Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

CONSOLIDATED REPLY OF VERIZON TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION OR CLARIFATION

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<u>Introduction and Summary</u>

The Commission should grant the BellSouth, SureWest, and USIIA petitions so as to ensure that next-generation broadband facilities remain free from counterproductive unbundling obligations; it should deny the CMRS Carriers' petitions for special rules that would give them access to cheaper transport with fewer restrictions than anyone else; and it should deny EarthLink's petition to impose line-sharing notwithstanding the intermodal competition that characterizes the broadband mass market.

BellSouth, SureWest, and USIIA Petitions. In the *Triennial Review Order*, the Commission found broadband unbundling obligations to be not only unnecessary but also affirmatively harmful. *See, e.g., Order* ¶¶ 3-4, 272-273, 278, 288, 290, 537, 541. The *Order* nonetheless contains a number of ambiguities that, if not clarified, could be construed to require broadband unbundling in a number of circumstances. As the oppositions to and comments on the pending petitions in this proceeding make clear, the failure to resolve these ambiguities so that broadband facilities are *not* subject to unbundling would undermine the Commission's goal of promoting broadband deployment and also would be contrary to the Telecommunications Act of 1996 ("1996 Act"). In particular, 47 U.S.C. § 251 precludes the Commission from making the impairment showing necessary to require unbundling where, as here, the relevant market is "still in its infancy" with competitors other than ILECs "leading the overall deployment." *Id.* ¶¶ 274, 275. Requiring unbundling in such circumstances also "would blunt the deployment of advanced

[1] This consolidated reply is being filed on behalf of the Verizon telephone companies ("Verizon"), which are the local exchange carriers affiliated with Verizon Communications Inc. listed in Attachment A of the Response of Verizon to Petitions for Reconsideration that was filed in this docket on November 6, 2003.

telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities, *in direct opposition to the express statutory goals authorized in section 706 [of the 1996 Act]*." *Id.* ¶ 288 (emphasis added).

Broadband equipment suppliers agree on all of these points. As the D.C. Circuit has recognized, these companies "sell goods and services that are *inputs* to the production and use of [broadband] services" and thus "stand to gain [from] an expanding market." *United States v. Western Elec. Co.*, 993 F.2d 1572, 1582 (D.C. Cir. 1993) (emphasis omitted). These companies therefore "have the incentive to make a completely unbiased judgment on the matter." *Id.* And their "unbiased judgment" here is that "[a]ny unbundling of broadband facilities will diminish investment." HTBC at 3; *see also* USIAA Pet. at 9. Indeed, one supplier notes that, because of the broadband unbundling relief granted so far by the *Order*, it "has already observed a significant 'uptick' in ILEC broadband investment and a greater interest in [its] products." Catena at 7. As this supplier states, "the marketplace has responded positively to the reduction in uncertainty" and to the "removal of some of the broadband investment disincentives as a result of the reduction in fiber and packet switching unbundling." *Id.* at 8. The suppliers accordingly urge the Commission to grant the petitions for reconsideration of SureWest, USIIA, and BellSouth and to remove the ambiguities in the *Order* that threaten to undermine the gains that have been achieved thus far.

The CLECs that seek to free-ride on ILEC investment in next-generation broadband networks oppose the BellSouth, SureWest, and USIIA petitions. But these CLECs offer no evidence to rebut the findings of the *Order*, and the showing in the petitions and comments, that unbundling will in fact increase the costs and complexity of broadband deployment, to the ultimate detriment of consumers. Nor do they provide any justification beyond their own self interest for maintaining the rules as is. For the most part, the CLECs merely rehash their previously rejected claims that unbundling does not stifle investment, and that all-new broadband networks should be treated the same as old legacy networks. These meritless claims should again be rejected.

CMRS Petitions. As Verizon demonstrated, and the other comments confirm, the Commission should deny the CMRS Carriers' petitions. *First*, the robust competition in the wireless market conclusively shows that CMRS providers are not impaired without unbundled access to the inter-network transmission facilities linking their base stations to incumbent central offices. Although some CLEC commenters assert that they are impaired if they cannot obtain unbundled access to those inter-network facilities to resell to CMRS providers, they make no attempt to show impairment under the standard set forth in the *Order*, instead focusing on a single cost in isolation. Nor do the CLEC commenters provide any reason for the Commission to distort its local loop definition to include these inter-network facilities – indeed, the CLECs' claims that these facilities are local loops were directly contradicted by the statements of the CMRS providers themselves. *Second*, only Sprint supports the CMRS Carriers' claim that the Commission should modify the service eligibility criteria, but, like the CMRS Carriers, Sprint makes no showing that CMRS providers cannot meet the same requirements applicable to CLECs. *See* Verizon at 38-39.[2] *Third*, no commenter supports Nextel's request that CMRS

[2] Sprint also opposes the Commission's establishment of any service eligibility requirements for either CLECs or CMRS providers. *See* Sprint at 4-6. No party sought reconsideration of the Commission's decision in this regard; accordingly, Sprint's claims are beyond the scope of this proceeding. *See, e.g.,* First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, 11 FCC Rcd 1463, ¶ 131 (1995) ("*SMR Order*").

carriers, alone, receive "fresh look" relief from their long-term contracts – not even Sprint, which affirmatively opposes that request. *See* Sprint at 6; Verizon at 40.

Line Sharing. EarthLink's petition for the Commission to impose line sharing, which garnered no support among commenting parties, should be rejected as meritless in view of the healthy intermodal competition that characterizes the broadband mass market.

Discussion

I. The Commission Should Ensure That Broadband Facilities Are Not Subject To Unbundling

A. The Commission Should Not Construe Section 271 As Imposing Independent Unbundling Obligations on Broadband or Should Forbear from Enforcing Any Such Obligations

Although the broadband portions of the *Order* appear intended to eliminate broadband unbundling requirements, a different section of the *Order* – one that contains no specific references to broadband – construes section 271 to impose unbundling obligations that are independent of those under section 251 and that continue to apply when particular elements do not meet the impairment standard under section 251. *Compare Order* ¶¶ 4, 273, 288, 537 *with id.* ¶¶ 653-655. Thus, while neither the *Order* nor contemporaneous comments by the Commissioners state that any unbundling requirements apply to broadband, *see* USIIA Pet. at 3-5; Verizon at 7-8 & n.4, some parties have attempted to construe the *Order* as implying that broadband facilities are subject to unbundling obligations under section 271, *see Order* ¶¶ 653-655; *cf.*, *e.g.*, Covad at 13-15.

As the comments – including those of the unbiased equipment suppliers – demonstrate, imposing unbundling obligations under section 271 would have negative effects on broadband deployment similar to those that the Commission correctly concluded would result from an unbundling requirement under section 251. For example, construing section 271 to require unbundled access to loops, switching, and transport would require a significant redesign of integrated fiber network architectures to create new and artificial points of access to individual components of the network architecture. *See, e.g.*, Verizon at 8-9; HTBC at 4. Likewise, it would require the design and development of costly new systems to manage access at these new access points and development of new operations practices to correspond. *See, e.g.*, Verizon at 9-10. Experience also has shown that any unbundling obligation evolves over time as it is further defined and interpreted, which would add yet another new layer of uncertainty and financial risk that would only add to the cost and delay associated with the need to redesign the network and accompanying systems. *See, e.g.*, *id.* at 10. And, of course, these costs, risks, uncertainties, and delays would apply solely to the Bell operating companies ("BOCs") – and not to their cable competitors that currently dominate the broadband market.

As Verizon has explained, the Commission should resolve this uncertainty once and for all by granting forbearance from such requirements. *See id.* at 11-13; *cf.*, *e.g.*, Allegiance *et al.* at 21 (noting pending forbearance petitions); Covad at 14-15 (same); PACE at 6 (same). The Commission's findings that broadband unbundling is unnecessary and affirmatively harmful are equivalent to the findings required for forbearance: continued unbundling is unnecessary for the protection of either consumers or other carriers (47 U.S.C. § 160(a)(1), (2)), and forbearance is plainly in the public interest (*id.* § 160(a)(3)). *See* Verizon at 11-12; HTBC at 6-7. Moreover, the Commission's findings – throughout Verizon's region and in 33 other states – that BOCs have "*fully implemented* the competitive checklist," 47 U.S.C. § 271(d)(3)(A)(i) (emphasis added), means that section 10(d) of the Communications Act of 1934 poses no barrier to the mandatory application of the Commission's forbearance authority, *see id.* § 160(d) (conditioning forbearance on a finding that "the requirements of section . . . 271" have been "fully implemented").[3] Section 706(a) provides still further support by singling out broadband for special attention and by "direct[ing] the Commission to use the authority granted in other provisions, including the forbearance authority under section 10(a), to encourage the deployment of advanced services." Memorandum Opinion and Order, and Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, ¶ 69 (1998); *see* Verizon at 8-11; HTBC at 4-6; SBC at 11-13.[4]

ALTS argues (at 23-24) that, because incumbents can charge market rates for any elements unbundled under section 271 (*Order* ¶¶ 656, 659), opposition to unbundling requirements under section 271 is necessarily anti-competitive. But the fact that ILECs would obtain market rates for broadband facilities unbundled under section 271 hardly mitigates the disincentives to investment that such unbundling would create. What ALTS ignores is that, in the context of integrated broadband network architectures, any unbundling obligation necessarily would impose significant redesign requirements, resulting in suboptimal technology and adding cost, inefficiency, and delay. *See* USIAA Pet. at 9 ("[m]anufacturers would have to design and build two versions of their broadband equipment," "increas[ing] the cost of everyone's equipment and slow[ing] its development and deployment"); HTBC at 4; Verizon at 8-10. Verizon also would be required to develop new systems to manage requests for unbundled

[3] Covad's (at 15) and Z-Tel's (at 9) claims that section 271 has not been fully implemented in states where the Commission has expressly found that a BOC has "fully implemented the competitive checklist" cannot be squared with Congress's decision to use the same term in both sections of the 1996 Act. *See* Verizon at 12.

[4] ALTS claims (at 25) that "section 706 is irrelevant to the scope of a BOC's access obligations under section 271." But that misses the point. Section 706 is highly relevant to the Commission's application of its forbearance authority, which may include forbearance from section 271 once that section is fully implemented, as it has been.

access, which would divert significant resources from the important task of deploying the broadband facilities themselves. And, at the end of the day, the potential for intrusive regulatory involvement in the pricing of these elements remains.

Indeed, parties have already argued to state regulators that they have a right to oversee these federal obligations. *See* Summary of TRIP Triennial Review Meeting Discussions at 2, Washington, D.C. (Oct. 10, 2003), *available at* http://www.naruc.org/programs/trip/summaryoct03.pdf ("CLECs say States do have a role" in "setting prices under §§ 201 and 202 for UNEs required under § 271"). While that argument is fallacious because any remaining obligation under section 271 is a purely federal requirement, the fact that it is being advanced signals that the pricing of any elements unbundled pursuant to section 271 will remain the subject of additional rounds of investment-deterring litigation. Moreover, even under a purely federal standard, there is significant uncertainty as to how the pricing obligation would be applied. While the Commission has indicated that negotiated, market-based rates will satisfy the section 201 pricing standard, experience has shown that other parties will nonetheless try to game the regulatory process, either to pre-empt the negotiations entirely or to obtain extra leverage – a practice that the Commission has tolerated and sometimes even encouraged. *See, e.g.*, Order Designating Issues for Investigation, *Verizon Telephone Companies Tariff FCC Nos. 1 & 11, Transmittal No. 232*, 17 FCC Rcd 23598, ¶ 8 (2002) (requiring Verizon to offer proof why it should not have a "UNE pricing methodology" imposed on a broadband service being evaluated under a section 201 standard). In short, the prospect of rate regulation even under the pricing standards of sections 201 and 202 will generate substantial uncertainty and further pointless litigation so long as the underlying unbundling obligations remain in place.

B. The Commission Should Confirm That Any Facilities or Services Unbundled Under Section 271 Need Not Be Combined with Network Elements Unbundled Under Section 251

A number of CLECs have opposed BellSouth's request for the Commission to confirm that ILECs need not combine any facilities or services unbundled pursuant to section 271 with network elements unbundled pursuant to section 251. ALTS goes so far as to say (at 25) that BellSouth's request "violates the letter and spirit of the . . . *Order*." *See also* Covad at 15-16; PACE at 7; MCI at 22. But these same CLECs, in a filing with the D.C. Circuit, agreed with BellSouth's reading of the *Order*. Twenty-two CLECs – including virtually every commenter here – told the Court that the Commission had held that BOCs may "refuse to provide combinations of elements" required to be provisioned under section 271 "if [those] elements have not been unbundled under § 251." Joint Proposal of CLECs for Briefing Format and Schedule at 13, *USTA v. FCC*, Nos. 00-1012 *et al.* (D.C. Cir. filed Nov. 10, 2003).[5] If that is a correct statement of the Commission's intended holding – and Verizon believes that it must be, because, in the *Errata*[6] to the *Order*, the Commission *deleted* from paragraph 584 the "require[ment] that incumbent LECs permit commingling of UNEs and UNE combinations with

[5] *See also* Allegiance, Cbeyond, El Paso, Focal, McLeodUSA, Mpower, TDS Statement of Issues at 2, *USTA v. FCC*, Nos. 00-1012 *et al.* (D.C. Cir. filed Nov. 5, 2003) ("Whether the FCC's decision not to require Incumbent Local Exchange Carriers ("ILECs") to provide combinations of unbundled network elements obtained pursuant to Section 271 is arbitrary and capricious and otherwise contrary to law?"); WorldCom Statement of Issues at 2, *USTA v. FCC*, Nos. 00-1012 *et al.* (D.C. Cir. filed Nov. 5, 2003) ("Whether the FCC's decision that unbundled elements provided pursuant to the section 271 checklist are subject to different pricing and combination rules than unbundled elements provided pursuant to section 251 is arbitrary, capricious and otherwise contrary to law?").

[6] Errata, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 *et al.*, FCC 03-227, ¶ 27 (rel. Sept. 17, 2003) ("*Errata*").

. . . any network elements unbundled pursuant to section 271" – then the Commission should grant BellSouth's request to state it explicitly.

Granting BellSouth's request for confirmation would eliminate any possible arguments to the contrary based on the Commission's simultaneous deletion of its statement that the "commingling rule" does not "apply . . . to services that must be offered pursuant to the[] checklist." *Order* ¶ 656 n.1990; *see Errata* ¶ 31; SBC at 13-14; Verizon at 14-15.[7] This latter statement may be, strictly speaking, superfluous in light of the Commission's deletion of the reference to section 271 in the portion of the *Order* dealing with the commingling rule, but the result is that the *Order* itself is now silent on the question. Under the circumstances, an affirmative statement by the Commission that no such commingling of elements unbundled under section 271 is necessary provide much needed certainty on this issue.

C. The Commission Should Ensure That There Are No Unbundling Obligations for Fiber Deployed to Mass-Market Customers

The *Order* prohibits unbundling of "fiber-to-the-home loops" ("FTTH"), which are defined as loops "consisting entirely of fiber optic cable, whether dark or lit, and serving a end user's customer premises." 47 C.F.R. § 51.319(a)(3). It is not clear, however, whether this definition includes fiber serving all mass-market customers. As the petitions and Verizon explained, this uncertainty threatens to impose significant broadband unbundling obligations on the fiber that ILECs hope to deploy to mass-market customers, thereby undercutting carriers' incentives and ability to deploy these facilities in the first place. *First*, requiring unbundled

[7] Various commenters oppose the Commission's determination that incumbents are not required to combine elements provided under section 271 with UNEs provided under section 251. *See* Allegiance *et al.* at 21-22; AT&T at 24-25; Covad at 16; MCI at 21-23; Sprint at 22-25. Because no party sought reconsideration of that determination, those claims are beyond the scope of this proceeding. *See, e.g., SMR Order* ¶ 131.

access to broadband facilities would require a significant redesign of integrated fiber network architectures to create new and artificial points of access to individual components of the network architecture. *See* Verizon at 8-9. *Second*, it would require the design and development of costly new systems to manage access at these new access points and development of new operations practices to correspond. *See id.* at 9-10. *Third*, by making it less attractive to deploy fiber to a segment of the population, such obligations would reduce the overall revenues that ILECs could expect to earn from deploying fiber, which would in turn reduce the incentives to deploy fiber to all other customers as well. *See id.* at 23. In addition, even where ILECs did decide to deploy fiber despite these increased obstacles, the costs of doing so would be greater and ultimately would be passed on to consumers in the form of higher prices. *See id.*

As noted above, the "unbiased" equipment suppliers agree with all of these points and urge the Commission to grant the petitions and clarify its rules in a way that ensures that unbundling does not extend to fiber deployed to any mass-market customers. *See* HTBC at 12-13; Catena at 11-12. While competing carriers generally oppose the petitions, they concede that the rules are ambiguous. *See, e.g.*, Allegiance *et al.* at 12 (describing FTTH as "impermissibly vague"). At the same time, these carriers offer no evidence to rebut the showing that the ambiguities in the rules will increase the costs and complexity of broadband deployment. Instead, they argue that incumbent LECs will proceed with their fiber deployment plans even if such fiber is subject to unbundling. *See id.* at 20; ALTS at 6-7; AT&T at 7; MCI at 9-10. But, even assuming that is true, it is beside the point. Even if the unbundling obligations do not eliminate all of the incentives for ILECs to deploy fiber, such obligations will unquestionably make such deployment more costly and more complex, and thus may slow its progress as well as artificially inflate the costs to consumers. The Commission was therefore correct to find that removing unbundling obligations was necessary to "promote investment in, and deployment of, next-generation networks." *Order* ¶ 272.

1. The Commission should adopt a consistent national definition of a mass-market customer for purposes of its fiber-to-the-premises rules

The *Order* correctly made a nationwide determination that fiber deployed to mass-market customers should not be unbundled. This finding was based on two key facts that distinguish broadband facilities deployed to mass-market customers from the "legacy network" facilities currently serving those customers. For starters, broadband networks, unlike existing legacy networks, are used primarily for interstate services – in particular, connecting to the Internet. *See Order* ¶¶ 51, 229, 292.

But the second, more significant, distinguishing feature is that the actual and potential competition for broadband facilities is much greater: the broadband mass market is separate and distinct from the narrowband mass market, and it is developing competitively. Cable companies are formidable, dominant competitors against whom telephone companies are seeking to make inroads in both the residential and the business segments of the market. Incumbent LECs "have no advantages" with respect to the provision of next-generation facilities, *id.* ¶¶ 274-275, the deployment of which is only now getting underway and will require massive investments nationwide. A uniform national market definition and uniform national unbundling rules are needed so that competitors can build their networks to common standards and designs nationwide, thus reducing costs and facilitating deployment. *See* Verizon at 10-11. Yet the *Order* fails to establish a clear national definition of the broadband mass market for purposes of the Commission's unbundling rules.

a. The Mass Market Properly Includes Business Customers. The *Order* and the rules refer repeatedly to fiber-to-the-*home* loops, even though the discussion in the *Order* and the text of the rule makes clear that it is not limited to homes, but includes other premises where mass-market customers, including businesses, may reside. As Verizon explained, the Commission should resolve this first inconsistency by globally replacing "fiber-to-the-home" and "FTTH" with "fiber-to-the-premises" and "FTTP." This change would make the terminology used in the rules consistent with the text of the *Order*, the clarifications made in the *Errata*, and the factual record on which those clarifications were based.

The CLECs agree that, if left unresolved, this rule would be "impermissibly vague." Allegiance *et al.* at 15-18; *see* AT&T at 18. Their proposed solution, however, is that the Commission reverse the *Errata* and the findings in the *Order* and "return to its original language that limited the fiber unbundling exemption to FTTH deployed to *residential* premises." Allegiance *et al.* at ii; *see* AT&T at 18, 21-22. There is no basis for such an approach. As the Commission recognized, many businesses "typically purchase the same kinds of services as do residential customers, and are marketed to, and provided service and customer care, in a similar manner." *Order* ¶ 127 n.432. Such businesses therefore belong in the mass market, and nothing in the *Order* supports any decision to the contrary. *See* Opposition of the Federal Communications Commission to Allegiance Telecom's Motion for Stay Pending Review at 13, *Allegiance Telecom, Inc. v. FCC*, Nos. 03-1316 *et al*. (D.C. Cir. filed Oct. 21, 2003) ("nothing in the Commission's discussion of FTTH loops indicates that the FTTH non-impairment finding was limited to residential end users," so the *Errata* "merely conformed the rule to the discussion in the text of the *Order*").

Citing a Corning presentation, Allegiance *et al.* claim (at 16) that residential customers "were the focus of the Commission's impairment analysis in regard to FTTH because the evidence of FTTH deployment evaluated the number of 'homes' passed." But the Corning presentations on which the *Order* actually relied evaluates the "*communities*" currently served by fiber, which includes both homes and business premises. *Order* ¶ 274 & n.804 (citing Ex Parte Letter from Timothy Regan, Corning, to Marlene H. Dortch, FCC, at 5, CC Docket Nos. 01-338 *et al.* (Dec. 20, 2002)). In any event, this was hardly the only piece of evidence on which the Commission relied, and the other –evidence – such as the fact that fiber deployment to the mass market "is still in its infancy," that "the potential rewards from FTTH deployment are significant," and that "the entry barriers appear to be largely the same for both incumbent and competitive LECs," *Order* ¶¶ 272, 274, 275 – applies at least as much to business customers as to residential customers. Indeed, if anything, the opportunities to deploy fiber to mass-market business customers are even greater than for residential customers because the costs of deployment are likely comparable but business customers are likely to pay higher prices. *See Order* ¶ 127 n.432 (businesses "usually pay higher retail rates, and may be more likely to purchase additional services").

A number of CLECs also claim that the Commission should exclude business customers from the mass market because "the evidence of intermodal competition . . . only supports application of unbundling relief to FTTH facilities used to serve residential customers." *E.g.*, Allegiance *et al.* at 16-17. Their principal contention is that cable companies do not serve business customers, but they provide no evidence in support of this claim. *See id.* at 16; ALTS at 20, 31; NewSouth *et al.* at 6. Indeed, the facts show otherwise. As Verizon demonstrated, for example, six of the seven largest cable system operators (which, collectively, represent more than 90% of consumer cable modem subscribers) already offer broadband services to businesses, and analysts estimate that the number of businesses using cable broadband will more than triple to as many as 2.2 million by the end of 2006.[8] The National Cable Telecommunications Association has recently testified before Congress that cable operators are now "in a position to serve smaller and medium sized businesses. And as the cable modem technology itself is improved so that we can offer usage sensitive and tiered pricing arrangements, increasingly the small business market will be attractive to us."[9] According to In-Stat/MDR, a larger percentage of small businesses are now using cable modem services (40%) than the ADSL services offered by local telephone companies (22%).[10] A June 2003 Smith Barney report finds that cable MSOs are now capturing more than 50% of new commercial high-speed Internet customers in their addressable footprint.[11] These and many other examples are collected in an ex parte letter that Verizon filed recently in WC Docket Nos. 01-337, 02-33, 98-10, and 95-20, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.[12] The Commission would

[8] *See* Verizon at 17; M. Lauricella *et al.*, Yankee Group, *Cable MSOs: Ready to Take Off in the Small and Medium Business Market* at 4 (Mar. 2002); E. Bergstrom & M. Paxton, In-Stat/MDR, *Broadband 2002: DSL & Cable Modem Services Fuel Worldwide Subscriber Growth* at 21 (June 2002).

[9] The Regulatory Status of Broadband Services: Information Services, Common Carriage, or Something In Between?: Hearing Before the Subcomm. on Telecommunications and the Internet of the House Comm. on Energy and Commerce, 108th Cong., 1st Sess. 64 (July 21, 2003) (statement of Robert Sachs, President & CEO, NCTA).

[10] *See* In-Stat/MDR Press Release, *Cable and DSL Fighting for Business Subscribers* (Dec. 12, 2002).

[11] *See* Citigroup Smith Barney, *Cable: Capitalizing on the SME Opportunity; Detailed Note* at 3 (June 4, 2003).

[12] Ex Parte Letter from Dee May, Verizon, to Marlene H. Dortch, Secretary, FCC, at 10-17, WC Docket Nos. 01-337 *et al*. (Nov. 13, 2003) (Exhibit A hereto).

therefore not be justified in restricting the definition of mass market exclusively to residential customers.

b. Distinction Between Mass-Market and Enterprise Customers. The *Order* fails to define a cut-off or other threshold distinguishing the mass market from the enterprise market for purposes of the Commission's fiber-to-the-premises rules. As SureWest's petition urged (at 7), the Commission should resolve this by defining the "the mass market as any residence or business customer locations which use up to 48 telephone numbers," which is the equivalent of no more than two DS1 loops. Such a bright-line approach is necessary to ensure that mass-market customers are defined consistently throughout the country. This is critical to avoid a patchwork regulatory environment from emerging in which some customers and locations are subject to unbundling, but other similarly situated customers and locations are not. As described above, this kind of regime will impose enormous hurdles and inefficiencies in the design and deployment of next-generation networks, and will have a negative effect on the economics of deploying such networks by reducing the ability of providers to spread costs and earn revenues over the largest possible customer base. Moreover, eliminating broadband unbundling for businesses that use 48 or fewer telephone numbers is consistent with the factual record in this proceeding. As Verizon has explained, business customers of this size typically are at the same locations as and mixed in with residential and other business customers that use fewer numbers, areas where the Commission has acknowledged the ILECs are generally behind CLECs in the deployment of fiber. *See Order* ¶ 275; Ex Parte Letter from W. Scott Randolph, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338 *et al*. (Jan. 10, 2003) (showing that the small businesses that CLECs are serving with one or two DS1s are in the same geographic locations as larger business and residential customers); Verizon at 19-20.

A number of CLECs argue that the 48-number cut-off proposed by SureWest is too high, but their arguments are unavailing. First, MCI argues (at 7-8) that this cut-off is inconsistent with the approach taken in the mass-market switching context. As Verizon has explained, however, the Commission did not establish any specific cut-off to delineate mass-market customers for the purposes of the unbundled switching rules, but instead left it up to the states to make this determination. *See Order* ¶ 497; 47 C.F.R. § 51.319(d)(4). Whatever merit this approach may have in the unbundled switching context, it should not be applied in the broadband context. As the Commission has recognized, the need to establish uniform national rules is particularly critical with respect to broadband in order to preserve the incentives needed to spur new investment. Uniform national rules also serve the important function of allowing carriers to design and build their respective networks to a common standard nationwide, thus taking advantage of scale and scope economies that make it possible to deliver service to customers at lower cost.

Furthermore, the purpose of establishing a cut-off in the *switching* context is to distinguish between those customers whose loops are subject to hot cuts (*i.e.*, mass-market customers) and those that do not require a hot cut in order to migrate to a competitor's switch (*i.e.*, enterprise customers). This distinction is simply irrelevant for purposes of the fiber-to-the-premises rules.

Second, several CLECs purport to find a tension or conflict between the 48-number cut-off and the Commission's finding that DS1 loops provided to mass-market customers must be unbundled because, say the CLECs, "customers served by DS1 loops will frequently have far fewer than 48 telephone numbers." Allegiance *et al.* at 17; *see* Covad at 9-10; NewSouth *et al.* at 2, 9-10; MCI at 8-9. This comparison is inapposite, however. In a fiber-to-the-premises scenario, the only unbundling required, even for enterprise customers, is access to dark fiber. And while that requirement also should be eliminated, as Verizon has shown at length elsewhere, the simple fact is that the decision as to were the line should be drawn in defining enterprise and mass-market customers in the fiber-to-the-premises scenario will have no effect on when and where DS1 loops are available. In any event, at least as of today, there is very little fiber deployed to mass-market customers, including to mass-market business customers. *See Order* ¶ 274 ("FTTH loop deployment is still in its infancy."). In order to stimulate such deployment in the first place, it is necessary to define mass-market customers broadly, to maximize the potential customer base and revenues over which this massive investment can be recovered. Moreover, any future concerns about the ability of CLECs to serve customers to whom an ILEC has deployed fiber are put to rest by the Commission's finding that other carriers – and, *a fortiori*, the incumbent cable companies – stand on an equal or better footing than ILECs in their ability to deploy fiber to mass-market customers. And the competition to deploy new facilities will be felt particularly keenly with respect to business customers that, as the Commission recognized, can be served at similar or lower costs and with greater potential revenues.

Finally, ALTS claims (at 31) that including businesses in the fiber-to-the-premises rules will somehow "contaminate the growing competitive marketplace for business customers." This argument makes no sense. The deployment of new fiber to serve business customers would have a *pro*competitive effect, by offering these customers next-generation facilities that they do not currently have and by increasing the incentives for CLECs to respond in kind. *See Order* ¶ 272. ALTS's suggestion (at 32) that this will make business customers "captive to a monopoly provider with no incentive to innovate" is absurd: the reality is that this will encourage both

ILECs and CLECs to deploy next-generation fiber networks to these customers, which is in and of itself an enormous innovation that the Commission is at pains to promote in the *Order*.

2. The Commission should clarify that mass-market customers in multi-unit premises are part of the mass market

Although the *Order* states that the loop "unbundling obligations and limitations for such loops *do not vary based on the customer to be served*," *Order* ¶ 210 (emphasis added), a footnote appears to equate mass-market customers that "reside in multiunit premises" with "multiunit premise-based enterprise customers," *id.* ¶ 197 n.624. And, because enterprise customers are subject to greater unbundling obligations than mass-market customers, this suggests that fiber deployed to the significant segment of the mass market that reside in multi-unit premises will be subject to greater unbundling obligations than apply to other segments of the mass market.

As the petitioners and Verizon explained, any rules that make it less attractive to deploy fiber to a significant segment of the mass market would reduce the overall revenues that ILECs could expect to earn from deploying fiber, which would in turn reduce the incentives to deploy fiber to all other customers as well. In addition, even where ILECs did decide to deploy fiber despite these increased obstacles, the costs of doing so would be greater and ultimately would be passed on to consumers in the form of higher prices. The equipment suppliers agree. As the High Tech Broadband Coalition states (at 3), extending broadband unbundling to mass-market customers in multi-unit premises "unreasonably deters deployment of fiber to buildings housing a substantial portion of mass-market customers." Catena likewise notes (at 12) that, "[b]y treating fiber to MDUs . . . with greater unbundling obligations, . . . the Commission preserves the disincentives to ILEC investment in new fiber-based technologies to these subscribers. As a result, many Americans will be denied access to advanced services."

Moreover, subjecting multi-unit premises, but not single-unit premises, to broadband unbundling also makes no sense as an economic matter. As the Commission has recognized, it is more economical for competitors to deploy fiber to mass-market customers in multi-unit premises – where customers are highly concentrated – than to deploy fiber to customers that are more dispersed. *See, e.g., Order* ¶ 303 (competitive carriers "usually" target "multiunit premises" precisely because such premises have an aggregated base of customers that provide "sufficient demand . . . to generate a revenue stream that could recover the sunk construction costs of the underlying loop transmission facility"). This is especially true when the cable companies, which already dominate the broadband mass market and which have strong economic incentives to focus on multi-unit premises, are subject to no comparable unbundling requirement.

Despite all this, the CLECs support the current ambiguities in the rules, just as they support every attempt to make fiber deployment by ILECs more costly and complicated. As demonstrated below, however, their arguments are uniformly without merit.

a. Mass-Market Customers in Multi-Unit Premises Should Be Treated the Same as the Rest of the Mass-Market. The CLECs claim that the petitions fail to demonstrate that CLECs are not impaired without access to multiple dwelling units, and that the Commission must accordingly treat mass-market customers in multi-unit premises as part of the enterprise market for purpose of the fiber unbundling rules. But the Commission's rationale for treating customers in multi-unit premises differently from other customers is based entirely on concerns about the ability of competitors to access the inside copper wiring owned by ILECs in such buildings. *See Order* ¶¶ 197 n.624, 351-355. That concern is fully addressed, however, by the Commission rules that guarantee competitors access to such wiring. With access to ILEC-owned inside copper wiring secured, CLECs have no legitimate claim that they are somehow disadvantaged vis-à-vis ILECs in their ability to deploy fiber to customers in multi-unit premises.

Allegiance *et al.* claim (at 19) that "CLECs are far behind ILECs in regard to ability to access multi-unit buildings," but it provides no support for this claim. For example, while Allegiance *et al.* claim (*id.*) that in New York "Verizon's network serves 7,364 buildings and CLECs serve fewer than 1,000," this statistic – for which no citation is provided – is meaningless because no attempt is made to distinguish between enterprise and mass-market customers in such buildings. If anything, their own admission that CLECs are now already serving approximately 1,000 buildings in the LATA indicates that they are *not* impaired. As just discussed, the Commission has identified access to ILEC-controlled copper inside wire as the real competitive concern in the multi-unit environment, due to the presumed difficulty of "'convinc[ing] landlords and customers to permit construction of redundant inside wiring'" and the expense associated therewith. *Order* ¶¶ 345 (quoting *UNE Remand Order*[13] ¶ 216), 348. And, as discussed above, the Commission's rules allowing CLECs to access ILEC-controlled copper inside wire in multi-unit premises fully alleviates any such impairment.

Several CLECs also complain that including multi-unit premises in the definition of fiber-to-the-premises would result in many business customers being included in the definition. *See*, *e.g.*, Allegiance *et al.* at 19-20; ALTS at 20; AT&T at 19. As discussed above, however, there is no question that some business customers are properly included in the mass market; the only question is how large such customers may be. Regardless of how the Commission answers

[13] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), *petitions for review granted and remanded*, *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

that question, it would be entirely inappropriate to treat those business customers differently depending on whether they are located in a multi-unit premises. Indeed, any such approach would violate the Commission's holding that the loop "unbundling obligations and limitations for such loops do not vary based on the customer to be served." *Order* ¶ 210. Moreover, as demonstrated above, it makes no sense to impose more unbundling on customers in multi-unit premises given that the economics of serving these customers are even more attractive than the economics of serving customers in single-unit premises.

Some CLECs next argue that the Commission should treat mass-market customers in multi-unit premises differently from other mass-market customers because "[i]t is not economical for a LEC to deploy anything other than fiber to a building with multiple dwelling units," and therefore ILECs do not need any additional regulatory incentives. ALTS at 19, 32; *see* MCI at 9-10; AT&T at 7-8. Even if this were true, however, the same would be true for CLECs given that "the entry barriers appear to be largely the same for both incumbent and competitive LECs." *Order* ¶ 275. In any event, the issue is not whether ILECs need additional regulatory incentives to deploy fiber in the first place, but about ensuring that the economic and operational barriers to such deployment are kept to a minimum, in order to permit such deployment to proceed efficiently and at the lowest possible cost – all for the benefit, ultimately, of consumers. And, as both the unbiased equipment suppliers in this proceeding, as well as outside analysts have concluded, requiring broadband unbundling is antithetical to this goal. *See, e.g.*, Scott L. Cleland, Precursor Group, *Telecom Recovers in 2003* (Jan. 8, 2003) ("Under current rules, which enable competitors to wholesale the network at whatever price it can convince regulators to set, it makes little investment sense for incumbents to upgrade their last-mile facilities with more fiber even though upgrades would allow for new integrated services and lower operational costs.").

b. Fiber-to-the-Building Should Be Classified as Fiber-to-the-Premises. A number of CLECs argue that, when ILECs deploy fiber to a multi-unit premises building, but do not extend that fiber to the individual units within that building, such loops should be classified as "hybrid" loops, rather than fiber-to-the-premises loops. *See, e.g.*, Allegiance *et al.* at 13-15; AT&T at 12. But, as Verizon has explained, this result would be inconsistent with the Commission's acknowledgement 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. *Order* ¶ 343 n.1021. In other words, fiber–to-the-building *is* fiber-to-the-premises and ought to be regulated as such.

Moreover, any approach that imposes unbundling obligations on fiber deployed to multi-unit premises based on who owns or controls the inside wiring in that premises would result in rules with arbitrary distinctions between the buildings and locations subject to unbundling and those exempt from such requirements. This will impede the ability of LECs efficiently to design and build fiber networks. As Catena notes (at 12), "[b]y treating fiber to MDUs as a 'hybrid loop' with greater unbundling obligations, . . . the Commission preserves the disincentives to ILEC investment in new fiber-based technologies to these subscribers. As a result, many Americans will be denied access to advanced services." As Verizon has explained, the net effect of such policies will be to discourage ILECs from deploying fiber-to-the-premises in areas where there are multi-unit premises, including areas where there are single-unit premises that happen to be near multi-unit premises, and to discourage them from deploying to multi-unit premises even when they deploy to others. And this, in turn, will impede the ability to serve all other customers as well, both by increasing the costs of any fiber deployment strategy and by decreasing the revenues that can be earned by such a strategy.

Basing fiber unbundling decisions on who owns the inside wiring also "makes no sense . . . because the services that can be provided to the subscriber are the same as if fiber were provided all the way to the apartments/condominiums or offices. Thus, the revenue opportunities are identical." Catena at 11-12. And although some CLECs claim that service quality may suffer if fiber is not deployed all the way to each unit in a building, they offer no support for this speculation. *See, e.g.*, ALTS at 19. But the true motivation behind this claim is that these CLECs do not want ILECs to deploy fiber to multi-unit premises because they prefer the world in which CLECs can free-ride off of the ILECs' legacy networks rather than competing in building their own next-generation networks. ALTS in particular claims that ILECs will deploy fiber to buildings that contain business customers, and that CLECs will no longer be able to obtain access to loops serving those business customers. ALTS objects to this based on its view that such business customers do not need the bandwidth offered by fiber in the first place and "would be much better off" with the legacy facilities that now exist. ALTS at 33; *see also id.* ("The dry cleaner in the middle of a residential neighborhood is not going to subscribe to HBO and does not need the huge bandwidth levels that are needed for video."). Regardless of the truth of their assumption that businesses have no use for video services, ALTS utterly fails to address the potential for new broadband services that may be desirable to businesses. But, in any case, it is obviously not for ALTS to decide what customers need or want. Congress and the Commission have already decided that broadband facilities should be deployed to all customers (so that the customers themselves can choose) and that unbundling is contrary to that goal.

D. The Commission Should Clarify the Requirements Regarding the Unbundling Obligations of TDM Capabilities on Hybrid Loops

Although the packet-switched features, functions, and capabilities of an ILEC's hybrid loops are *not* subject to unbundling, new 47 C.F.R. § 51.319(a)(2)(ii) provides that, "[w]hen a requesting telecommunications carrier seeks access to a hybrid loop for the provision of broadband services, an incumbent LEC shall provide . . . nondiscriminatory access to the time division multiplexing features, functions, and capabilities of *that* hybrid loop" (emphasis added).

Some commenters argue, however, that when ILECs deploy a next-generation loop that has no TDM features and functions, they should have to modify the loop to to include such features and functions simply so that those features and functions can be unbundled on demand. *See* ALTS at 28-29; AT&T at 15-17; WorldCom at 11-13; Allegiance *et al.* at 2-3. Even assuming, for purposes of the present argument only, that the Commission's "routine network modification" rules are valid, they extend only to modifications that ILECs "regularly undertake for their own [retail] customers." *Order* ¶ 632. The policy that ILECs need not modify their next-generation packetized networks in order to provide unbundled access to TDM features that they do not themselves use is fully consistent with the Commission's statement that "to the extent there are significant disincentives caused by unbundling of circuit switching, incumbents can avoid them by deploying more advanced packet switching." *Id.* ¶ 447 n.1365. The Commission's objective not to "blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities" requires that ILECs be allowed to deploy next-generation packetized facilities without incurring the extra expense and inefficiency of adding TDM features for which they have no use. *Id.* ¶ 288.

E. The Commission Should Eliminate Unbundling Obligations for Fiber Deployed to Enterprise Customers

Although the Commission's rules impose greater broadband unbundling obligations for enterprise customers than for mass-market customers, the petitions of SureWest and the comments in this proceeding demonstrate that the Commission should reverse this policy on reconsideration. As Verizon has explained, this is the only approach that gives meaning to the Commission's holding that its loop "unbundling obligations and limitations for such loops *do not vary based on the customer to be served*." *Order* ¶ 210 (emphasis added); Verizon at 27. It is the only approach that squares with the Commission's findings that there is more competitive fiber deployed to enterprise customers than to mass-market customers, and that deploying fiber to enterprise customers is economically more attractive than deploying fiber to mass-market customers. *See Order* ¶¶ 227, 298, 303, 309, 315. It is the only approach consistent with the substantial evidentiary record before the Commission that the enterprise segment is dominated by interexchange carriers like AT&T and MCI. *See* Verizon at 27-28; *see also* Comments of Verizon at 21-22, CC Docket Nos. 01-338 *et al*. (FCC filed Apr. 5, 2002); Ex Parte Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, Secretary, FCC, Attach. at 30-31, CC Docket Nos. 01-338 *et al*. (Jan. 31, 2003) (relevant portions of which are attached hereto as Exhibit B). And it is the only approach that fulfills the Commission's goal to "promote investment in, and deployment of, next-generation networks." *Order* ¶ 272; Verizon at 30. Although a number of CLECs argue that the Commission should retain its rules and reject SureWest's petition, they provide no evidence to rebut any of these points.

Allegiance *et al.* state (at 23) that the Commission's holding was properly justified by the high costs of deploying fiber to enterprise customers, but they fail to reconcile this with the fact that the Commission eliminated broadband unbundling for mass-market customers that are even more costly to serve. Indeed, the two positions are inconsistent, and the only way to reconcile them that is consistent with the 1996 Act is to eliminate broadband unbundling for the enterprise market.

ALTS claims (at 30) that the Commission must continue to require unbundling of fiber deployed to enterprise customers in order to "ensure that CLECs have access to DS1 and DS3 loops to serve the enterprise market." But, as the *Order* recognizes, the results of the impairment analysis for DS1 and DS3 loops is not the same as for fiber loops. *Compare Order* ¶¶ 311, 315 *with id.* ¶¶ 320, 325. It would therefore be completely inappropriate for the Commission to link a determination regarding fiber for enterprise customers on its findings regarding DS1 and DS3 facilities. And, to the extent that eliminating broadband unbundling for enterprise customers would pose a conflict with the unbundling rules for DS1 and DS3 loops, the solution is not to refuse to take this otherwise appropriate step, but to craft more sensible distinctions between the various elements.

II. The Commission Should Deny The CMRS Carriers' Petitions For Reconsideration

A. Neither CMRS Providers Nor CLECs Are Impaired Without Unbundled Access to the Inter-Network Transmission Facility Connecting a CMRS Provider's Base Station to an ILEC's Central Office

There can be no doubt that the lack of unbundled access to inter-network transmission facilities used to connect a CMRS provider's base stations to an incumbent's central office poses no "barrier . . . to entry . . . that [is] likely to make entry into a market uneconomic." *Order* ¶ 84. Even without such access, the wireless market is extremely competitive: there are six nationwide, facilities-based CMRS providers, as well as numerous large, regional providers, and

95% of the population can choose from among three or more providers. *See* Verizon at 31; BellSouth at 2, 6-11; SBC at 16 n.46.

Some CLECs, wishing to engage in price arbitrage by leasing these inter-network transmission facilities from incumbents on behalf of CMRS providers, assert that they are impaired without unbundled access to this link. *See* El Paso *et al.* at 8, 12-14. As an initial matter, the Commission has no "license . . . to inflict on the economy the sorts of costs" entailed by unbundling where, as here, the existing competition in wireless markets throughout the country means that there is "no reason to think [unbundling these facilities] would bring on a significant enhancement of competition." *USTA v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003). In addition, these CLECs make no attempt to show that their entry into this "market" – reselling to CMRS providers the exact same inter-network facility available from an incumbent as special access – is "uneconomic," that is, that "all potential revenues from entering a market exceed the costs of entry, taking into consideration any countervailing advantages that a new entrant may have." *Order* ¶ 84. Instead, they focus on a single cost in isolation, *see* El Paso *et al.* at 12-14; El Paso Joint Decl. ¶¶ 19-22, which both the Supreme Court and the D.C. Circuit have held is contrary to the 1996 Act. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 389-90 (1999); *USTA*, 290 F.3d at 422-23. These CLECs provide only conclusory statements about potential revenues from serving CMRS carriers, *see* El Paso Decl. ¶¶ 21-22, and make no mention whatsoever of their "countervailing advantages."

B. The Commission Should Not Alter Its Unbundled Local Loop Definition To Include the Inter-Network Transmission Facility Connecting a CMRS Provider's Base Station to an ILEC's Central Office

As the CLEC commenters acknowledge, the Commission's definition of an unbundled local loop does not include the inter-network transmission facility at issue here. *See* El Paso *et* *al.* at 14-15. These commenters, like the CMRS petitioners and others, nonetheless claim that the Commission should modify its local loop definition to include this facility. But there is no reason for the Commission to distort its definition in this manner. *See* Verizon at 34-35; BellSouth at 15-19; Qwest at 4-6; SBC at 20-21. Even apart from the absence of any impairment, doing so would conflict with the Commission's broad holding that "no requesting carrier shall have access to unbundled inter-network transmission facilities under section 251(c)(3)." *Order* ¶ 368. The facility at issue is unquestionably an "inter-network transmission facility" – it connects a portion of an incumbent's network with a portion of a CMRS provider's network. Therefore, "no requesting carrier," whether a CLEC or CMRS provider, is entitled to obtain this facility as any type of UNE.[14] The few new claims raised by the commenters provide no basis for the Commission to depart from that conclusion.

The CLEC commenters contend that the Commission failed to consider their arguments that the facility connecting a base station to a central office is a local loop. *See* El Paso *et al.* at 4, 5; CompTel/ASCENT at 3-4. The Commission's disregard of these arguments was entirely justified because every CMRS carrier made the exact opposite claim, arguing that their base station is a switch and that the facility at issue, therefore, fits within the Commission's prior definition of unbundled dedicated transport. Indeed, as BellSouth notes, "every wireless carrier made this argument exclusively." BellSouth at 16. The CMRS carriers acknowledged that the "last mile" in a wireless network, or the "wireless loop," is the connection between the base station and a CMRS customer's handset. *See* AT&T Wireless/VoiceStream Petition for Declaratory Ruling at 14, CC Docket No. 96-98 (FCC filed Nov. 19, 2001); *see also* Ex Parte

[14] Because the facility at issue here is an inter-network transmission facility, El Paso *et al.*'s claim (at 7-9) that there is no technical difference between that facility and a local loop is simply irrelevant.

Letter from Douglas I. Brandon, AT&T Wireless, to Marlene H. Dortch, FCC, at 2, CC Docket Nos. 01-338 *et al.* (Feb. 5, 2003) (stating that it has "duplicat[ed] the local loop" by providing for wireless connection between base stations and CMRS customers). In contrast, the connection between the base station and the incumbent's central office (and, from there, to the CMRS provider's switch) is used "for the purposes of *backhauling* traffic." *Id.* at 2-3 (emphasis added).

The CLEC commenters also claim that, from their perspective, the base station is an end-user customer's premises, because "the CMRS carrier is the end-user of [the CLEC's] wholesale service." CompTel/ASCENT at 4-5 (internal quotation marks omitted; *see* El Paso *et al.* at 15. Although a CMRS provider can be a customer of either a CLEC or an ILEC, in neither case is it an "end-user" customer – it is another carrier. Nor is its base station a loop demarcation (or termination) point – instead, the base station directs calls to their termination point regardless of what entity provisions the facility connecting the base station to a wireline carrier's network. Because the facility at issue here provides "inter-network transmission," it is not a local loop, and "no requesting carrier" may obtain it as a UNE. *Order* ¶ 368.

III. The Commission Should Deny EarthLink's Petition For Reconsideration Of Its Decision Not To Require Line Sharing

No commenter has indicated support for EarthLink's petition for reconsideration of the Commission's decision not to require ILECs to provide unbundled access to the high-frequency portion of the loop. The petition should be denied for the reasons given in Verizon's comments. *See also* Catena at 3-7; Qwest at 6-9; SBC at 23-30 (all opposing EarthLink).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of November 2003, copies of the Consolidated Reply of Verizon to Oppositions to Petitions for Reconsideration or Clarification were served upon the following parties by overnight mail.

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