



January 23, 2004

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation in CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceedings of *ex parte* meetings on January 22, 2004, by Jonathan Askin of the Association for Local Telecommunications Services (ALTS) and David Isenberg, a consultant to ALTS. In a series of meetings, the parties met with Christopher Libertelli, Matt Brill, Jessica Rosenworcel, Lisa Zaina, Jeffrey Carlisle, Robb Tanner, Brent Olson, Tom Navin, Jeremy Miller, Pam Arluk, Marcus Maher, Gail Cohen, Robert Pepper, Yoon Chang, Behzad Ghaffari, Bob Cannon, and Rodger Woock. ALTS focused on BellSouth's attempt to rewrite the loop access conclusions set forth in the *Triennial Review Order*, including rewriting of the fiber-to-the-home ("FTTH") rule to relieve the ILECs of their current obligations to unbundle fiber-to-the-curb ("FTTC") loops and fiber used to serve multiple dwelling units. ALTS' positions are considered below, but these issues are more fully addressed in ALTS' comments in opposition to BellSouth's Recon Petition in CC Docket 01-338.

ALTS adamantly objected, during the course of the *Triennial Review*, to any move by the Commission to limit a CLEC's ability to gain nondiscriminatory access to local loops, the paradigmatic bottleneck facility. ALTS argued that competitive choice could not exist if an ILEC were allowed to choke the capacity and services that CLECs could deliver over ILEC-controlled dumb pipes.

In any event, the Commission did limit the services and capabilities that CLECs could derive from ILEC-provided loops in greenfield, and certain overbuild, or brownfield, FTTH loop architectures. The Commission, however, must hold the line against any additional encroachment upon the CLECs' ability to push as much capacity and as many services through ILEC-controlled transmission facilities.

For instance, CLECs must never be limited to a mere 64 kbps channel when serving the needs of business customers. The *Triennial Review Order* limits the CLEC to a 64 kbps transmission path over a brownfield FTTH loop. The anticompetitive consequences of this conclusion must be confined to the fullest extent possible to ensure that CLECs and their existing and potential customers may avail themselves of the full features, functionalities and capabilities of local loops wherever possible and the fullest extent of the law. Countering the 64 kbps mass market brownfield FTTH capacity limitation, the Commission clearly adopted rules ensuring CLEC access to DS1, DS3, and dark fiber loops to serve the enterprise market, particularly small and medium business customers. The Commission acknowledged that these businesses generally only have one access facility -- the ILEC-controlled loop, and if they were to obtain the benefits of a competitive market, CLECs had to be able to offer new services and technology over this

single access facility. Until proper application of the impairment test determines that the CLEC could otherwise serve the customer without access to the unbundled ILEC loop, the rule must be that the CLEC can take full advantage of the capabilities of the local loop, particularly when serving business customers without alternatives. To the extent that CLECs, under certain circumstances are relegated to either no loop access or a mere 64 kbps channel (capable of delivering POTS service and little more), the anticompetitive consequences of this conclusion must not be allowed to contaminate the small and medium enterprise market or cause disruption to the CLECs' existing customer base. Certainly where a CLEC is serving a business customer, it must continue to have unfettered access to the DS1s, DS3s, and dark fiber needed to serve business customers. It would be absurd to limit the CLEC or its customer to a 64 kbps channel. No business customer could logically be expected to obtain service from a competitive carrier, if all that carrier could offer were the capabilities derived from a 64 kbps channel. CLECs are great innovators, but there are finite limitations to the capabilities of a 64 kbps bitstream that would preclude the types of services that business customers demand and that CLECs are ready to offer, if guaranteed fair access to ILEC dumb pipes.¹

THE COMMISSION MUST NOT EXTEND FTTH UNBUNDLING PROTECTION TO FTTC ARCHITECTURES²

While ALTS disagrees with the Commission's FTTH conclusions and rule, ALTS contends that the Commission must not rewrite the current FTTH rule and must not further curtail competitor access to loops. While BellSouth treats its proposal as little more than a minor clarification and extension of the existing rules just adopted in the *Triennial Review Order*, BellSouth, in fact, is proposing a brand new rule. BellSouth is attempting through its petition to move, then blur, then erase the bright-line established by the Commission to determine what must be unbundled and what need not be unbundled. Without a bright-line FTTH rule, there is no way for anyone but BellSouth to determine which loops are FTTC loops free of unbundling obligations and which are merely hybrid or copper loops subject to unbundling obligations. With the bright-line FTTH rule, a CLEC and its potential customer can immediately determine if the loop connected to the home is an all-fiber loop not subject to unbundling, or some variety of copper loop, subject to, at least, some unbundling. Without a bright-line FTTH rule, new layers of confusion are added, making it significantly more difficult for the CLEC to determine if it can serve a customer. This severely undermines the ability of a CLEC to develop reasonable customer marketing and business plans. If copper is terminating at the customer's NID, then the CLEC and potential customer have to take an additional, potentially deal-breaking, step – ask the ILEC whether the loop is a FTTC loop, not subject to unbundling, or a home-run copper loop or some variant on a hybrid loop, subject to varying degrees of unbundling. As it is, with the gradations of unbundling set forth in the *Triennial Review Order*, this process is hard enough. It would be devastating for the FCC to add an additional layer of confusion, and allow the ILEC to be the arbiter of what loops are unbundling.

BellSouth's Recon Petition is premised on the argument that FTTC loops provide "service equivalence" to FTTH loops. The immutable laws of physics verify that this cannot be the case. As ALTS pointed out in its meetings, and as documented in the attachments hereto, the capacity of the FTTH medium is essentially limitless. FTTC, however, is constrained by the

¹ ALTS must also note that the Commission should ensure that ILECs cannot apply the 64 kbps capacity limitation in overbuilt, mass market FTTH scenarios to dislocate the embedded base of CLEC customers now receiving services requiring more than a 64 kbps circuit, such as xDSL-based services.

² The attached documents more fully address the technical argument that FTTC must not be construed as a "service equivalent" to FTTH.

copper subloop. Once an additional point of failure is introduced, speed or throughput decrease, latency increases; more jitter occurs; and long-term reliability decreases. Fiber as a medium has substantially lower attenuation than copper and, hence, substantially higher bandwidth capacity. Fiber, be it home run fiber or a PON delivery system, requires no routers, no amplifiers, and no electronics in the middle. Electromagnetic interference (which does not exist on FTTH because fiber is dielectric) on FTTC copper limits the bandwidth capacity of FTTC. The standardized local loop access transmission speeds for FTTC (*i.e.*, xDSL ANSI standard for copper subloops) are substantially lower than the standardized transmission speed for FTTH (*e.g.*, FTTH FSAN/ITU standards for APON, BPON, EPON, Gb Ethernet). The Bell FTTH standard conforms to ITU FSAN G.983. FTTC does not use this standard and does not offer a service platform possible on the ITU FSAN G.983 standard. BellSouth claims that FTTC can provide 100 Mbps. It cannot do so under any local loop access transmission standard for copper adopted by an ANSI-accredited standards-making body. A 100 Mbps copper standard (*e.g.*, ISO-IEC 1180) over 100 meters exists as a LAN premises standard, but it is not applicable to local loop access.

THE COMMISSION MUST ENSURE COMPETITOR ACCESS TO LOOPS TO SERVE BUSINESS CUSTOMERS.

As noted at the outset of this *ex parte* letter and in every ALTS *ex parte* meeting yesterday, under no circumstances should the Commission allow any relief granted to deploying fiber to residential consumers to contaminate the growing competitive marketplace for business customers. Small and medium business customers will not have a choice of competitive carriers if CLECs do not have equal access to ILEC-controlled loops and the ability to run as much capacity and as many services as possible over these transmission facilities. Wireless is nowhere near being a competitive option to offer integrated voice and data services to small and medium sized business customers. Certainly, cable does not offer the ubiquity and quality required to serve the small/medium business market. If small/medium business customers are lumped in with residential consumers, they will simply end up subsidizing FTTH deployment for the benefit of residential users.

Extending FTTH relief to the small/medium business market would essentially eviscerate any competition in this market sector. These small and medium-sized businesses are desperate for competitive alternatives. Without the CLEC ability to access the ILEC's last-mile transmission facility and drive innovation, small business customers will be captive to a monopoly provider with no incentive to innovate. Note that the Bells rarely point to cable as a viable substitute in the business MTE space. The Bell Companies historically pointed to the success of alternative last-mile providers like Winstar, Teligent, ART, and other fixed-wireless carriers as evidence of competition in small/medium/MTE space. These services are no longer viewed as such a threat to ILEC monopoly service to small and medium-sized businesses. As such, we do not see many references from the Bells to these intermodal competitors. Now the Bell Companies are forced to grasp at straws, pointing to speculative technologies like satellite and power line providers of telecom services.

There are a large number of assumptions and requirements to make a FTTH model work; however, whether or not a carrier must have to unbundle those facilities is not critical to the business plan. No ILEC wants to provide access to its network to its competitors, but that is not a factor in determining the viability of a fiber deployment proposal. The key requirement is that convergence in the industry will take hold and that a carrier can gain a significant market share of three revenue streams - voice, video and high speed data. Without all three, fiber deployment

might not be viable. There must be significant household density per mile of fiber. The demographics of the potential customer base are important – high speed data users along with high spenders on video entertainment. Capital costs have just recently come down enough to make this possible. When one looks at the requirements for profitability, what sticks out is how important the video piece is, making FTTH squarely a residential play. 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. Why push FTTH to them when they would be much better off if there is competition in the voice and high speed data markets to help lower costs and improve quality?

Finally ALTS must note its concerns over the prospect that the Bell Companies could simply reconfigure their “next-generation networks” in such a way as to eliminate TDM, and arguably any, access. This could very easily eviscerate the essential language on access to DS1s and other loops that the Commission labored over in the Triennial Review Order. Like the recurrent problems that CLECs have experienced with obtaining DS1 loop based on ILEC claims that “no facilities” exist (when in fact it was simply a matter of attaching DS1 electronics), the ILEC could simply claim that it does not have to do something like add a multiplexer for TDM access if it would not do so for its retail customers that are served by packet-based technology, and the CLEC would be blocked from providing services in that market. This issue was analyzed in great detail in the Triennial Review Order; the Commission concluded that CLECs, at a minimum, must be assured access to the legacy capabilities of the ILEC loop plant, and there is no reason for the Commission to abandon its recent conclusion. The Commission must not allow BellSouth to hang preclude competitive access simply because BellSouth has reconfigured its network to preclude a TDM handoff.

To reiterate, while ALTS opposes any effort to extend unbundling relief to FTTC architectures, interim architecture akin to hybrid loop architectures with shorter distribution plant, ALTS certainly, and most adamantly, must oppose any ripple effect that such a policy change could have on small and medium business customers, anxious for the advance services and technologies that CLECs are and will continue to offer as long as they may avail themselves of the full capabilities of the local loop.

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As considered above, in our comments and in our meetings, ALTS has grave concerns about the dramatic, anticompetitive consequences that would result if the FCC were to grant further protection to the ILECs, by further curtailing competitor access to the paradigmatic, bottleneck facility – the local loop.

If you have any questions about this matter, please contact me at 202-969-2587.

Respectfully submitted,

/s/

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