

**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 COMMENTS OF AT&T CORP.
TO PETITIONS FOR RECONSIDERATION**

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Pursuant to Section 1.429 of the Commission’s Rules, AT&T Corp. (“AT&T”) respectfully submits this reply to comments submitted on the petitions for reconsideration of the Commission’s *Triennial Review Order* (“TRO”) filed by BellSouth, SureWest, and USIAA (“Petitions”).

INTRODUCTION AND SUMMARY

The comments confirm that the Petitions lack merit and should be promptly denied. BellSouth’s “fiber-to-the-curb” proposal has been exposed as a sham that would discourage, not advance, the actual delivery of true next-generation services, and that is transparently designed to deny competitive choice to millions of customers. The Commission’s fiber-to-the-*home* rules were designed to encourage pioneering technologies, not to reward business as usual. And the Bells plainly already have strong incentives to continue aggressively to push fiber incrementally into their networks, through fiber-to-the-curb and other hybrid loop arrangements that already serve millions of mass market customers that are *not* being offered the next-generation services upon which the Commission justified the FTTH rules.

The comments likewise confirm that the proposals by BellSouth and SureWest to “clarify” the *TRO* with respect to multi-unit buildings, dark fiber, and the provision of hybrid loop “TDM” functionality must be rejected. The Bells’ starkly anticompetitive agenda is to stretch the boundaries of the mass market beyond all reason to encompass more and more loops with enterprise characteristics that the Commission properly held must be subject to entirely different impairment and broadband incentive analyses and rules.

Verizon, for example, supports SureWest’s proposal to include customers with up to 48 *telephone numbers* – the equivalent of 2 or more enterprise DS1s – in the “mass market.” Contrary to Verizon’s bald assertion, there is not a shred of record support for this absurd proposal, which is, in any event, irreconcilable with the Commission’s express DS1/DS3 impairment findings, which *are* supported by uncontraverted record evidence. As the *TRO* makes very clear, high-capacity loops – *i.e.*, DS1s, DS3s and dark fiber – must be unbundled to their full capacity regardless of the technology used and the customer class served.

For the same reasons, the FTTH rules are not inconsistent with the dark fiber rules, and there is accordingly no basis to “clarify” the rules to exempt new dark fiber from unbundling, as BellSouth proposes, or entirely to eliminate dark fiber unbundling, as SBC and Verizon improperly urge. As the Commission has already explained to the court of appeals, the FTTH rules apply *only* to customers that would otherwise be served by low capacity loops, whereas dark fiber is and always has been deployed to serve as high capacity loops.

BellSouth’s proposal to relax the network modification rules is likewise an improper scheme to limit access to high-capacity loops. Verizon bootstraps support for BellSouth’s proposal by claiming that it is consistent with the Commission’s “policy” of refusing to require unbundling of DS1 and DS3 loops that lack TDM features. But there is no such policy. Rather, the Commission’s clearly stated policy in the *TRO* is that such high capacity loops (and all of

their features and functionalities) must be fully unbundled *regardless* of technology or customer class.

The bottom line is that none of these anticompetitive proposals is consistent with the *TRO* approach to loop unbundling, which distinguishes between loop *types* – *i.e.*, between copper DS0 facilities (and the hybrid and FTTH facilities that are replacing those low capacity loops) and high-capacity DS1 and DS3 loops (as well as dark fiber used to provision such high capacity loops). The most basic underpinnings of the *TRO* require that this approach be maintained, because as the *TRO* repeatedly recognizes, high capacity loops are different both in terms of impairment characteristics and fiber deployment – no one can seriously contend that the Bells need additional unbundling relief to encourage them to continue their routine (and, indeed, near universal) practices of deploying fiber in DS1, DS3 and dark *fiber* loops. Thus, no amount of tinkering with mass market or enterprise definitions can rationally provide the Bells with what they seek here – limitations on access to the DS1, DS3 and dark fiber loops for which the Bells are unable to demonstrate non-impairment. *See TRO* ¶ 210 (“while we adopt loop unbundling rules specific to each loop type, our unbundling obligations and limitations for such loops do not vary based on the customer to be served); *id.* (“a competitive LEC faces the same economic considerations in provisioning a DS1 loop to a large business customer typically associated with the enterprise market that it faces in provisioning that same loop type to a very small business or residential customer typically associated with the mass market”).

Finally, the comments confirm that there is no basis for the Commission to reconsider its holding that § 271 imposes entirely separate loop, switching and transport unbundling obligations on the Bells. Verizon and other Bells claim that reading § 271 to require them to provide broadband loops, switching, transport, and signaling on a wholesale basis is burdensome and would imperil their next-generation networks. But, as the courts have previously cautioned,

there is no broadband exemption to the Act's requirements. Moreover, the Bells' broadband investment claims are palpably untrue in this context, as revealed by, *inter alia*, the Bells' prior claims that it would not serve their economic interests to adopt "closed" broadband networks and that they would, accordingly, voluntarily deliver wholesale broadband services to other carriers pursuant to the same §§ 201 and 202 standards that the Commission has determined will govern the provision of network elements pursuant to § 271. And the Bells' claims that § 271 allows them to prohibit combinations and commingling ignores that nondiscrimination provisions that exist elsewhere in the Act or that are established pursuant to state law would plainly prohibit such practices.

I. THE COMMISSION SHOULD REJECT THE EFFORTS OF BELLSOUTH AND OTHER CARRIERS TO EXPAND THE EXISTING FTTH RULES.

The comments confirm that there is no sound technical, legal, or policy basis for BellSouth's proposal to expand the definition of fiber-to-the-home ("FTTH") loops to include all fiber-to-the-curb ("FTTC") loops.¹ Even BellSouth's traditional broadband allies, the other Bells and their captive broadband equipment suppliers, cannot bring themselves wholeheartedly to endorse the BellSouth proposal. The other Bells' "support" is particularly lukewarm: Qwest and SBC do not address BellSouth's FTTC proposal at all, and Verizon tenders only a single, one-sentence footnote. Verizon at 16 n.8.

The High Tech Broadband Coalition ("HTBC") recognizes one of the most glaring problems with BellSouth's proposal: BellSouth seeks full FTTH unbundling relief wherever it merely has fiber within 500 feet of customers' premises, but has no intention of deploying any of the electronics and other equipment that would be necessary actually to deliver next-generation services (and BellSouth *already* has more than a million loops that meet its FTTC definition, *see*,

¹ *See, e.g.*, Covad at 5-10; Sprint at 7-15; RICA at 2-4; MCI at 2-5; NuVox et al. at 1-9; PACE at 8-12; ALTS at 8-18; Allegiance et al. at 3-14; New South et al. at 7-10.

e.g., AT&T at 9-10, 12). HTBC's comments confirm that FTTH treatment of FTTC loops could never be appropriate unless "media and electronics have been deployed" on the FTTC loops that would enable them actually to provide true next-generation services. HTBC at 10.

HTBC fails to recognize, however, that *any* proposal to redefine "fiber-to-the-home" to encompass "fiber-not-to-the-home" – even one conditioned on actual deployment of electronics – must fail, because the impairment characteristics and next-generation service capabilities of FTTH loops are quite different from those of FTTC and other hybrid loops.² Moreover, HTBC proposes a moving target FTTH definition that turns on "an ITU-approved or other well-established standard" for "transmission capability." HTBC at 10. That proposal is profoundly unworkable even apart from its unacceptable vagueness. As recent events indicate, the ILECs appear to exert strong influence over the manufacturers directly involved in standard-setting, and it would therefore be quite improper to allow the scope of the Act's unbundling obligations to hinge upon those processes.³

² See, e.g., *TRO* ¶¶ 205, 222-26, 237-39, 286 (citing evidence of and finding impairment for hybrid loops); see also AT&T at 12-15; Allegiance et al at 6-8 ("CLECs cannot stress strongly enough that they do not stand in an equivalent position to ILECs in constructing FTTC," because of, among other things, first mover advantages, economies of scale, and incremental additions to existing facilities); ALTS at 12; NuVox at 3-4; PACE at 8-9. HTBC's claim (at 9) that CLECs face no impairment in deploying fiber-to-the-curb in overbuild situations because they would retain access to any existing copper or, if copper is retired, to a 64 kbps channel is plainly inaccurate. Where the ILEC can use the transmission facility to offer an entire range of services, the ability to use a 64 kbps channel is obviously worthless to CLECs. The inescapable fact in such overbuild circumstances is that ILECs already have ubiquitously deployed the copper portion of the FTTC, while CLECs will always need to construct it – circumstances that the *TRO* recognizes create substantial impairment. See, e.g., *TRO* ¶¶ 205, 237-39.

³ See, e.g., G. Witte, *Baby Bells Want Manufacturers' Clout*, Wash. Post, at E1 (Nov. 12, 2003) (reporting meeting of Bells with 10 manufacturers, in which Bells proposed that they "unite with [the Bells] and commit, as well," specifically by "kick[ing] in up to \$500,000 a year for three years and to endorse the Bells' agenda in the press and in meetings with government officials"); Broadband Bus. Report, *Should BellSouth Consider Fiber To The Homeless*, Oct. 21, 2003 (reporting that "BellSouth lobbied vendors" to support its FTTC proposal and that "vendors are afraid to make an enemy of a powerful customer who could respond by not buying from them"); M. Jander, *FTTH Dispute Boils Up*, Light Reading, (available at www.lightreading.com/document.asp?doc_id=41681) (Oct. 10, 2003) (reporting that Alcatel and Corning "felt pinched because BellSouth has pressured them to back up" BellSouth on FTTC issues and that "a BellSouth spokesman confirmed . . . that the carrier wants the vendors to support its position").

II. CUSTOMERS WITH 48 LINES ARE NOT “MASS MARKET” CUSTOMERS.

Although there is virtually no support for BellSouth’s FTTC proposal, a number of parties offer additional proposals that improperly seek to extend the Commission’s findings and rules for FTTH deployed to the mass market to virtually any deployment of fiber to any type of customer.

Verizon, for example, supports a proposal by SureWest to expand the Commission’s rules on FTTH loops deployed to the mass market to include any location (business or residential) which uses up to 48 telephone numbers, *i.e.*, approximately *two* DS1 loops. Verizon at 19; SureWest Petition at 7. That proposal has no support in the record and would immediately wall off significant numbers of customers from UNE competition, in direct contravention of the Commission’s express findings of DS1 impairment. The *TRO* clearly limits the application of unbundling rules for FTTH to the DS0 loops typically deployed to the mass market – as the Commission has already explained to the court of appeals.⁴

It would be patently arbitrary for the Commission to mandate a national 48-number mass market definition for loops. Verizon asserts without citation that the 48 line definition of “mass market” is “consistent with the factual record in this proceeding.” Verizon at 19. To the contrary, the Commission found that small businesses that might be included in the mass market “typically purchase analog loops, DS0 loops, or loops using xDSL-based technologies” (*TRO* ¶ 209; *id.* n.624) – not the equivalent of the *two* DS1 loops proposed by SureWest. Further, although the Commission found that DS1 loops are occasionally used to “serve customers associated with the mass market,” *id.* ¶ 326, the Commission nevertheless found impairment in

⁴ See, e.g., AT&T at 7, 18, 21; Covad at 7-11; Sprint at 12-16; MCI at 7; New South et al. at 10 & n.31 (*quoting* Opp. of the FCC To Allegiance Telecom’s Motion for Stay Pending Review (filed Oct. 21, 2003) (D.C. Cir.) (“Opp. of the FCC To Allegiance Motion for Stay”) (the “text [of the *TRO*] makes clear that the FTTH rule applies to customers who, in the absence of fiber, would be served by a low capacity loop”)).

deploying even a *single* DS1 loop, regardless of the class of customer served with the loop, and expressly ruled that “[t]he unbundling obligation associated with DS1 loops is in no way limited by the rules we adopt today with respect to hybrid loops typically used to serve mass market customers.” *Id.* n.956. SureWest’s entirely unsupported 48-number “mass market” definition simply cannot be reconciled with these Commission findings or the overwhelming record evidence that supports them. *See, e.g.*, Covad at 9-10; Sprint at 11-12; Allegiance at 17.

III. THE COMMENTS DEMONSTRATE THAT IT WOULD BE ANTI-COMPETITIVE TO EXTEND THE FTTH RULES TO ALL MULTI-UNIT PREMISES.

The proposals to apply the Commission’s rules on FTTH indiscriminately to all customers in any multi-unit building could deny millions of customers the benefits of competition, solely because they happen to live in apartments rather than single-family residences.⁵ In some areas, such as New York City, the percentage of residential consumers that live in multi-unit buildings exceeds 70 percent. The Commission neither intended nor could justify such discrimination. As the *TRO* makes clear and as the Commission has confirmed in court filings, the FTTH rule applies to “customers who, in the absence of fiber, would be served by a low capacity loop.” *Opp. of FCC To Allegiance Motion for Stay*, at 12 (filed Oct. 21, 2003) (D.C. Cir.).⁶

Further, the FTTH loop rules apply only to mass market loops that consists of fiber all the way from the central office *to the customer’s home*. If there is *any* copper in the loop, then the loop is not “entirely” fiber, and is therefore a hybrid loop. *See TRO* nn.802, 811 (“For purposes

⁵ *See, e.g.*, Covad at 10-11 (proposal is “designed to sweep in enterprise customer locations”); Sprint at 9-10 (“Redefining FTTH to include multi-unit apartment buildings would prevent CLECs from providing” services); MCI at 7-10; ALTS at 18-22; Allegiance at 18-21.

⁶ Thus, an all-fiber DS1, DS3 or dark fiber loop deployed to the premises of an enterprise customer in multi-unit building (including multi-unit buildings housing a mix of mass market and enterprise customers) is still a DS1, DS3 or dark fiber loop for which the full capabilities of the loop must be unbundled according to the Commission’s rules. *See TRO* ¶¶ 298-342.

of our unbundling rules, we consider any loop consisting of fiber optic and copper cable to be a hybrid loop”). Thus, loops deployed to MDUs that contain copper are hybrid loops that must be unbundled pursuant to the Commission’s rules on hybrid loop.

Only Verizon and HTBC support BellSouth and SureWest’s request to reverse the *TRO* on this point, and they fail to provide any compelling reason to do so. Contrary to Verizon’s suggestion (at 23), the Commission’s existing rules do not “make it less attractive” for incumbent LECs to deploy fiber to multi-unit buildings – as with loops deployed to enterprise customers, incumbents already routinely deploy fiber to such locations and have unique advantages in deploying fiber where they have not already done so. *See TRO* ¶ 325 (it is “economically infeasible for competitive LECs to deploy DS1 loops”); *id.* (“the economics of constructing DS1 loop facilities to serve . . . different customer classes are not significantly different”).⁷

Further, and in all events, there is no record evidence that deployment of fiber to the premises of a multi-unit building would in fact allow the Bells to deliver true next-generation services to individual customers, as the FTTH rules contemplate. The Commission found that only deployments of “entirely” fiber loops would lead to the actual delivery of true next-generation services, *TRO* ¶¶ 274 & n.807, 276 & n.812, and in the scenario proposed by BellSouth and endorsed by Verizon and HTBC, there could be significant amounts of copper in the customer’s loop. If BellSouth, Verizon and HTBC have their way, millions of mass market customers in MDUs will not in fact have access to next-generation broadband services, but also will not be able to receive competitive, UNE-based services, merely because the incumbent has

⁷ Verizon, News Release, “Verizon Selects Vendors for Fiber to the Premises Project; Deployment and New Product Rollout Begin in 2004,” Nov. 17, 2004 (Verizon has “over 9 million miles of fiber-optic systems already in place” and the its plans to install fiber to the home will “natural extension of this fiber technology”).

deployed fiber somewhere in the vicinity of the customers' premises.⁸

IV. THE COMMISSION SHOULD DENY THE ILECs' PROPOSALS TO LIMIT ACCESS TO HIGH-CAPACITY LOOPS THAT LACK TDM CAPABILITIES.

The Bells also attempt to use proposed modifications to the TDM-related obligations associated with hybrid loops to evade their DS1/DS3 loop unbundling obligations. SBC and Verizon, for example, assert that BellSouth's request that the Commission excuse ILECs from any obligation to modify their hybrid loops to provide TDM functionality is "consistent with the Commission's policy of refusing to unbundle DS1 and DS3 loops where there is no TDM capability deployed for those loops." *See Order* ¶ 296." Verizon at 26. However, neither ¶ 296 of the *TRO* nor any other portion of it reflects any such policy. To the contrary, the *TRO* is very clear that ILECs must unbundle the full capabilities of DS1 and DS3 loops "without limitation," "regardless of the technology used to provide such loops," and "regardless of the customer" to be served. *TRO* ¶ 325 & n.956.⁹ The Commission must reject SBC and Verizon's profoundly mistaken view that modifying the TDM-related obligations associated with the hybrid loop rules could somehow limit the Bells' obligations to provide unrestricted access to the full capabilities of all DS1 and DS3 loops.

With respect to hybrid loops, the Commission properly found that CLECs are impaired on a national basis without access to a transmission path over such loops, and the Commission's rules for hybrid loops are intended to "ensure[that] requesting carriers have access to the

⁸ Thus, under the Bells' proposal, an incumbent could obtain the full FTTH unbundling relief merely by extending fiber to within 500 feet of an apartment building, and, if the building is tall, nearly a thousand feet away from the actual tenants' equipment.

⁹ The Commission's rules clearly define DS1 loops as a "digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit digital subscriber line services, including T1 services." 47 C.F.R. § 51.319(a)(4); *see TRO* ¶ 202 n.634. Thus, any loop that meets these characteristics must be unbundled, including all capabilities of the loop, regardless of the type of customer to which it is deployed.

transmission facilities they need to serve the mass market.” *TRO* ¶ 286. The Bells did not want to provide the packetized capabilities of such loops, however, and the Commission invoked § 706 as a basis to deny those capabilities. *Id.* ¶ 290. At the same time, the Commission relied upon the CLEC’s ability to use TDM capabilities of hybrid loops – which the Bells and manufacturers had claimed was feasible and practical – to provide a transmission path that CLECs could use. *See TRO* ¶¶ 289, 294 & nn.835, 845 & 846 (noting SBC *ex parte* explaining that its network “consists of a TDM-based portion and a packet-switched portion”). And, under its authority to ensure that such access is nondiscriminatory, the Commission further provided that an ILEC was prohibited from “engineer[ing] the transmission capabilities of its network in a manner” that would “disrupt or degrade access to” the TDM capabilities of hybrid loops. *TRO* ¶ 294; Rule 319(a)(9).

Verizon and SBC claim that, for assertedly “legitimate engineering and economic reasons,” ILECs may deploy hybrid loops which do not have TDM capabilities. *E.g.*, Verizon at 26. But there is no reason to credit the Bells’ claims that they could not provide TDM capabilities on the loops at issue. With respect to FTTH loops in overbuilds, for example, the Bells are required to provide access to a narrowband 64 kbps channel where they have retired copper. There is no reason why the Bells could not create a similar virtual channel of a specified capacity over hybrid loops or provide the TDM capabilities using a separate strand of fiber.¹⁰ Indeed, at a minimum, they could perform the TDM conversion in the central office. And if the Bells are somehow deploying loops that cannot be altered to provide TDM capabilities, they are now (i) backtracking from their prior submissions that the Commission relied upon to reduce

¹⁰ Whether or not the specific facilities that the Bells will deploy have these capabilities is irrelevant – as MCI explains, “[t]he issue is not whether an incumbent plans to deploy a particular type of equipment at a specific location, but whether the incumbent regularly deploys such equipment for its own customers.” MCI at 13.

unbundling obligations for mass market hybrid loops, *see TRO* n.846, and (ii) engaging in the precise behavior that the Commission meant to proscribe when it barred ILECs from adopting “practice[s] . . . that ha[ve] the effect of disrupting or degrading access” to TDM capabilities of hybrid loops. *See id.* ¶ 294; 47 C.F.R. § 51.319(a)(9).

V. THE COMMISSION SHOULD REJECT THE ILECs’ EFFORTS TO RE-ARGUE THE DARK FIBER UNBUNDLING REQUIREMENTS.

In response to BellSouth’s request to clarify the incumbents’ dark fiber obligations by excluding “new” dark fiber to enterprise customers from unbundling requirements, Verizon and SBC take the opportunity to re-argue the merits of the entire impairment case for dark fiber and claim that the Commission should entirely “reverse” its findings and “eliminate unbundling obligations” in all respects for dark fiber. Verizon at 27; *see* SBC at 6, 8 (“ILECs therefore should not have been required to unbundle any dark fiber loop plant at all”). For the reasons stated by AT&T and other commenters,¹¹ these arguments to eliminate all dark fiber are entirely meritless.

As an initial matter, Verizon’s and SBC’s “comments” do not respond to or support BellSouth’s request, and, if they are to be considered at all, they must be considered as entirely separate requests for reconsideration that must be denied as untimely and otherwise procedurally improper. No party made these requests in a proper reconsideration petition, and SBC and Verizon could not do so, because they chose to petition for appellate review of the *TRO* decision, rather than reconsideration. *See BellSouth Corp. v. FCC*, 17 F.3d 1487, 1490 (D.C. Cir. 1994).

In all events, Verizon and SBC provide no legitimate ground for the Commission to revise its dark fiber unbundling rules; rather, they rely on precisely the same arguments that were

¹¹ *See, e.g.*, Sprint at 18-20 (in deploying dark fiber, a BOC “has enormous advantages of incumbency, including ubiquitous plant, contiguous service territories, and a customer base developed over years”); MCI at 14-16; ALTS at 29-31; Allegiance et al. at 22-23.

previously presented to, and rejected by, the Commission. For example, SBC repeats its claim that there exists a “virtual spaghetti bowl” of competitive fiber that a CLEC could extend to serve any customer.¹² But as the Commission properly recognized, the relevant question for impairment with respect to dark fiber is whether there is any competitive fiber on the particular loop route in question. *See, e.g., TRO* ¶ 332.¹³ As is abundantly clear from the record in this proceeding and in the special access docket, with the limited exception of certain routes where OCn-level facilities can be justified, the answer is overwhelmingly no in virtually all cases. *See, e.g., TRO* ¶¶ 298, 302-06, 312-13. And, with respect to the relatively few routes where competitive fiber is actually available, the Commission provided ILECs with the opportunity to demonstrate those facts and avoid unbundling obligations. *Id.* ¶¶ 314, 334. Thus, far from creating “uncertainty” (SBC at 5) regarding dark fiber unbundling, the Commission’s rules are clear: ILECs must unbundle dark fiber unless they demonstrate in the ongoing proceedings before state commissions that at least two competitive carriers have deployed their own dark fiber facilities “at [a] specific customer location.” Rule 319(a)(6)(i).

Verizon and SBC attempt to manipulate the Commission’s limited findings applicable to true greenfield FTTH loops deployed to the mass market to extend them to any deployment of dark fiber. Verizon at 27-28, 30; SBC at 6-7 & n.17-18 (*citing* to FTTH portions of *TRO*). But the record here amply demonstrates that ILECs and CLECs do *not* stand in same shoes for

¹² SBC at 6; *see* Verizon at 27-28 (relying on CLEC deployment of OC-n fiber, despite findings in the *TRO* (*e.g.*, ¶ 320) deployment of such loops does not demonstrate CLEC can deploy dark fiber, DS1 and DS3 loops).

¹³ Verizon’s claim (at 28-29) that carriers like AT&T and MCI may have large ATM and frame relay shares is irrelevant to the question of whether these and other carriers need access to dark fiber, because AT&T and MCI are relying almost exclusively on ILEC loops to provide those services.

unbundling “new” dark fiber. *See TRO* ¶¶ 303-06, 312-13.¹⁴ Because ILECs – but not CLECs – enjoyed “first-mover” advantages, have existing customers, control existing rights of way and structures, such as space in conduits, they have clear advantages in deploying dark fiber. *Id.*; *see also* Giovanucci Supp. Decl. ¶¶ 5-30. Further, in many cases, so-called “new” dark fiber is merely the extension of an existing plant that avoids the prohibitive barriers to deploying fiber from scratch. *Id.* Indeed, SBC’s proposal (at 8) to color code fiber cables so as to distinguish “old” strands subject to unbundling from “new” ones that would be exempt simply demonstrates both the arbitrary nature of its proposal and the reality that CLECs face severe impairment while SBC can easily and efficiently deploy new fiber in existing rights of way and conduit that is otherwise indistinguishable from existing fiber.

SBC’s proposal (at 7) that the Commission eliminate or radically revise its unbundling rules by using § 706 to override clear determinations of impairment is meritless. The Commission has already stretched section 706 beyond all rational limits in the mass market context to which the Commission has recognized section 706 is directed. Attempting to rely upon section 706, to justify “elimination of any unbundling” of any fiber deployed to enterprise customers – regardless of impairment and in the absence of any evidence that unbundling requirements have in any way dampened ILEC deployment of fiber or advanced services to enterprise customers – could not possibly withstand review.

Finally, SBC’s vague request (at 8-9) to exempt from unbundling requirements any dark

¹⁴ Further, Verizon’s claim (at 27) that dark fiber should not be unbundled because true greenfield FTTH that serves the mass market was not unbundled has no merit. Although AT&T does not agree with the Commission’s FTTH rules, the Commission did find that ILECs had not deployed FTTH, and cited evidence purporting to show that CLECs had deployed more FTTH than ILECs. *TRO* ¶ 275. With respect to dark fiber, however, the ILECs unquestionably have deployed tremendous amounts of fiber, far more than competitive LECs. Thus, although CLECs are in fact impaired in both situations, this fact confirms the need for unbundling dark fiber even if true greenfield FTTH to the mass market is not unbundled. Further, because ILECs have already deployed tremendous amounts of fiber to businesses, eliminating unbundling requirements would not spur a “race” to build even more, as Verizon claims (at 30).

fiber that would “threaten an ILEC’s ability to provide service as a carrier of last resort” would open the door to myriad abuses. SBC does not provide a single example of how leasing its dark fiber loops could conceivably impact its carrier of last resort responsibilities. Dark fiber is deployed almost exclusively to enterprise customers; a CLEC that leases dark fiber uses it to serve customers at that location – customers that the ILEC presumably would have to serve with that fiber if the CLEC were not. Moreover, if the CLEC ceases to serve its customers, it will no longer be leasing the dark fiber, leaving the ILEC free to provide service over that loop.

VI. SECTION 271 REQUIRES ILECS TO UNBUNDLE LOOPS, SWITCHING AND TRANSPORT WITHOUT REGARD TO TECHNOLOGY AND THE ACT’S NONDISCRIMINATION PROVISIONS PROHIBIT ILEC EFFORTS TO DENY COMBINATION AND COMMINGLING RIGHTS.

For the most part, the commenters that support BellSouth’s proposal to read a nonexistent broadband exemption into the section 271 checklist make the same arguments BellSouth made in its petition. As AT&T and other commenters demonstrated in the opening comments, the Bells arguments simply cannot be reconciled with the statute’s text.¹⁵

SBC, Verizon and HTBC make the alternative claim that the Commission should forbear from applying the plain terms of § 271 to broadband. Forbearance is not an appropriate response to petitions for reconsideration, particularly where, as here, the Commission is already considering actual petitions for forbearance from the same requirements. AT&T will address the Bells’ § 271 forbearance arguments in the forbearance proceedings, and demonstrate there why forbearance is unlawful and unwarranted.¹⁶

¹⁵ See, e.g., Z-Tel at 4-14; Covad at 13-17; Sprint at 20-25; MCI at 16-23; PACE at 2-7; ALTS at 22-28; Allegiance et al at 21-22.

¹⁶ HTBC makes the bizarre claim that § 271 does not require the BOCs to provide access to “any particular loop or switch facilities,” but only to a “loop transmission service” or a switching service.” HTBC at 5. HTBC provides neither an explanation of what this means nor any basis in the Act’s text or purposes upon which to draw such a distinction. As the Supreme Court recognized, the Act must be read to “get[] a practical result,” *Verizon Comm. v. FCC*, 535 U.S. 467, 532 (2002), and a switching or a loop transmission service “is not much good” if it is not

The only new claim is Verizon’s lengthy tirade that any unbundling of “integrated” broadband facilities would be impractical, requiring new and costly OSS and other systems. Verizon at 8-11. Verizon does not provide a shred of factual support for its claims. Moreover, Verizon asserted in its *TRO* comments that, with respect to its broadband facilities, it did *not* “intend[] to adopt a closed network model” and that there can be “significant value in maintaining a wholesale business that allow other providers to reach their customers over our network.” Verizon Comments at 82; *see also TRO* n.755 (relying on Verizon’s statements to “make available wholesale broadband service offerings”). Verizon further claimed that providing such wholesale services would allow it to recoup some of the costs of constructing broadband facilities. Verizon Comments at 82. These statements are impossible to square with Verizon’s current assertions that, for example, developing OSS and other systems necessary for carriers to order wholesale broadband capabilities pursuant to § 271 would be too costly and could not possibly provide offsetting benefits to Verizon. *Compare id. with Verizon* at 9-10. Given its stated intentions to provide wholesale broadband services, the straightforward application of § 271 to broadband facilities imposes no unusual or unexpected burdens on Verizon or other Bells, which must, of course, have “broadband” OSS and network access capabilities in place to provide the wholesale broadband arrangements they have promised.

Verizon’s additional claims (at 8-9) that an “integrated” broadband network cannot be segregated into separate components is obviously unsupportable. Packet-based equipment is deployed today – and will co-exist for many years to come – side-by-side with circuit-based technologies, and all carriers, including Verizon and other LECs, can deploy equipment that allows telecommunications to be converted from voice to packet and vice-versa. As a result,

possible to use the service to reach customers. Moreover, the Act does speak of “loop transmission from the central office to *the customer’s premises*” (§ 271(c)(2)(iv)), and thus expressly includes a loop to a particular customer.

even though packetized technology does not always have a dedicated circuit, it is clearly possible to provide access to other carriers. Indeed, as AT&T advocated in its Electronic Loop Provisioning proposal, it is feasible, using currently available technology, to deploy packet-based technology that is expressly designed to provide nondiscriminatory access to other carriers.¹⁷ Thus, while Verizon claims it is “far from obvious” how ILECs could provide access to loops in integrated packet networks, AT&T has already explained that deployment of an ATM module – the same module that ILECs need to deploy to route their own voice traffic – could perform this function.¹⁸

Verizon claims (at 10-11) that § 271(c) unbundling of integrated broadband would be particularly unfair to Verizon, because it controls some (former GTE) territory that is not covered by § 271(c)(2) and thus would need to “design and deploy two different kinds of broadband networks.” Verizon’s tail-wagging-the-dog claim is, in essence, that it no longer should be required to comply with § 271 in all of its former Bell Atlantic and NYNEX territories as a result of its choice to acquire GTE. The plain terms of Act bar that outcome. If Verizon finds the § 271 implications of Bell Atlantic’s merger with GTE too onerous, then it can halt its interLATA operations or divest the former GTE operations. In all events, nothing in § 271 *requires* Verizon to design two sets of networks – it can deploy a single network and provide access to it in *all* of its territories.

Verizon and SBC also support BellSouth’s proposal to adopt a new rule to forbid combining or commingling of unbundled facilities obtained under § 271 with other § 271 elements, with elements obtained under § 251, and with wholesale services. As Covad points out (at 16-17), this would be an absurd reading of § 271 that would prevent CLECs even from taking

¹⁷ See, e.g., AT&T Comments at 235-39 & Gerszberg Dec.; AT&T Reply at 359-60; .

¹⁸ See AT&T Comments, Gerszberg Dec. ¶¶ 8, 25-28.

a loop obtained under § 271 and terminating it in a collocation arrangement. If that is prohibited, what would CLECs be permitted to do with § 271(c)(2)(iv) loops once they obtain them?

Verizon and SBC each rely on the *Errata* to the *TRO* to claim that ILECs may not be required to combine loops, switches, transport and signaling provided under § 271 with elements that must be unbundled under § 251. But all that footnote 1990 does is *decline* to create a particular rule that applies to combinations of loops, switches, transport and signaling obtained under § 271. But other general provisions – including §§ 201 and 202 of the Communications Act and state law provisions (Z-Tel at 15; Covad at 16) – *do* place limits on the Bells’ ability to refuse to combine facilities obtained pursuant to § 271. As AT&T and other commenters explained, it would be discriminatory and unreasonable under §§ 201 and 202 for an ILEC to insist on breaking apart facilities that are already combined, to refuse to combine facilities that it would combine for itself, or to refuse to allow CLECs to engage in the same efficient “commingling” practices that the ILEC itself employs. Further, the states are entitled to determine (so long as they act consistently with §§ 201 and 202) the terms and conditions – including combinations and commingling – upon which CLECs can obtain access to loops, switching, transport and signaling provided pursuant to § 271.¹⁹

¹⁹ See, e.g., *Illinois Bell v. WorldCom*, 179 F.3d 566, 573 (7th Cir. 1999) (states can add to minimum federal requirements under the Act; to say that the Act and the FCC’s rules “do not require” a particular rule “is not to say that [they] prohibit[] it”); *Southwestern Bell v. Waller Communications*, 221 F.3d 812, 820-21 (5th Cir. 2000) (the fact that there is no valid FCC regulation requiring ILECs to combine “does not hold that such [state] arrangements are prohibited; rather it holds only that they are not required by [federal] law”).

CONCLUSION

The Commission should deny the Petitions for Reconsideration filed by BellSouth, by SureWest, and by USIAA.

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I hereby certify that on this 17th day of November, 2003, I caused true and correct copies of the foregoing to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

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