Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338

COMMENTS OF CIENA CORPORATION

Stephen L. Goodman
David K. Judelsohn
Wilkinson Barker Knauer, LLP
2300 N Street, N.W. Suite 700
Washington, D.C. 20037
(202) 783-4141
Counsel for CIENA Corporation

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COMMENTS OF CIENA CORPORATION

The Broadband Group of CIENA Corporation ("CIENA"), formerly Catena Networks, Inc., hereby comments on some of the issues raised in the Commission's Further Notice of Proposed Rulemaking on incumbent carriers' unbundling obligations.[1] This proceeding was initiated in response to the Court of Appeals decision to vacate and remand portions of the *Triennial Review Order*.[2] As a manufacturer of telecommunications equipment, including equipment used to provide advanced services, CIENA urges the Commission to continue its policy of eliminating disincentives for carriers to invest in broadband capabilities. As demonstrated herein, these policies have already spurred additional investment and thus well serve Congressional intent and the public interest.

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[1] *Unbundled Access to Network Elements*, WC Docket No. 04-313, FCC 04-179, released August 20, 2004, *Federal Register* Vol. 69 at p. 55128 (September 13, 2004), hereafter cited as *TRO Remand NPRM*.

[2] *Review Of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003), *vacated and remanded in part*, *USTA v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

I. Introduction and Summary

CIENA provides a broad range of telecommunications products, and thus has a high level of expertise and a strong interest in this proceeding. CIENA helps service providers deliver and manage advanced and traditional data services. Of particular relevance here, CIENA has developed a suite of Broadband Access Solutions, which enable service providers to deliver profitable voice, data and video services over both copper and fiber access lines. CIENA's already-deployed solutions include a family of integrated broadband DSL upgrade systems for legacy Digital Loop Carriers, and a versatile Broadband Loop Carrier (BLC) system that provides unprecedented access network flexibility.[3] CIENA, and its predecessor Catena Networks, Inc., have actively participated in the Triennial Review proceedings, as well numerous other advanced services proceedings at the Commission. Throughout those proceedings, CIENA has urged the Commission to adopt broadband unbundling policies that would help spur the deployment of advanced services.

As discussed below, CIENA believes the *Triennial Review Order* correctly reduced or eliminated the unbundling obligations for the mass market broadband facilities and packet switches of the incumbent local exchange carriers ("ILECs").[4] The

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[3] These broadband access systems include the CN 2300 Managed Optical Services Multiplexer; the CN 2200™ Managed Optical Ethernet Multiplexer; the CatenaView Element Management System Software for all Broadband Access Products; the CNX-5™ Broadband DSL System; the ECU Subscriber Service Card for all CNX-5™ Configurations; the CN 1000™ BLC Next-Generation Broadband Access Platform; and the CNX-100 Modular Broadband Loop Carrier.

[4] CIENA does, however, urge the Commission to provide some additional relief by treating fiber-to-the-curb ("FTTC") the same as fiber-to-the-home ("FTTH") with regard

Commission's broadband determinations were challenged on appeal, but were upheld by the Court of Appeals in *USTA II,*[5] and so were not remanded to the Commission. To the extent the *TRO Remand NPRM* merely seeks "comment on how to respond to the D.C. Circuit's *USTA II* decision in establishing sustainable new unbundling rules under sections 251(c) and 251(d)(2) of the Act,"[6] CIENA takes no position on the unbundling requirements vacated or remanded by the Court.

On the other hand, the *TRO Remand NPRM* also seemingly includes much broader questions than just the issues vacated or remanded by the Court, and incorporates "into this Notice the Commission's 2001 *Triennial Review NPRM*, rather than restating similar proposals and questions, to the extent they remain relevant."[7] The *TRO Remand NPRM* did not, however, incorporate the record from the *Triennial Review* proceeding.[8] Thus, it is not entirely clear whether all of the broadband determinations from the *Triennial Review* proceeding are "back in play" in this remand proceeding. In addition, the Commission incorporated "the record generated by the petitions for reconsideration and clarification of the *Triennial Review Order*, including discussion of issues such as broadband unbundling requirements,"[9] and raised at least one issue – collocation at

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to unbundling obligations in greenfield deployments. *See* pp. 13-16, *infra.*

5 *USTA II*, 359 F.3d at pp. 578-85.

6 *TRO Remand NPRM* at ¶ 9.

7 *TRO Remand NPRM at* ¶ 11.

8 *TRO Remand NPRM* at n. 39.

9 *TRO Remand NPRM at* ¶ 12.

remote terminals – that pre-dated the *Triennial Review* proceeding.[10] Assuming the Commission is reexamining these broadband unbundling issues, CIENA takes this opportunity to reiterate its support for the Commission's policy of removing the disincentives for investment in advanced services equipment by reducing and/or eliminating unbundling obligations for broadband facilities and packet switching equipment. In addition, CIENA restates its positions on two of the issues raised in petitions for reconsideration – CIENA urges the Commission to deny EarthLink's request to reinstate line-sharing as an unbundled network element, and CIENA urges the Commission to grant BellSouth's request to treat greenfield FTTC the same as greenfield FTTH.

II. The Commission Should "Stay the Course" on Its Broadband and Packet Switching Unbundling Policies

CIENA has consistently and repeatedly urged the Commission to take steps to facilitate the deployment of advanced services and technologies, consistent with Congress' directive in Section 706 of the Telecommunications Act of 1996.[11] In the context of the *Triennial Review Order*, the Commission acknowledged the importance of such a policy, and as a result eliminated the unbundling obligation for incumbent carriers'

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[10] *TRO Remand NPRM* at n. 38.

[11] *See, e.g.,* Comments of Catena in CC Docket No. 98-147, filed October 12, 2000; Reply Comments of Catena in CC Docket No. 98-147, filed November 14, 2000; Comments of Catena in CC Docket No. 98-147, filed February 27, 2001; Comments of Catena filed in WC Docket No. 01-338, filed April 5, 2002; Comments of Catena in WC Docket No. 01-338, filed July 17, 2002; Comments of Catena Networks, Inc. in WC Docket No. 01-338, filed November 6, 2003; Comments of CIENA Corporation in WC Docket No. 04-242, filed July 22, 2004. In addition, CIENA/Catena has engaged in over 30 *ex parte* meetings with the Commission.

broadband facilities when fiber is deployed deep into the network.[12]

The *Triennial Review Order*'s elimination of broadband unbundling obligations has already demonstrated positive results – DSL has become available to many more consumers, increased broadband competition has lowered retail prices significantly, and new applications, including Voice over Internet Protocol ("VoIP) are spreading exponentially. CIENA has enjoyed continued ILEC investment, broadband access technology investment and a greater interest in some of CIENA's related products, and general industry reports indicate that other broadband telecom equipment and fiber optic manufacturers have also experienced strong demand for broadband equipment following the *Triennial Review Order*.[13] According to the DSL Forum, subscribership to DSL services is continuing to increase. DSL subscribers in North America grew 11.72% in the First Quarter of 2004 (reflecting record breaking growth for the third consecutive quarter),[14] and the latest statistics indicate that in the Second Quarter of 2004, DSL subscribership in the United States increased from 10,584,281 to 11,434,254 – an

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12 *Triennial Review Order* at ¶¶ 60, 173-178, 213, 234, 236, 242-244, 253, 278, 288, 290, 295 and 541.

13 *E.g.,* Adams Harkness & Hill, Communications Technology Industry Report – "The Return of a Networked World: Key Trends in Communications Equipment" (October 9, 2003)(http://www.ahh.com/files_and_pdfs/press_rel_pdfs/commtech%20industry%2010-9-03.pdf) at pp. 3, 5 and 6.

14 DSL Forum, Press Release issued June 9, 2004 "Broadband Achieves Record Breaking Growth for the Third Consecutive Quarter." According to other market analysts, worldwide DSL CPE units grew 18% and revenue grew 14% between the First Quarter and Second Quarter of 2004. Infonetics Research, PR Newswire, August 25, 2004, "DSLAM Market Grows in North America and CALA, Slows in Asia and Europe."

increase of eight percent for the quarter. Indeed, in its most recent report to Congress on the availability of advanced services in the United States, the Commission concluded that "the deployment of advanced telecommunications capability to all Americans is reasonable and timely."[15]

Moreover, several of the incumbent carriers have announced plans to expand their broadband deployment significantly. For example, Verizon stated that it would invest $2 billion over the next two years to expand fiber in its landline networks.[16] Verizon has already initiated service over FTTP fiber in Keller, Texas, and has several other systems under construction. SBC announced that, pending final clarity on applicable regulatory requirements and successful completion of neighborhood-level trials, it is intending to invest $4 billion to $6 billion over five years to deploy fiber deeper into its network and make advanced services available to millions of additional customers.[17]

The Commission must continue to support policies that have proven effective in spurring the deployment of broadband services. As the Commission acknowledged in the *Fourth Broadband Report* on the availability of advanced telecommunications services:

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[15] Federal Communications Commission, "Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress," September 9, 2004 at p. 38 (hereafter cited as "*Fourth Broadband Report*").

[16] *See, e.g., News Release* "Verizon Outlines Leadership Strategy for Broadband Era; Announces Major New 3G Mobile Data and Wireline IP Network Expansions," January 8, 2004.

[17] *See, e.g., News Release*, "SBC Communications Announces Advances In Initiative To Develop IP-Based Residential Network For Integrated Video, Internet, VoIP Services," June 22, 2004.

> The deployment of infrastructure capable of delivering broadband services is critical to the U.S. economy. Broadband has played and will continue to play a vital role in the 21st Century. Many U.S. companies depend on broadband connections to run various facets of their businesses .... In addition to tangible benefits to the economy, broadband has a significant impact on the lives of everyday citizens.[18]

There is unanimous agreement on the importance of broadband, and irrefutable evidence of the success that the Commission's policy of reducing or eliminating unbundling obligations on ILECs' broadband services has demonstrated in spurring additional broadband investment. The *Triennial Review Order*'s broadband relief "ain't broke," so the Commission should not attempt to "fix it" by reinstating unbundling obligations.

III. Reinstating Unbundling Obligations on Broadband Facilities Would Create Debilitating Uncertainty

In the *Triennial Review* proceedings and its predecessors, the Commission undertook an exhaustive analysis based on a thorough record and concluded that, in the case of broadband facilities and packet switching, there was unlikely to be impairment if there was no unbundling. The Commission also determined it would be unnecessary and impractical to expand remote terminal collocation obligations. Finally, the Commission

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[18] *Fourth Broadband Report* at p. 47. Each of the Commissioners acknowledged the importance of broadband in their separate statements. Chairman Powell stated that "Americans deserve information at the speed of light – and it is the country's next challenge to deploy a network that is at least as capable as any other nation's." *Id.* at p. 3. Commissioner Abernathy related: "I have been privileged to see first-hand how broadband is changing the lives of Americans, including the way we work, learn, receive health care, and play." *Id.* at p. 4. Indeed, as Commissioner Copps observed in his separate statement: "Our economy and our future will be driven by how quickly and completely we deploy broadband." *Id.* at p. 5. Likewise, Commissioner Martin indicated in his statement that "Broadband services are essential to the economy of the 21st Century." *Id.* at p. 6. And Commissioner Adelstein noted that "From telecommuting to distance learning to telemedicine, broadband is bridging distances between us and transforming communities." *Id.* at p. 7.

held that to the extent there might be any risk of impairment, the "at a minimum" provision of Section 251(d)(2), combined with the important policy of fostering the deployment of advanced services, militated against unbundling of the ILECs' broadband facilities. These determinations were either never challenged, or were upheld by the *USTA II* Court.[19]

The single greatest deterrent to investment in advanced facilities has been regulatory uncertainty. The twists and turns of regulation (after multi-year proceedings) followed by judicial decisions questioning those regulatory decisions has cast a pall over new investment in advanced equipment, particularly in the area of broadband access facilities. The service providers, both incumbent and competitive, have been unable to plan or make investment decisions in the absence of a way to make reliable forecasts of the costs and revenues they can expect as a result of what they and their competitors will be allowed or required to do. It is critical that the Commission bring this period of uncertainty to a close by making it clear, as soon as possible, that it will not revisit its decision on unbundling of broadband facilities.

Any attempt to re-impose unbundling obligations on the ILECs' broadband facilities would have disastrous effects on the deployment of broadband facilities. Any such decision is certain to be appealed, so at the very least uncertainty will be re-introduced, particularly in light of the likelihood of the Court's overturning such an abrupt reversal of policy. The "cloud" surrounding any such new unbundling obligations would stifle additional investment by the ILECs, and likely retard any efforts by

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[19] *See* n. 5, *supra*.

competitive carriers to attempt to rely on any such new unbundled network elements.

Indeed, in the *Triennial Review Order* the Commission indicated that when it undertook its analysis of the unbundling obligation under the framework of Section 251's "at a minimum" standard, it considered as one of the additional factors

> certainty in the market – "how the unbundling obligations ... can provide the uniformity and predictability that new entrants and fledgling competitors need to develop national and regional business plans[, as well as] ... whether the rules ... provide financial markets with reasonable certainty so that carriers can attract the capital they need to execute their business plans to serve the greatest number of consumers."[20]

The Commission also cited to "the pressing need for market certainty" to help justify the imposition of interim rules freezing the status quo with regard to the UNEs vacated by the Court of Appeals.[21] Such reasoning provides additional justification for the Commission to decline to reverse its prior decision to reduce or eliminate the unbundling obligations for the ILECs' broadband facilities.

IV. The Commission Should Not Re-Impose Line Sharing as a UNE

EarthLink sought reconsideration of the Commission's decision to phase out line sharing as a UNE. To the extent the Commission is considering addressing this issue as part of this proceeding, CIENA reiterates its opposition to such a request. The Commission properly concluded that carriers were not impaired without access to line

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[20] *Triennial Review Order* at ¶ 22, quoting from the *UNE Remand Order*, 15 FCC Rcd 3696, 3705 (1999).

[21] *TRO Remand NPRM* at ¶ 16.

sharing of the high frequency portion of a loop as an unbundled network element,[22] and that decision was upheld by the Court of Appeals in *USTA II*.[23] The developments since those decisions were issued to reinforce the correctness of those determinations.

In holding that requesting carriers were not impaired without access to line sharing as a UNE, the Commission properly found that a carrier's access to the loop would enable the carrier, on its own (providing both voice and data), or through "line splitting," to be able economically to provide DSL services. The Commission concluded that its earlier assessment of the economics of DSL service was no longer accurate. In fact, the Commission's finding as to the availability of line splitting as an alternative for competitive DSL providers has been reinforced by subsequent events. Covad -- the leading national broadband service provider of high-speed Internet and network access utilizing DSL technology -- has announced additional line splitting deals,[24] as well as

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22 *Triennial Review Order* at ¶¶ 255-269.

23 *USTA II*, 359 F.3d at pp. 584-85.

24 *E.g.,* Press Release, "Covad Extends Partnership with MCI" (September 2, 2003)(http://www.covad.com/companyinfo/pressroom/pr_2003/090203_press.shtml); Press Release, "Covad Partners with AT&T to Offer Bundled DSL and Voice Services in Four More States" (September 11, 2003) (http://www.covad.com/companyinfo/pressroom/pr_2003/091103_press.shtml); TelephonyOnline.com, "Covad signs line-splitting deal with Z-Tel" (August 7, 2003) (http://telephonyonline.com/ar/telecom_covad_signs_linesplitting/). Indeed, Covad indicated it has expanded its dealings with EarthLink to cover 65 new markets. "Covad Partners with Earthlink to Expand Small Office DSL Service to 65 New Markets," Press Release (October 20, 2003) (http://www.covad.com/companyinfo/pressroom/pr_2003/102003_press.shtml).

negotiated agreements with some of the ILECs to continue line sharing.[25]

EarthLink asserted that the Commission lacks authority to require that competitive carriers offer a bundle of services "in order to compete in the mass market broadband transport market."[26] The Commission, however, is not mandating that competitive carriers bundle services or adopt a particular business model – rather, the Commission, in assessing whether there is impairment without access to line sharing as a UNE, examined whether a requesting carrier has access to alternatives (in this case unbundled loops, and line splitting where a data carrier does not want to offer voice service), and determined that such alternatives are available and economical. Moreover, as the rapid adaptation of Voice over Internet Protocol ("VoIP") services illustrates, a competitive DLEC need not even partner with a CLEC via line splitting in order to provide the voice element of the bundled package. The DLEC can provide VoIP itself, partner with a VoIP provider,[27] or simply make its customers aware of their ability to acquire VoIP from the numerous independent providers that merely require a broadband

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25 *E.g.,* Covad *Press Release* (September 21, 2004), "Covad and Verizon Agree to Interim Arrangement Extending the Availability of Line Sharing Until February 1, 2005" (announcing interim line sharing deal with Verizon and mentioning previous line sharing deals with SBC and Qwest).

26 EarthLink Petition at p. 5.

27 *E.g., Dow Jones Newswires* (September 9, 2004), "Charter's Vogel: VOIP Partnerships Are Economical Choice" (Charter Communications teams up with Sprint Corp. and Level 3 Communications to launch VoIP quickly); *Dow Jones Newswires* (October 1, 2004) "Time Warner Cable Rolls Out VOIP in New York, New Jersey" (To get its new VoIP service rolled out quickly, Time Warner Cable partnered with other companies -- Sprint Corp. and MCI Inc.).

connection.[28] VoIP has eliminated the need for a DLEC to find a CLEC that was willing to make the investment in switching equipment, so that EarthLink's claims that the Court of Appeals' decision vacating the UNE-P element necessitates the reinstatement of line sharing is completely meritless.[29]

In addition, as the Court and the Commission acknowledge, unbundling itself imposes costs and impedes competition, and that is particularly true in the case of line sharing. As CIENA explained in the context of the Commission's proceeding on remote terminal collocation, line sharing with use of a POTS splitter introduces inefficiencies in the use of the bandwidth of the loop (by foreclosing use of full-frequency spectrum splitterless technology) and greatly complicates test access.[30] As EarthLink also acknowledges, line sharing raises insoluble problems with regard to regulatory determinations for allocating the cost of the loops among multiple services,[31] and the

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[28] *E.g., AT&T Press Release* (September 29, 2004), "Circuit City Signs On To Sell AT&T CallVantage Service" (AT&T CallVantage Service is now available to consumers in more than 170 markets in 39 states and Washington, D.C.); *Vonage Press Release* (October 1, 2004), "Vonage® Upgrades Local Unlimited Calling Plan to Premium Unlimited Plan"(Vonage's service area encompasses more than 1900 active rate centers in over 125 North American markets)

[29] *E.g.,* EarthLink in CC Docket No. 01-338, August 10, 2004 at p. 6 (UNE-P was a predicate to the availability of line splitting). Moreover, as the Commission observed in the *Triennial Review Order*, CLECs had deployed some 1,300 circuit switches by 2001 (up from 700 in 1999), and those switches covered over 86% of BOC access lines. *E.g., Triennial Review Order* at ¶¶ 39 and 436.

[30] For a detailed discussion of these issues, *see* Comments of Catena in CC Docket No. 98-147, filed December 12, 2000 at pp. 12-19.

[31] EarthLink Petition at p. 12.

resulting uncertainty and/or errant price signals dampen investment incentives and distort competition. These factors reinforce the Commission's conclusion that line sharing of the high frequency portion of the loop should not be unbundled as a separate network element.

V. The Commission Should Accord the Same Unbundling Obligations on Fiber-to-the-Curb as Fiber-to-the-Home

Although CIENA believes the Commission should not revisit the reduction in broadband unbundling aspects of the Triennial Review Order, CIENA believes that in one respect that decision did not go far enough. CIENA urges the Commission to eliminate the disparate regulatory treatment of FTTH and FTTC architectures. As BellSouth explained in its petition for reconsideration, FTTC (defined as fiber deployed to a serving terminal within 500 feet of the premises) provides service equivalency to FTTH.[32] When the copper portion of the FTTC loop is within 500 feet of the customer premises, full high bandwidth (*i.e.*, virtually no attenuation) capabilities are supported, allowing the carrier to provide "triple play" services – voice, high-speed data and multi-channel video. Thus, in the Commission's impairment analysis -- which takes into consideration all of the revenue opportunities available to a competitive carrier if it were to deploy new technology -- there is no difference between the FTTH and FTTC service capabilities, and hence revenue opportunities.

FTTC is distinguishable from the broader "remote terminal" deployments, which typically support 9,000 feet serving areas and can support voice and DSL data services,

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[32] BellSouth Petition at pp. 3-6; BellSouth Ex Parte Submission in WC Docket No. 01-338, filed September 30, 2003.

but are limited from realizing full bandwidth service capacity due to loop length attenuation. While the Commission should (and does) foster the deployment of advanced services such as DSL through the reduction in unbundling of hybrid loops and packet switching,[33] the more extensive relief afforded to FTTH should be extended to FTTC so as to encourage carriers to invest in technology providing even greater capabilities. As the record demonstrates, the service capabilities of FTTH and FTTC are virtually indistinguishable.

Moreover, FTTC is also virtually indistinguishable from fiber-to-MDUs, which, just like FTTC, incorporates copper or other metallic media in the loop. In the case of fiber-to-MDUs, that metallic media (which could be more than 500 feet) is used for the in-building wiring, whereas for FTTC the metallic portion of the loop connects the subscribers to the node/pedestal located within 500 feet of the home.[34] The Commission recently afforded fiber-to-MDUs for primarily residential buildings equivalent unbundling treatment as that afforded FTTH, finding that the two architectures provided service equivalency, equal revenue opportunities, and equivalent impairment analyses.[35]

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[33] The *Triennial Review Order* does reduce the investment disincentives for fiber-fed remote terminals by eliminating some of the unbundling obligations for these "hybrid loops," although the relief for hybrid loops is not as extensive as that afforded to FTTH architectures.

[34] CIENA observes that FTTH also incorporates metallic portions into the connections between the CPE and the central office, insofar as the customer's inside wire is metallic, and not fiber. There are no "pure fiber" loops.

[35] *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Reconsideration*, FCC 04-191, released August 9, 2004 ("*TRO Reconsideration Order*").

Because FTTC and fiber-to-MDUs are virtually indistinguishable with regard to these salient factors, the Commission should likewise provide additional unbundling relief for FTTC. In her separate statement, Commissioner Abernathy acknowledged the inequity and illogic of treating FTTC differently than fiber-to-MDUs.[36]

With regard to the impairment analyses considered by the Commission in the *Triennial Review Order*, FTTC and FTTH (as well as fiber-to-MDUs) are equivalent. For new deployments, the ILEC has no "first mover" advantage for either FTTC or FTTH, and in fact for both architectures the competitive carriers may have cost advantages as a result of their ability to utilize non-union labor. Likewise, in light of the service equivalency, the "at a minimum" consideration of the Section 706 command to facilitate advanced services is equally applicable to FTTH and FTTC. In sum, there is no valid basis for applying different unbundling obligations on these two fiber architectures.

Although the impairment analyses are the same, there are some distinctions between the two architectures that can affect a carrier's decision to deploy FTTC versus FTTH. The costs for deployment of the two technologies will vary in different situations for numerous reasons. For example, in the case of FTTH, each premise must install electronics for the optical/electrical conversions, whereas for FTTC the electronics for

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36 *TRO Reconsideration Order*, Statement of Commissioner Kathleen Q. Abernathy:

> I see no reason for the Commission to prefer one form of deployment over another so long as all of them enable very high-speed Internet access and video services (and thus are affected comparably by the investment disincentives associated with unbundling) and all are subject to the same degree of intermodal competition (as they undoubtedly are). I therefore hope that the Commission builds on this Reconsideration Order by revisiting the treatment of fiber-to-the-curb deployments in an upcoming item in the near future.

optical/electrical conversion are shared among the homes or offices sharing the pedestal (typically six to eight living units). Similarly, in order to ensure that lifeline services are available even when the power is out, a FTTH deployment requires each home or office to install backup battery equipment. For FTTC deployments, the backup electricity equipment can be shared among all of the homes or businesses served from the same pedestal.

CIENA firmly believes that a carrier should decide which fiber architecture to deploy based on the technical and economic merits of FTTC and FTTH, not because of the differing regulatory treatment that currently applies to these two architectures. The greater unbundling obligations presently imposed on FTTC distorts the marketplace decisions of carriers and contravenes the Congressional and Commission policy of technical neutrality.[37] CIENA thus urges the Commission promptly to eliminate the differing unbundling requirements imposed on FTTC and FTTH consistent with BellSouth's petition for reconsideration.

VI. Conclusion

When CIENA began participating in the Commission proceedings examining the unbundling obligations imposed on the ILECs' broadband facilities in April, 2000 (in CC Docket No. 98-147), tremendous uncertainty surrounded what those obligations were.

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[37] *E.g.*, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 14 FCC Rcd 2398 (1999) at ¶ 74; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) at ¶ 12; Telecommunications Act of 1996, § 706(c)(1) ("the term 'advanced telecommunications capability' is defined without regard to any transmission media or technology").

That uncertainty had a tremendous dampening effect on ILECs' (and CLECs') broadband investment. When the Commission removed that cloud and reduced or eliminated broadband unbundling obligations in the *Triennial Review Order*, the carriers responded as expected and began to accelerate advanced services investment. The Commission can spur even more investment by treating FTTC the same as FTTH. The Commission, however, must resist calls for the reinstatement of unbundling obligations for broadband services or packet switching, because such a policy reversal would put a screeching halt to needed investment. CIENA believes that the actions recommended herein will best serve the public interest.

Respectfully submitted,

By _____/s/_____

Stephen L. Goodman
David K. Judelsohn
Wilkinson Barker Knauer, LLP
2300 N Street, N.W. Suite 700
Washington, D.C. 20037
(202) 783-4141
Counsel for CIENA Corporation

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