

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

In the Matter of: )  
)  
Petition of BellSouth Telecommunications, Inc. For ) WC Docket No. 03-220  
Forbearance Under 47 U.S.C. 160(c) )  
From Application of Sections 251(c)(3), (4), )  
And (6) In New-Build, Multi-Premises )  
Developments )

**COMMENTS OF THE VERIZON TELEPHONE COMPANIES<sup>1</sup>**

The Commission should grant the Petition of BellSouth Telecommunications, Inc. (“BellSouth”) for Forbearance From the Application of Sections 251(c)(3), (4), and (6) in New-Build, Multi-Premises Developments (“Petition”). Because both CLECs and ILECs compete on equal footing for the right to provide services to these types of premises, ILECs should not be required to unbundle the new infrastructure built to serve these premises.

Moreover, the Commission may and should provide equivalent relief with respect to new *broadband* facilities built to Multi-Premises Developments (“MPDs”)<sup>2</sup> by clarifying two significant ambiguities in the *Triennial Review Order* that, if not

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<sup>1</sup> The Verizon telephone companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

<sup>2</sup> BellSouth’s Petition uses the term Multi-Premises Developments (or MPDs) to apply not only to multiunit premises, as that term is defined in 47 C.F.R. § 68.105(b), but to “newly constructed, multi-subscriber properties, including single-family home subdivisions, Multiple Dwelling Unit (MDU) residential properties . . . multi-tenant commercial buildings, mixed use developments, malls, industrial parks and other similar developments where the improvements, including the telecommunications infrastructure, will be new construction” as well as “re-developments of existing properties that are undergoing total rehabilitation where the communications facilities and infrastructure are being replaced entirely.” Petition at 2. Verizon agrees that forbearance is appropriate for all of these properties, but throughout these comments uses the term multiunit premises and MPDs interchangeably.

immediately addressed, will pose real barriers to the deployment of fiber to these properties. The Commission should clarify that (1) mass-market customers in multiunit premises are part of the mass market and not the enterprise market; and (2) deploying fiber to such buildings qualifies as fiber-to-the-premises if the fiber extends to the basement of the building. Both of these issues are ripe for decision by the Commission in pending petitions for clarification and partial reconsideration and should be promptly resolved so that they do not interfere with the Commission's goal to "eliminate most unbundling requirements for broadband, making it easier for companies to invest in new equipment and deploy the high-speed services that consumers desire."<sup>3</sup>

### ARGUMENT

BellSouth is correct that "all communications providers stand on equal footing when negotiating the installation of facilities and provision of services" in MPDs. Petition at 3. In most cases, developers or owners of MPDs negotiate with a number of carriers, CLECs and ILECs, for the right to provide services to these properties. Petition at 3. At times, developers bid out these contracts by issuing requests for proposals from a wide range of carriers. Exhibit A to Petition.

In fact, as the Commission has correctly recognized, competitive carriers "usually" target "multiunit premises" because such premises have a large, aggregated customer base that provides "sufficient demand . . . to generate a revenue stream that could recover the sunk construction costs of the underlying loop transmission facility." *Triennial Review Order* ¶ 303. Indeed, numerous competitors that have deployed

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<sup>3</sup> *Review of the Section 251 Unbundling Requirements of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand, CC Docket No. 01-338, FCC 03-36 ¶ 4 (rel. Aug. 21, 2003) ("Triennial Review Order").

broadband to the mass market have acknowledged that they compete aggressively for these multiunit premises because they are generally more profitable to serve.<sup>4</sup>

Given the vibrant state of competition that exists for these contracts, ILECs should not be required to provide unbundled access to the new facilities built to serve MPDs pursuant to Section 251(c)(3). For the same reasons, ILECs should not be required to provide competitors resale discounts under Section 251(c)(4).

Bellsouth rightly analogizes new facilities that exclusively serve MPDs to new-build fiber-to-the-home loops (“greenfield” situations), which the Commission declined to unbundle in the *Triennial Review Order*. In the *Triennial Review Order*, the Commission found that competitive carriers were not impaired without access to these new fiber deployments for either voice or broadband services. *Triennial Review Order* ¶ 275. The Commission’s reasoning for providing unbundling relief to “greenfield situations” applies equally to facilities that serve MPDs. Like new “greenfield” fiber loops, the entry barriers to serving MPDs are the same for both ILECs and CLECs. ILECs have no advantage over competitors in negotiating for and building infrastructure to serve MPDs. Both ILECs and CLECs must negotiate with the owner or developer for the right to provide these new services and are faced with the same sunk costs when they deploy new facilities to MPDs. And, like greenfield situations, competitive carriers have been successful in deploying facilities to MPDs. BellSouth states that in its nine-state

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<sup>4</sup> For example, RCN Corporation, a CLEC, has noted that “[t]he ability to serve this sector of the market is crucial because it is generally more profitable due to the large number of subscribers in each MDU.” See Robert Currey, Vice Chairman, RCN Corporation, Prepared Statement Before the Senate Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, *Cable and Video: Competitive Choices*, 107th Cong., S. Hrg. 107-248, at 31 (Apr. 4, 2001). Press reports confirm that RCN is deploying “mainly in apartment buildings.” M. Farrell, *Moody’s Slashes RCN*, Multichannel News (July 21, 2003).

service territory, competitive carriers serve at least 109 separate residential or commercial developments. Petition at 1.

Moreover, although BellSouth's Petition seeks relief with respect to *all* new facilities used exclusively to serve MPDs, the Commission can and should provide this relief immediately with respect to new *broadband* facilities for MPDs by clarifying two significant ambiguities in the *Triennial Review Order* with respect to fiber loop facilities to these buildings – both of which are pending before the Commission in petitions for clarification and/or partial reconsideration.<sup>5</sup>

*First*, the Order is not clear as to whether ILECs must unbundle fiber loop facilities deployed from a central office to a multiunit premise. Since the Commission clearly did not impose such obligations on fiber-to-the-premises loops and since the Order clearly contemplates unbundling relief for all mass market customers, *see Triennial Review Order* ¶ 278 (a key goal of its broadband policy is to promote the “deployment of the network infrastructure necessary to provide broadband services to the mass market”), it makes sense to conclude that the Commission intended to exempt from unbundling all fiber deployed to all types of premises where mass-market customers are located, including multiunit premises. The ambiguity arises, however, because of a footnote in the *Triennial Review Order* that suggests that all multiunit premises customers must be treated like enterprise customers. *Triennial Review Order* ¶ 198 n.624 (“the conclusions

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<sup>5</sup> BellSouth Petition for Clarification and/or Partial Reconsideration, CC Docket Nos. 01-338, 96-98, and 98-147 (filed Oct. 2, 2003) (“BellSouth Petition for Clarification”); SureWest Communications Petition for Clarification and Partial Reconsideration, CC Docket Nos. 01-338, 96-98, and 98-147 (filed Oct. 2, 2003) (“SureWest Petition”).

we reach for high-capacity loops in the enterprise market apply equally to mass market customers in multiunit premises”).

The Commission should clarify this ambiguity by making clear that mass market customers in multiunit premises are part of the mass market, not the enterprise market. *See* SureWest Petition at 3-4; BellSouth Petition for Clarification at 9-10; *see also* Verizon Response to Petitions for Reconsideration, CC Docket Nos. 01-338, *et al.* at 21-25 (filed November 6, 2003). And, the Commission should clarify that its definition of fiber-to-the-premises applies whenever fiber is deployed to a multiunit premises building, regardless of whether the fiber continues to the individual units within that building. Millions of residential and business customers are located in these types of units – by some estimates approximately 30-35% of the population – and the Commission should not discourage fiber deployment to these millions of customers.<sup>6</sup> It would subvert the Commission’s goal of promoting broadband deployment to the mass market to treat this segment of the population differently than customers in individual occupancy buildings. And, such a shortsighted policy could hurt broadband deployment overall. If it is less attractive to deploy fiber to such a big segment of the mass market, ILECs will have less incentive to deploy fiber to all other customers as well, since their total revenues from fiber deployment will be reduced.

*Second*, the *Triennial Review Order* also leaves open the possibility that the new fiber deployment rules will only protect a subset of multiunit premises. The Commission

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<sup>6</sup> *See, e.g.*, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, *United States Summary: 2000; Summary Social, Economic, and Housing Characteristics; 2000 Census of Population and Housing*, Table 9: Units in Structure 2000 (issued July 2003) (27% of the total housing units in the United States are in structures with 2 or more units).

should clarify not only that no unbundling is required for fiber deployed to multiunit premises generally, but that no unbundling is required for *any* situation where fiber is deployed to a multiunit premises building, regardless of whether the fiber continues to the individual units within that building. *See* SureWest Petition at 4-5; BellSouth Petition for Clarification at 9-10. The Order is ambiguous because, while the rules define a fiber-to-the-home loop as one that consists “entirely of fiber optic cable,” 47 C.F.R.

§ 51.319(a)(3), in some multiunit premises fiber may be deployed to a central serving terminal in the building’s basement and connected from there to individual end user’s units through copper wiring. In buildings where the ILEC owns or controls this inside copper wiring, it could be construed to be part of the loop itself, and the entire loop in this situation could be incorrectly categorized as a “hybrid loop” and subject to the unbundling obligations applicable to hybrid loops. This result would be inconsistent with the Commission’s recognition in the Order that, in a multi-tenant building, the customer premises includes “not just the actual premises of end-user subscribers, but also the premises of the property owner,” within which the end user’s premises is located.

*Triennial Review Order* ¶ 343 n.1021.

Without this clarification, the current rules will produce absurd results. If there are arbitrary distinctions between the buildings and locations subject to unbundling and the buildings and locations that are not, it “could lead to the perverse situation where two identical buildings next door to each other could have different regulatory protection based on who owns the in-building wiring.” SureWest Petition at 4; *see also* BellSouth Petition for Clarification at 10; Verizon Response to Petitions for Reconsideration at 24 - 25. This would also impede the ability of ILECs efficiently to design and build fiber

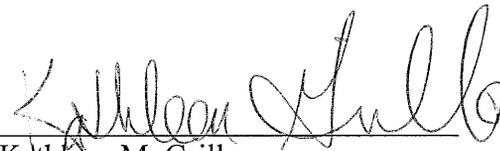
networks. “An efficient network cannot vary its design from building to building. Moreover, plans cannot be made if uncertainty and ambiguity exist about which buildings qualify for unbundling relief and which do not.” SureWest Petition at 4; Verizon Response to Petitions for Reconsideration at 25.

Furthermore, there is no justifiable reason to classify fiber to multiunit premises based on who owns the in-building copper wiring. The Order already ensures that competing carriers will have access in-building wiring owned by the ILEC. *Triennial Review Order* ¶¶ 347-48. These rules eliminate the possibility that competing carriers will not gain access to the copper inside wiring in multiunit premises and ensure that competitive carriers have the same ability as ILECs to deploy fiber-to-the-premises.

#### **CONCLUSION**

For these reasons, the Commission should grant BellSouth’s Petition.

Respectfully submitted,



Kathleen M. Grillo  
1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201  
(703) 351-3071

Michael E. Glover  
Edward Shakin  
Of Counsel

Attorney for the Verizon telephone  
companies

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.