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Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Review of Section 251 Unbundling Obligations of ILECs, Unbundled Access of Network Elements. 01-338; 04-313

Dear Ms. Dortch:

In the *Triennial Review Order,* the Commission "eliminate[d] most unbundling requirements for broadband, making it easier for companies to invest in new equipment and deploy the high-speed services that consumers desire." *See* ¶ 4. In particular, the Commission eliminated unbundling requirements for such next-generation network facilities as fiber-to-the premises loops, packet switches and packet switching capabilities of hybrid loops.

At the same time, the Commission did require incumbent LECs to provide access to "Time Division Multiplexing" (TDM) capabilities of existing hybrid loops, *see* 47 C.F.R. § 51.319(a)(2)(ii), and prohibited any "practice, policy or procedure that has the effect of disrupting or degrading access to the TDM-based features, functions, and capabilities of hybrid loops," *see* ¶ 294. The Commission made clear that the purpose of these provisions was to provide access to incumbent LECs' existing hybrid network facilities, and that it was not imposing an unbundling requirement on new next generation network facilities. Accordingly, the Commission explained that "[a]lthough we require the unbundling of legacy technology used over hybrid loops, we decline to attach unbundling requirements to the next-generation network capabilities of fiber-based local loops." *See* ¶ 292. And it squarely held that it would "not require incumbent LECs to unbundle any transmission path over a fiber transmission facility between the central office and the customer's premises (including fiber feeder plant) that is used to transmit packetized information." *See* ¶ 288.

Some parties have asked the Commission to confirm that incumbent LECs are not required to build TDM capabilities into newly deployed packet based networks or to add them to

existing packet based networks that never had TDM capabilities. We agree that the *Triennial Review Order* imposed no such requirement, and there is no basis for doing so now.

If the Commission were to address the issue again to provide further confirmation of that fact, it is critical to avoid inadvertently creating new ambiguities with respect to the scope of the unbundling obligations for broadband. This is true in two respects.

First, the provisions cited above apply by their terms only to those existing hybrid loop facilities that are subject to an unbundling requirement, and do not apply to or require unbundling of new next-generation network facilities such as fiber-to-the-premises or fiber-to-the-curb loops. Accordingly, to the extent the Commission addresses the scope of the provisions cited above, it should expressly so state to avoid creating any ambiguity.

Second, the Commission also must remain cognizant of the fact that, even when carriers deploy new packet-based networks, including fiber-to-the premises networks, it will continue to be necessary in many instances to hand off a signal to end-user customers in TDM format. For example, small business customers may have made a substantial investment in customer premises equipment that is not directly compatible with the new packetized networks. In these circumstances, it may be necessary to hand off a signal to the customer in TDM format rather than put the customer to the expense of investing in all new customer premises equipment. This can be accomplished by using interfaces that enable TDM-based customer premises equipment to use the packetized network. For example, in a fiber-to-the premises network architecture, the optical network terminal installed at the customer's premises can incorporate "ports" that accommodate TDM-based legacy equipment. The optical network terminal converts the information generated by the customer premises equipment (voice or data) into packets for optical transmission over the fiber loop transmission facility to an optical line terminal at the central office. As a result, while the signal is handed-off to or from the customer in TDM format, the information is optically transmitted over the fiber transmission facilities in packet format. Accordingly, to the extent the Commission addresses the scope of the provisions cited above, it also should make clear that incumbent LECs need not unbundle their next-generation networks regardless of whether they employ TDM interfaces to make their new network facilities backward-compatible with customers' existing equipment.

Sincerely,

Dee May

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