

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 Services Offering Advanced Telecommunications Capability)	CC Docket No. 98-147

REPLY

BellSouth’s Petition for Clarification and/or Reconsideration demonstrated that certain clarifications to the Commission’s unbundling rules are necessary to eliminate unwarranted barriers to investment in next-generation networks and promote the widest possible broadband deployment. As discussed herein, the opponents’ arguments are factually and legally baseless.¹

I. FTTC SHOULD BE TREATED IDENTICALLY TO FTTP.

BellSouth’s Petition established that fiber-to-the-curb (*i.e.*, fiber to a serving terminal, connected to a copper and coaxial drop of no more than 500 feet) provides the same “truly broadband capabilities” as fiber to the premises – the very capabilities the Commission sought to promote by eliminating unbundling of greenfield FTTP and sharply limiting unbundling of over-built FTTP. Petition 1-2, *citing Triennial Review Order (“TRO”), ¶ 272*. BellSouth further demonstrated that there is no difference in the impairment analysis for these two technologies, because all potential providers of both technologies face similar costs and enjoy significant revenue opportunities (indeed, the first-in costs are slightly lower for FTTC than for FTTP, while the revenue opportunities are the

¹ The attached Declaration of Eric Fogle provides factual support for the rebuttal arguments in this Reply.

same). Petition 6-7. Under these circumstances, treating FTTP more favorably than FTTC arbitrarily disadvantages FTTC, depriving carriers of the ability to choose the most appropriate design for their particular networks and constraining the number of households that receive the benefits of true broadband. (For example, carriers may prefer to use the shared electronics and network power of FTTC instead of the passive network and subscriber-provided battery back-up power of FTTP.) *Id.* 3.

Equipment manufacturers endorsed BellSouth's request. For example, HTBC explained that, "[f]rom a technical standpoint, certain FTTC loops can provide end users with transmission capacity equivalent to FTTH loops," and noted that the Telcordia Notes on Fiber in the Loop document referenced in note 811 of the *Triennial Review Order* specifically identified BellSouth's FTTC deployments as providing capabilities equivalent to FTTP. HTBC 8; *see also* Catena 9 ("When the copper portion of the FTTC loop is within 500 feet of the customer premises, full high bandwidth (*i.e.*, virtually no attenuation) capabilities are supported, allowing the carrier to provide 'triple play' services – voice, data, and video."); Marconi *ex parte*, Oct. 1, 2003, at 3 ("FTTC is at 'Service Parity' with FTTH"), 5 ("The limited amount of copper and coax media in both applications enables support of 100Bt, 1GHz video"). Manufacturers also agreed that there is no impairment for either greenfield or overbuilt FTTC, HTBC 9-10, and that "[c]arriers should be permitted to design their networks based on technological and economic considerations ... without regard to unnecessary regulatory costs that could impede deployment." *Id.* 10; *see also* Catena 10 ("a carrier should decide which fiber architecture to deploy based on the technical and economic merits of FTTC and FTTP, not because of the differing regulatory treatment that currently applies to these two architectures.").

The opponents of relief for FTTC raise four main arguments, none of which has merit:

Service equivalence. Several CLECs claim that FTTC is technically inferior to FTTP, that FTTC is an interim architecture, and that granting additional relief to FTTC would create disincentives to deployment of FTTH. Allegiance 9-10, ALTS 16, AT&T 10-13. They are wrong. As an initial matter, the informed assessment of the manufacturers that build both FTTC and FTTP equipment should be given far greater weight than the unsupported assertions of the opponents of FTTC relief. In addition, BellSouth already has demonstrated that copper drops of less than 500 feet can provide as much capacity as FTTP; in fact, BellSouth's FTTC architecture uses the same wavelength division multiplexing video transport capability as FTTP. *See also* Marconi Oct. 1 *ex parte* at 4 (chart showing "enormous bandwidth carrying capacity" of 500-foot copper drop length). In fact, the FTTP video specifications in the BellSouth/SBC/Verizon RFP for Fiber to the Premises are based on BellSouth's FTTC architecture.

Because FTTC supports "truly broadband transmission capabilities," the decision whether to deploy FTTC (as either a long-term or an interim solution) or FTTP should be based solely on the economic and technical trade-offs identified in BellSouth's Petition. FTTC relief would not diminish deployment of FTTP where those trade-offs favor FTTP; it would expand deployment of FTTC where the costs of unbundling otherwise would preclude such investment.²

² AT&T (at 10) contends that a statement by Duane Ackerman, BellSouth's CEO, establishes that the regulatory environment will not make a "dramatic change" in BellSouth's fiber deployment strategy. This statement must be understood in context. In many cases it is hard to justify making the substantial required investments regardless of the regulatory ground rules. Precisely because of the magnitude of this investment, however, those ground rules make a significant difference. BellSouth has invested in FTTC based on an expectation that these facilities would not be subject to intrusive unbundling obligations. If the Commission does retain extend unbundling for these facilities, it will disrupt that expectation and remove one of the underpinnings of FTTC deployment. As AT&T recognized back when it was a facilities-based provider of high-speed Internet access, "[n]o company will invest billions of dollars to become a facilities based broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others." C. Michael Armstrong, Chairman and CEO, AT&T, remarks before the Washington Metropolitan Cable Club, Washington, DC (Nov. 2, 1998).

Impairment. Various CLECs claim that CLECs are impaired with respect to FTTC because ILECs can use existing rights-of-way and outside plant Allegiance 7-8, 14, ALTS 11-12, AT&T 12-15. As their oppositions make clear, however, their real problem is that they disagree with the Commission's impairment analysis for FTTP³; they offer only speculative assertions why the analysis should be different for FTTC. There is no basis for these claims.

Approximately 85 percent of BellSouth's FTTC builds are in greenfield developments. In that context, CLECs plainly are not impaired. As the *TRO* (§§ 274-75) explains, CLECs and ILECs face the same entry barriers and enjoy the same revenue opportunities. Both must bid to win the right to serve the development, obtain access to rights-of-way (although CLECs have a statutory right to access the ILECs' rights-of-way), and purchase and deploy the necessary fiber and electronics. Moreover, even if ILECs have any advantage by virtue of their existing networks in other locations, CLECs enjoy offsetting advantages given their lower labor expenses (*id.*, n.808), which account for half the cost of a fiber deployment.

The same holds true for overbuilds. In that context, an ILEC's FTTC build will make some use of fiber feeder (if it exists and has capacity), just as an ILEC would for an FTTP build. Generally, however, opponents of relief are mistaken in suggesting that ILECs re-use the existing copper drop. In most cases, when a customer subscribes to service over an FTTC loop, the ILEC deploys a new copper drop – as well as a coax wire – because the ONU (the fiber serving terminal for the 8-12 home cluster) will be in a different location than the old copper serving terminal, which typically served only four homes. And, in any event, treating overbuilt FTTC the same as overbuilt

³ This is particularly true of AT&T; *see* Giovannuci Supp. Decl. attached to AT&T's opposition. AT&T, of course, has elected to seek judicial review of the *TRO*, so it is foreclosed from seeking reconsideration of the FTTP issue, whether directly or indirectly. 47 U.S.C. § 402(a); 28 U.S.C. § 2342(1); *BellSouth v. FCC*, 17 F.3d 1487, 1489-90 (D.C.Cir.1994); *Tennessee Gas Pipeline Co. v. FERC*, 9 F.3d 980, 980 (D.C.Cir.1993) ("a party may not simultaneously seek both agency reconsideration and judicial review of an agency's order.").

FTTP will guarantee CLECs access to either an existing copper loop or, if the loop is removed, a 64 kbps voice channel. This addresses any arguable impairment stemming from the ILEC's use of legacy facilities.

AT&T's efforts to distinguish FTTC and FTTP from an impairment standpoint are unavailing. Contrary to AT&T's claims (at 12), CLECs have in fact deployed FTTC. As Catena points out, "competitive carriers today are providing all three services [voice, data, and video] using FTTC technology." Catena 9, *citing* Marconi *ex parte*, CC Docket No. 01-338, Sept. 26, 2003, at 7. Even if AT&T were correct, there still would be no basis to find impairment: CLECs lead the way in deploying FTTP, and FTTC deployments, at least in terms of first-in costs, are less expensive because they use shared electronics. AT&T likewise errs in arguing that FTTC does not support the same video services (and thus the same revenue potential) as FTTP. As discussed above and in the manufacturers' comments, FTTC provides more than 200 high-quality video channels.

Incentives. Various parties contend that FTTC relief is unnecessary because BellSouth already has deployed FTTC to approximately one million homes; some claim that FTTC will not foster the provision of broadband services because BellSouth assertedly has used FTTC to offer only voice and low-speed data and will rely on DirecTV to provide video. ALTS 15, 18, AT&T 9-10. They are wrong. BellSouth is committed to building out a next-generation network and thus has aggressively deployed FTTC where feasible. As noted above, however, such deployment is capital-intensive and risky. The substantial costs of unbundling – redesigning equipment to introduce access points in facilities whose efficiency derives from the integrated nature of a broadband network, developing otherwise unnecessary support systems, and coping with uncertainty about the future scope of sharing obligations – seriously constrain deployment. Petition 12; Verizon 8-10. Accordingly, relief for FTTC will enable BellSouth both to maximize next-generation investment in

greenfields and to make more significant inroads in upgrading 13 million access lines still served by legacy facilities.

Similarly, BellSouth most assuredly does use FTTC to provide video. BellSouth already has activated video capability for approximately 175,000 FTTC-served customers – with capacity to deliver 230 video channels – and programs are under way to expand video availability in additional areas. Given the time and expense of building out FTTC, however – and the stark competitive threat posed by cable companies offering high-speed data and voice services – BellSouth needed a ready alternative (the DirecTV deal) for providing video service to the 93 percent of its customers who are not served by FTTC.

Definitional issues. Several parties attack the 500-foot limitation in BellSouth’s proposed FTTC definition, arguing that they cannot verify the length of copper drops, that there is no basis for determining that 500 feet is the correct dividing line between true broadband and hybrid loops, and that any line short of pure FTTP will invite requests for further relaxation. Allegiance 10, NuVox 5, 9. None of these concerns has merit. First, both FTTC and FTTP bear an information code designating an all-fiber loop. Any copper in the loop outside the FTTC context, in contrast, bears a different designator, implying that the hybrid loop unbundling rules apply. Accordingly, CLECs can tell in advance whether and to what extent a particular loop is subject to unbundling.⁴ Second, BellSouth, Catena, Marconi, and HTBC all have demonstrated that 500 feet is the appropriate dividing line for “truly broadband” loops and, indeed, is recognized as such in Telcordia’s Notes on

⁴ Covad (at 19-20) contends that states should be responsible for determining whether the copper drop is less than 500 feet and whether each individual FTTC loop delivers the same bandwidth as FTTH and is used to offer voice, video and data. This is a recipe for disaster. Broadband services are inherently interstate and must be subject to exclusive federal jurisdiction. *See TRO*, ¶ 187. No ILEC would invest a dime in broadband if it had to go through a loop-by-loop state approval process. That may suit Covad’s interests, since its business plan depends on retention of copper loops, but it is antithetical to Section 706 and the Commission’s entire approach to broadband.

Fiber-in-the-Loop. Copper/coax drops shorter than 500 feet provide equivalent video capacity to FTTP; beyond 500 feet, however, there is a marked degradation which eliminates the service-equivalency of the two architectures. Moreover, while technology may change over time, the CLECs are wrong in suggesting that this will trigger re-evaluation of the FTTC definition. BellSouth's thousands of deployed and planned ONUs are designed to provide service only where the drop length is less than 500 feet (with an average of approximately 200 feet).⁵ For all of these reasons, the Commission should promptly grant the requested relief.

II. THE OPPONENTS' ARGUMENTS REGARDING BELLSOUTH'S OTHER RELIEF REQUESTS ARE BASELESS.

Multiple-unit premises. Opponents of BellSouth's request to treat fiber to multi-unit premises as FTTP argue that (1) such relief would encompass enterprise customers for which CLECs are impaired, and (2) such loops do not qualify as FTTP because the fiber does not reach all the way to the individual end user. ALTS 21, AT&T 19-20, Sprint 10. The first argument is unpersuasive because there can be no legitimate claim of impairment in serving multiple tenant premises whether those premises house residential, small business, or enterprise customers. As Verizon (23) points out, the Commission has recognized that the aggregated demand in these locations makes them ideal targets for deployment of competitive broadband facilities. In contrast, excluding multi-unit premises from the FTTP rules would compromise the economics of deploying deep fiber loops not just to buildings housing one-third of the population, but to single-family homes and standalone small businesses in surrounding areas. Petition 9.

⁵ AT&T thus mischaracterizes FTTC architectures as being akin to hybrid loops containing "hundreds of yards" of copper. As AT&T well knows, 500 feet of copper is the absolute outside limit for service-equivalent FTTC deployments, and most such deployments use much shorter drops.

The second argument is equally unconvincing: HTBC (12-13) explains that the G.983 FTTH standard for serving multiple dwelling units “describes an architecture in which fiber is connected to the building but individual units within the MDU are served by copper,”⁶ and the *TRO*, ¶ 343 n.1021, notes that, in a multiple-unit building, the customer premises includes “not just the actual premises of end-user subscribers, but also the premises of the property owner” – that is, the building itself.

Section 271. Allegiance (21) and Sprint (20) assert that checklist items 4-6 and 10 establish independent unbundling obligations that can be eliminated only through forbearance. BellSouth’s Petition (12-15) already explained why that reading of the statute is incorrect. Notably, however, one CLEC cites legislative history that confirms BellSouth’s interpretation: the Senate Report explained that the checklist items establish “what must, at a minimum, be provided by a Bell operating company in any interconnection agreement approved under section 251 ... *before* the FCC may authorize the Bell operating company to provide in region interLATA services.” *Z-Tel 11, quoting S. Rep. 104-23, 104th Cong., 1st Sess. 43 (1995)*. Once a BOC has received 271 authority, therefore, the checklist items requiring unbundling of services have no independent applicability.⁷ Remarkably, some parties assert that the pro-broadband policies of Section 706 and the *USTA* court’s admonition about the social costs of unbundling are relevant only in the Section 251 context, and must be disregarded under Section 271. ALTS 25, AT&T 24. This is ridiculous: Congress could not have

⁶ HTBC thus refutes AT&T’s claim (at 20) that there has been no showing that fiber to a building connected to copper inside wire can deliver next-generation services. No carrier, ILEC or CLEC, would deploy fiber all the way to each individual apartment or office.

⁷ For this reason, subsection (d)(4) does not preclude the Commission from concluding that the Section 271 unbundling requirements are coextensive with those under Section 251. *See* AT&T 23. By its terms and in the overall context of 271(d), that subsection relates to what must be demonstrated in an application for interLATA authority; it has no continuing applicability once an application has been granted. Nor does BellSouth’s opposition to 271 unbundling indicate resistance to making wholesale offerings available “at any price.” ALTS 23-24, AT&T 23. Rather, as explained above, 271 unbundling, particularly for broadband services, creates serious inefficiencies and costs. BellSouth has every intention of making wholesale broadband transport available on terms that make sense both technically and economically.

intended to create the same disincentives to investment under Section 271 that it took pains to guard against in Section 251, particularly for broadband facilities that are not part of the BOCs' legacy networks and thus not subsumed in the market-opening imperative underlying Section 271. *See* HTBC 5-6 ("Section 271 must be construed to avoid a conflict with the critical statutory goals of promoting facilities-based competition and broadband deployment.").

Commingling. As footnote 1990 of the *Order* recognizes, the language of checklist items 4-6 precludes arguments that those items must be combined with one another. Arguments to the contrary (AT&T 24-25) are untimely petitions for reconsideration and irreconcilable with the plain terms of the statute. Nor does Section 201 require the combining of services unbundled under Section 271 either with each other or with UNEs or other wholesale offerings. AT&T 25, Covad 16-17. Any services unbundled only under 271 are provided in a competitive marketplace, so market forces will assure that such services are provided on a just and reasonable basis. Accordingly, if the Commission does not eliminate 271 unbundling requirements for services that do not meet the impairment test, it should confirm that a BOC need not combine such services with each other or with other wholesale offerings.⁸

TDM. The Commission should clarify that (1) CLECs can access the TDM capability of hybrid loops only where it already exists or the ILEC routinely adds that capability for its own customers,⁹ and (2) ILECs need not remove packet switching or packetized transmission features to accommodate requests for access. This clarification is consistent with the obligation not to "disrupt

⁸ Z-Tel contends that the *Errata*'s changes to ¶ 584 and fn. 1990 allow the states to determine the rates, terms, and conditions (including commingling) for services unbundled under Section 271. Such services, however, exist solely by virtue of the federal statute and fall outside any arguable state jurisdiction. The Commission also has made clear (expressly rejecting Z-Tel's arguments) that services unbundled under Section 271 are subject to Sections 201 and 202, precluding any claim of state authority. *TRO*, ¶¶ 656-664.

⁹ For example, ILECs need not add TDM multiplexers because they would not do so for retail customers.

or degrade” access to TDM capabilities (*TRO*, ¶ 294); if those capabilities do not exist, there is nothing to disrupt or degrade. A contrary rule improperly would require construction of a “superior, unbuilt network” and would undermine the exemption of next-generation networks from unbundling obligations. The Commission should reject arguments (AT&T 15, NewSouth 3) that the limitation on access to the TDM capabilities of hybrid loops does not apply to enterprise customers. Rule 51.319(a)(2) contains no such carve-out, and the *TRO* (fn. 623) expressly states that “the unbundling rules ... apply with equal force to every customer served by that loop type.”

Dark fiber. The Commission should not require unbundling of any enterprise dark fiber deployed after the effective date of the Order. (Dark fiber deployed to mass market customers already is exempt from unbundling.) The CLECs’ contrary arguments fail to demonstrate impairment for such newly deployed fiber, and there is none. Petition 18-19, SBC 5-9.¹⁰

III. CONCLUSION

The Commission should expeditiously grant BellSouth’s Petition.

Respectfully submitted,

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¹⁰ Allegiance (31-32) and ALTS (33-39) request various “clarifications” to the FTTP rules. These requests must be dismissed because these parties already have appealed the *TRO*. See note 2, *supra*. In any event, the “minor changes to the network notification rule” that ALTS describes as “inconsequential” should state that ILECs “should” (rather than “must”) file disclosures for copper loop retirements at least 91 days prior to the planned retirement date, because of the possibility of nearer term events such as the discovery of deteriorating plant, road moves, bridge replacements and other unexpected, but non-emergency events.

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 17th day of November, 2003, I caused copies of the foregoing Reply of BellSouth to be sent via first-class mail to:

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