrants have the ability to match those offers with competitive plans of their own.<sup>7</sup> By prohibiting the

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<sup>6</sup> Id.

<sup>7</sup> See, e.g., Comments of Comcast Cable Communications, Inc., Adelphia Communications Corporation and InterMedia Partners, L.P. at 9 ("a telephone company could bundle its local exchange and [open video system] offering while effectively preventing cable operators in the state from offering a competing package by dragging its feet with regard to

(footnote continued on following page)

incumbent LECs from offering bundled packages including local services, the Commission can ensure that those LECs do not leverage their monopoly position in the local exchange and inhibit the development of competitive local and video services.<sup>8</sup>

For these reasons, AT&T urges the Commission to reconsider its decision allowing incumbent LECs to create bundled offers including their non-competitive local services, until such time as those LECs meet their obligations

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(footnote continued from previous page)

interconnection. Consequently, telephone companies should not be permitted to jointly market OVS with local exchange service until the state certifies that the LEC is in compliance with the interconnection obligations imposed under Section 251 and 252 of the 1996 Act").

<sup>8</sup> Indeed, the pricing flexibility accorded to the incumbent LECs under the Second Report and Order exceeds the freedom allowed to date to competitive interexchange carriers ("IXCs") under the Commission's Computer Inquiry rules. See Amendment of §64.702 of the Commission's Rules and Regulations, 77 F.C.C.2d 384 (1980) (subsequent history omitted). Those rules prohibit IXCs from providing single-price offers of their competitive interexchange services along with customer premises equipment or enhanced services, even though the Commission has determined that no IXC is "dominant" in the interstate or international interexchange markets, and the markets for customer premises and enhanced services are each fully competitive.

under the 1996 Act and provide cost-based unbundled network elements and interconnection for the provision of competitive local exchange and exchange access services.

Respectfully submitted,

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I, Rena Martens, do hereby certify that on this 5th day of July, 1996, a copy of the foregoing "Petition for Reconsideration", was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

  
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