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June 2, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washingotn D.C. 20554

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

Dear Ms. Dortch:

In its Reconsideration Petition of the Triennial Review Order (TRO), BellSouth has requested that the Commission modify the parameters of the broadband relief granted to the incumbent local exchange carriers (ILECs). Specifically, BellSouth has asked for permission to deny competitive carriers access to unbundled loops over "fiber-to-the-premises" (FTTP) loop facilities in multiple-dwelling unit (MDU) locations. Under the guise of seeking "mass market" relief, BellSouth seeks to include in this denial of unbundling MDU locations that house enterprises as well as residential mass market consumers.

The Commission should ensure that any additional exemptions it provides the Bells from unbundling for facilities used to serve mass market consumers do not inadvertently sweep in loop facilities used to serve businesses. To that end, the Commission should make clear that, regardless of any exemptions it provides from unbundling FTTP facilities used to serve mass market customers in MDU locations, incumbent LECs nonetheless retain an obligation to unbundle enterprise loops (e.g., DS-1, DS-3 and dark fiber loops) to customers in the same locations. By their very nature, enterprise loops such as DS-1 loops, which cost several hundred dollars per month in recurring fees, are not used by "mass market" consumers. The Commission should also make clear that any additional unbundling exemptions it sets forth in response to BellSouth's request are limited to (1) greenfield locations; and (2) mass market loop types used to serve residential customers.

In addition, BellSouth has asked the Commission for a "clarification" which, if not properly crafted by the Commission, could grant broad permission to deny competitive carriers access to time division multiplexing (TDM) capable loops, such as

T-1 loops. BellSouth's proposal – that ILECs should not be required to provide TDM-capable loops if the ILECs have deployed packet capabilities in their networks – while seemingly innocuous, threatens to eliminate one of the last remaining facilities available for competitive carriers to deploy broadband services.

The TRO broadband relief framework limits competitive local exchange carrier (CLEC) access to loop facilities based on what those loops are made of and what type of traffic is carried over those loops. For example, hybrid fiber-copper facilities are available to CLECs for voice services, but are not available for provision of data service. Customers served via such loops are thus effectively barred from purchasing CLEC DSL, so T-1 loops remain the only CLEC broadband alternative. In addition, TDM based T-1 capable loops represent the only broadband option for consumers and small businesses beyond the CO distance limitation for DSL. T-1 loop access will be critical to rollout of competitive VoIP services.

In its petition, BellSouth requests a seemingly innocuous clarification "that an ILEC is not required to deploy a new multiplexer that provides TDM functionality if it has no plans to do so for its own customers." Petition at 17. In effect, however, if this relief is not carefully crafted, the Commission will grant permission to reinstate ILEC T-1 "no facilities" policies, overturning the clear direction that the Commission provided in the TRO. As the Commission held:

> "[W]e find that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include, but are not limited to, rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer." TRO para. 634.

Despite this clear holding, BellSouth now seeks FCC permission to add "using packet capabilities in a central office" to its list of reasons to refuse to provide a T-1 loop. In the context of unbundled T-1s, and the ILECs' clear obligations to provide supporting T-1 functionality, the requested clarification creates great potential for mischief. As set out in the attached White Paper from Covad Chief Network Architect Gregory Wetzel, Bell companies make extensive use of TDM capabilities in their networks for their own T-1 services. The simple introduction of packet switching capabilities in a CO does not change the essential character of a T-1 service from TDM to "packet based."

Although we do not endorse the policy that introduction of packet switching at any layer of the network should relieve ILEC unbundling obligations, we believe it is particularly critical that the Commission recognize that introduction of packet switching at a particular layer of the network does not eliminate the underlying TDM transmission functionality practically ubiquitous in ILEC loop networks. Accordingly, the Commission should make clear that, so long as the Bells continue to utilize TDM capabilities to provide T-1 services to their customers served by a particular central office, the TDM unbundling obligation, and the associated obligation to provision

additional equipment such as multiplexers, remains. Such an approach most faithfully preserves the parallel policies adopted in the *Triennial Review Order* of enforcing Bell obligations to make routine network modifications, as discussed above, and to provide unbundled access to TDM T-1 loop transmission facilities.

Respectfully submitted,

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