January 8, 2004

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket Nos. 01-338, 96-98, 98-147

Dear Chairman Powell and Commissioners:

On October 2, 2003, BellSouth Communications ("BellSouth") filed a petition for reconsideration of the *UNE Triennial Review Order*,[1] seeking additional relief from the Commission's unbundling requirements.[2] Although the precise nature of the relief requested is not entirely clear from the petition, BellSouth appears to seek to broaden the scope of the unbundling relief provided for fiber-to-the-home ("FTTH" or Fiber-to-the-Premises ("FTTP")) as much as possible,[3] for example, by extending this relief to fiber-to-the-curb ("FTTC"). Many

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1 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (FCC 03-36) (2003), *as modified by* Errata, 18 FCC Rcd 19020 (FCC 03-227) (2003) ("*UNE Triennial Review Order*").

2 Petition for Clarification and/or Partial Reconsideration, CC Docket No. 01-338 (Oct. 2, 2003).

3 The Commission's rules provide that "[a] fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, and serving an end user's customer premises." 47 C.F.R. § 51.319(a)(3). The FTTH relief granted in the order does not extend to DS1 and DS3 loops, which are treated in the enterprise section, and are not covered by the rules regarding mass market loops.

of the undersigned parties filed oppositions to BellSouth's petition and continue to oppose grant of that petition in any respect. Extending unbundling relief to FTTC loops will hinder the deployment of true FTTH loops, which the Commission has recognized will "significantly enhance the broadband capabilities a carrier can deliver to consumers."[4] Only all-fiber FTTH loops, unconstrained by the copper bottleneck, hold the promise of a symmetric, truly future-proof channel, with virtually unlimited capacity. And the record in this proceeding fully supports this notion. For instance, the Fiber to the Home Council ("FTTH Council"), in a recent *ex parte,* recognized that FTTC and FTTH are not equivalent and that "[a]ll copper-based distance-limited 19th Century technologies will foster digital divide."[5] For example, while fiber can support gigabits or even terabits per second (i.e., over 1,000,000 Mb/s), "copper-based standards flatline at 40 Mbps."[6] Moreover, "FTTP is distance and capacity unlimited and thus can provide any bandwidth demand growth to any US consumer."[7] It is thus clear that the hybrid fiber-copper FTTC is not equivalent to the all-fiber FTTH loop. Therefore, the Commission must deny BellSouth's request and reiterate its holding from the *UNE Triennial Review Order* that the "definition of FTTH loops excludes such intermediate fiber deployment architectures."[8]

If the Commission were to make any clarifications to the broadband portion of the *UNE Triennial Review Order*, however, it would be essential for the Commission to maintain and clarify the distinction in the *UNE Triennial Review Order* between "greenfield" construction and "brownfield" construction.

In the *UNE Triennial Review Order*, the FCC determined that incumbent LECs are not required to provide nondiscriminatory access to unbundled FTTH loops deployed to serve new-build, or "greenfield," "customer premises that previously ha[ve] not been served by any loop facility,"[9] and that "require entirely new construction of local loops (in addition to the deployment of the necessary switching and other network equipment)."[10] The FCC's rules, however, require incumbent LECs to provide narrowband access to FTTH where those loops are deployed "parallel to, or in replacement of, an existing copper loop facility."[11] Therefore, the

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4 *UNE Triennial Review Order* ¶ 278.

5 *Only FTTP Can Meet the Future Bandwidth Needs for All Consumers With a Cost-Effective Business Case* at 3, attached to letter from Walter Steimel, Jr., Counsel for the FTTH Council, to Marlene Dortch, FCC Secretary, CC Docket No. 01-338 (Dec. 16, 2003).

6 *Id.* at 11.

7 *Id.*

8 *UNE Triennial Review Order* ¶ 275 n.811.

9 47 C.F.R. § 51.319(a)(3)(i).

10 *UNE Triennial Review Order* ¶ 227.

11 47 C.F.R. § 51.319(a)(3)(ii).

FCC's rules draw a clear distinction between the treatment of FTTH loops deployed to serve "new builds" or "greenfield" premises and those used in "overbuild" or "brownfield" situations.

In order to minimize the potential for differing interpretations of the scope of any regulatory relief for "greenfield" loops, the Commission should clarify its rules regarding "new builds" or "greenfield" construction to incorporate concepts that are currently in the text of the order. This would include clarifying that the definition of FTTH loops encompasses only newly constructed all-fiber loops that do not rely on legacy feeder or distribution plant and that FTTH loops consist entirely of fiber from the incumbent LEC central office all the way out to the loop demarcation point at a mass market end-user customer premises. In addition, the definition should expressly establish the date after which a loop would need to be constructed to be considered a "New Build." Consequently, the Commission should clarify the definition of "New Builds" in 47 C.F.R. § 51.319(a)(3)(i) to read as follows:

> "New Builds (or 'Greenfield Local Loops'). An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC deploys such a loop to a mass market end user's customer premises that previously has not been served by any loop facility. For purposes of this subsection, a "fiber-to-the-home loop" is an all-fiber local loop extending from the incumbent LEC central office to the loop demarcation point at a mass market end-user customer's premises that was newly constructed in its entirety by the incumbent LEC on or after October 2, 2003 (Effective Date of the UNE Triennial Review Order).

In conclusion, the Commission should deny BellSouth's petition for reconsideration in its entirety. To the extent that it grants any relief with regard to the rules governing access to FTTH loops, the FCC must clarify the definition of "new builds" as discussed above to avoid any potential confusion regarding the precise contours of the relief granted.

Sincerely yours,

/s/ Daniel F. Gonos
Daniel F. Gonos
Senior Regulatory Analyst
ACN Communication Services, Inc.
32991 Hamilton Court
Farmington Hills MI 48334
(248) 699-3517
dgonos@acninc.com

/s/ Stephen C. Garavito
Stephen C. Garavito
AT&T Corp.
1120 20th Street N.W., Suite 1000
Washington, DC 20036
(202) 457-3878
garavito@att.com

/s/ Steve Goldman
Steve Goldman
Bullseye Telecom, Inc.
(801) 244-5298
sgoldman@bullseyetelecom.com

/s/ Jonathan Lee
Jonathan Lee
Vice President, Regulatory Affairs
CompTel (The Competitive
Telecommunications Association)
1900 M. Street, N.W., Suite 800
Washington, DC 20036-3508
(202) 296-6650
jlee@comptel.org

/s/ J. Jeffery Oxley
J. Jeffery Oxley
EVP, General Counsel
Eschelon Telecom, Inc.
730 2nd Ave. S. Suite 1200
Minneapolis, MN 55402
jjoxley@eschelon.com

/s/ Tina Pidgeon
Tina Pidgeon
Vice President, Federal Regulatory Affairs
General Communication, Inc.
1130 17th Street, N.W., Suite 410
Washington, DC 20036
(202) 457-8812
tpidgeon@gci.com

/s/ Mike Duke
Mike Duke
Director of Government Affairs
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30043
(678) 985-6266
michael.duke@kmctelecom.com

/s/ Kimberly Scardino
Kimberly Scardino
Director, Federal Advocacy
MCI
1133 19th Street, NW
Washington, DC 20036
(202) 736-6478
Kimberly.Scardino@MCI.com

/s/ Rick Heatter
Rick Heatter
Vice President Legal & Regulatory Affairs
Mpower Communications Corp
175 Sully's Trail, Suite 300
Pittsford, NY 14534
(585) 218-6556
rheatter@mpowercom.com

/s/ Jake E. Jennings
Jake E. Jennings
Senior Vice President
Regulatory Affairs and Carrier Relations
NewSouth Communications Corp.
NewSouth Center, Two N. Main Street
Greenville, SC 29601
(864) 672-5877
jejennings@newsouth.com

/s/ Edward J. Cadieux
Edward J. Cadieux
Vice President, Regulatory & Public Affairs
NuVox, Inc.
16090 Swingley Ridge Road, Suite 500
Chesterfield, MO 63017
(636) 537-5743
ecadieux@nuvox.com

/s/ Robert W. McCausland
Robert W. McCausland
Vice President, Regulatory Affairs
Sage Telecom, Inc.
805 Central Expressway South, Suite 100
Allen, TX 75013-2789
(214) 495-4704
RMcCausland@sagetelecom.net

/s/ Christopher T. McKee
Christopher T. McKee
Director of Regulatory Affairs
XO Communications
11111 Sunset Hills Road
Reston, VA 22190
chris.mckee@xo.com

cc: Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Dan Gonzalez
Lisa Zaina
Bill Maher
Jeff Carlisle
Michelle Carey
Tom Navin
Brent Olson