

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

In the Matter of)	
)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers)	CC Docket No. 01-338
)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Deployment of Wireline Service Offering Advanced Telecommunications Capability)	CC Docket No. 98-147
)	

**OPPOSITION
TO PETITION FOR CLARIFICATION AND/OR PARTIAL RECONSIDERATION**

The Rural Independent Competitive Alliance (“RICA”), by its attorneys, submits this Opposition in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice in the above-referenced proceeding.¹

Founded in 1999, RICA is an association comprising more than 80 rural competitive local exchange carriers (“CLECs”) serving rural businesses and individuals nationwide. It is the only organization dedicated exclusively to the operational challenges and interests of rural CLECs. RICA members continue to make use of unbundled network elements (“UNEs”), both during the process of building out their own facilities and as a means of serving customers in remote areas where facilities build-out is cost prohibitive.

In this Opposition, RICA urges the Commission to deny BellSouth’s petition² to have the Commission rewrite its unbundling rules —wrought after exhaustive and lengthy proceedings—

¹ Report No. 2635 (rel’d Oct. 9, 2003), *motion for extension denied*, Order, DA 03-3430 (rel’d Oct. 28, 2003).

² BellSouth Petition for Clarification and/or Partial Reconsideration in CC Docket Nos. 01-338, 96-98, and 98-147 (filed Oct. 2, 2003) (“BellSouth Petition”).

and extend an exemption of unbundling requirements afforded fiber-to-the-home (“FTTH”) loops to fiber-to-the-curb (“FTTC”) facilities. In support of its Opposition, RICA submits that FTTC is not equivalent to FTTH, and that the Commission determined unequivocally that unbundling exemptions apply to FTTH, not hybrid loops such as those employing FTTC. Because no clarification is needed, and no reconsideration is justified, the Commission accordingly should expeditiously deny BellSouth’s petition. In the event that the Commission grants BellSouth’s petition, it should ensure continued unbundled access to a voice grade channel on FTTC loops.

I. FTTC IS NOT FTTH OR ITS FUNCTIONAL EQUIVALENT.

FTTC is not FTTH and is not its functional equivalent. BellSouth stated this fact in materials it provided to Commissioner Martin during a September 29 *ex parte* meeting.³ RICA concurs with BellSouth’s affirmation in its *ex parte* of the “value of deep fiber”. As BellSouth indicated, fiber has unlimited bandwidth, whereas copper cable over very short distances has limited bandwidth (perhaps only twice the capacity of VDSL).⁴ Further, FTTH is the “ultimate migration” whereas FTTC, which costs about the same to deploy as plain copper, by implication, is not.⁵

RICA members appreciate the significant difference between FTTH on the one hand, and FTTC and other hybrid loops on the other. RICA members often provide advanced services to their customers through their own facilities, which in some cases include FTTH. Simply put, FTTH provides incomparably more capacity than any other facility or combination of facilities, even where fiber is brought quite close to the customer premises.

³ See BellSouth *ex parte* in CC Docket No. 01-338, p.13 (filed Sept. 30, 2003) (“BellSouth *ex parte*”).

⁴ *Ibid.*

The Commission recognized the importance of FTTH, and explicitly not FTTC, in its Triennial Review Order.⁶ The Commission stated that, “FTTH loops significantly enhance the broadband capabilities a carrier can deliver to consumers.”⁷ It determined therefore that, “particularly in light of a competitive landscape in which competitive LECs are leading the deployment of FTTH, removing incumbent LEC unbundling obligations on FTTH loops will promote the deployment of the network infrastructure necessary to provide broadband services to the mass market.”⁸

The Commission also explicitly indicated that FTTC is not the same as FTTH. Rather, it declared FTTC an “intermediate” loop architecture. The Commission stated that:

By FTTH loop, we mean a loop consisting entirely of fiber optic cable between the main distribution frame (or its equivalent) and the demarcation point at the customer’s premises. We recognize that other “fiber-in-the-loop” network architectures exist, such as “fiber to the curb” (FTTC), “fiber to the node” (FTTN), and “fiber to the building” (FTTB). [...] Our definition of FTTH loops excludes such intermediate fiber deployment architectures. For purposes of our unbundling rules, we consider *any loop consisting of fiber optic and copper cable* to be a hybrid loop.⁹ [citations omitted, emphasis added]

The Commission could not more clearly have indicated that it expressly considered, and rejected, equal treatment of FTTC and FTTH. BellSouth’s suggestion that the text is somehow less meaningful because it was contained in a footnote¹⁰ is absurd. RICA would surmise that the FCC determined that classifying FTTC with other hybrid loops, principally because FTTC is in fact a hybrid loop, is sufficiently obvious that no more than a footnote was needed. In making the distinction, the Commission stated that it was informed by the fact that:

⁵ *Ibid.*

⁶ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand, FCC 03-36, *recon. pending, appeals docketed* (rel’d Aug. 21, 2003) (“TRO”).

⁷ TRO, ¶ 278.

⁸ *Ibid.* RICA does not necessarily agree with the Commission’s conclusion that FTTH should not be subject to unbundling, but provides the quotation as evidence of the Commission’s desire to promote the deployment of FTTH.

⁹ TRO, n.811.

Several incumbent LECs note that they pursue their construction and network modification projects in incremental ways – first, deployment of fiber in the feeder plant and associated equipment like DLC systems (often with line cards capable of providing xDSL services), followed by fiber-to-the-curb, followed by FTTH.¹¹

The preceding excerpt also demonstrates, as BellSouth acknowledges,¹² that the Commission distinguishes between FTTC and other hybrid systems, such as digital line carrier (“DLC”) systems. The Commission determined not to treat any of these distinct non-FTTH architectures as it treats FTTH.

II. IF THE COMMISSION GRANTS BELLSOUTH’S PETITION, IT MUST RETAIN UNBUNDLED ACCESS TO A VOICE GRADE CHANNEL ON FTTC LOOPS.

Should the Commission grant BellSouth’s petition, it should nevertheless continue to require that the regional Bell operating companies (“RBOCs”) provide unbundled access to a narrowband channel of the hybrid FTTC loop,¹³ whether the loop is new or upgraded. BellSouth argues that because it can offer broadband over hybrid FTTC facilities it should be exempt *en toto* from unbundling requirements.¹⁴ While FTTC technology provides for high bandwidth applications, the mere availability of high bandwidth services in an area should not be an excuse to exclude the area from unbundling requirements. Per RICA members’ experience, only a low percentage of customers currently will purchase advanced services as part of a communications package. Competition still exists, if at all, primarily for narrowband services. Exempting FTTC areas from unbundling requirements not only will eliminate the competitive provision of video and data, but it will also eliminate the unbundled provision of voice.

Exempting FTTC from unbundling requirements would effectively permit BellSouth to

¹⁰ BellSouth Petition, p.2 (“...in a footnote devoid of analysis...”).

¹¹ See, e.g., TRO, ¶ 285, n.627.

¹² BellSouth Petition, p.5.

¹³ See TRO, ¶ 200.

¹⁴ BellSouth Petition, § VI.

selectively deploy technology for the express purpose of inhibiting or eliminating competition. Entire communities, subdivisions, or even a single gated community could be “targeted” for elimination from competitive threat by merely deploying FTTC. The Commission should continue, therefore, its policy to encourage local phone competition and maintain, at minimum, the narrowband unbundling requirements of hybrid loops, including FTTC loops.

III. CONCLUSION

For the foregoing reasons, the Rural Independent Competitive Alliance (RICA) urges the Commission to deny BellSouth’s Petition for Clarification and/or Partial Reconsideration. To the extent the Commission might grant the Petition, it must ensure unbundled access to a narrowband channel on FTTC loops.

Respectfully submitted,

Rural Independent Competitive Alliance

By: /s/
David Cosson
Clifford C. Rohde
Its Attorneys

Kraskin, Lesse & Cosson, LLC
2120 L St. N.W., Suite 520
Washington, D.C. 20037
Tel. (202) 296-8890

November 6, 2003

Certificate of Service

I hereby certify that, on this 6th day of November, 2003, the foregoing Opposition To Petition For Clarification And/Or Partial Reconsideration was served by First Class U.S. mail on:

Jeffrey S. Linder
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, D.C. 20006
Attorney for BellSouth