



February 4, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW Room TWB-204
Washington, DC 20554

Re: In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

Enclosed you will find a copy of the letter that was mailed to Michael K. Powell on
February 4, 2003.

Sincerely,

Tim Hugo



February 4, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th St. SW
Washington, DC 20054

RE: Triennial Review of the Commission's Unbundling Rules CC Docket Nos. 96-98,
98-147, 01-338

Dear Chairman Powell:

As a technology association dedicated to developing strong policies that foster technology's abilities to be an engine for innovation, economic growth and opportunity, I am writing to urge the commission to adopt a pro-competitive unbundling policy that will unleash true broadband competition.

CapNet, a bipartisan technology association representing more than forty software, and Internet companies, advocates expanding broadband access for consumers and businesses alike. We believe broadband policy should encourage investment, competition, increase the potential for greater innovation, and improve products and services for consumers.

Unfortunately, recent reports about efforts to convince the FCC that "new wires" require "new rules" could spell financial ruin for Internet broadband providers attempting to offer competition to incumbent local exchange carriers. Even more significantly, it will harm the Nation's economy generally and reduce consumer benefit by dampening competition for broadband services. For broadband competition to thrive, unbundling is essential for last mile facilities -- whether copper, fiber, or hybrid fiber copper. Excluding last mile facilities from unbundling obligations depending up whether they are packet-based, copper, fiber or copper/fiber hybrid could undermine the very broadband investments that the Commission is trying to encourage.

We disagree with the notion that freeing the Bell companies of their unbundling obligations would give them added incentive to make new investments to create additional bandwidth capacity in their networks. Instead, we believe that full and fair competition, which today requires competitive access to ILEC loop facilities, is the powerful driver for a more prosperous broadband future.

There are three primary faults with the Bell proposal.

First, distinguishing between voice and fiber assisted packet data networks moves us away from a vision of a converged packet switched network capable of supporting integrated services. If preferential regulatory treatment were granted for Bell packet or fiber broadband operations, the Bells may be able to classify nearly all of their investment opportunistically as intended for broadband data services to avoid pro-competitive unbundling and interconnection obligations. In a converged network, voice can be carried as data raising the possibility that even facilities used for legacy services would avoid unbundling obligations. As increasing portions of the network become laced with fiber -- and hence unregulated — it will become increasingly difficult to implement unbundling and interconnection rules for the rest of the Bells' local access network.

Second, eliminating, diluting or weakening the market opening requirements on incumbent telephone companies will remove the critical incentives needed to open up the local monopoly to competition and encourage new investment in broadband facilities. As a result, such a policy could dramatically decrease the number of firms providing broadband and related services, deny consumer innovative new choices, and stall needed broadband investment.

Third, this idea of Balkanizing the network and treating copper and fiber facilities differently was expressly rejected by Congress just last year. I find it troubling that the FCC would seek to do by rule, what the Congress refused to do by law.

Greater broadband and data competition has the potential to jumpstart this staggering economy. The Commission must take bold and decisive action – assuring the market of a predictable regulatory landscape and encouraging investment, by retaining unbundled access to all facilities at affordable prices.

With kindest regards,



Tim Hugo

cc Hon. K. Q. Abernathy
Hon. J. S. Adelstein
Hon. M. J. Copps
Hon. K. J. Martin
W. Maher, Chief, Wireline Competition Bureau