

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

In the Matter of)	
)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers)	CC Docket No. 01-338
)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability)	CC Docket No. 98-147

**COMMENTS OF MCI, INC. IN SUPPORT OF
AT&T CORP.’S PETITION FOR RECONSIDERATION**

MCI, Inc. (“MCI”) hereby submits these comments in support of the Petition for Reconsideration of the Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 15856 (2004) (“*MDU Reconsideration Order*”), filed by AT&T Corp. (“AT&T”) in the above-captioned proceeding.¹

The Commission concluded in the *MDU Reconsideration Order* that it was appropriate to extend the “fiber-to-the-home” rules adopted in the *Triennial Review Order* to multiple dwelling units (“MDUs”) that are “predominantly residential.”² As

¹ AT&T Petition for Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (Sept. 8, 2004) (“Petition” or “Petition for Reconsideration”). Unless otherwise noted, all material cited herein is filed in the above-captioned proceeding.

² *MDU Reconsideration Order* ¶ 1.

AT&T explains in its Petition for Reconsideration, the Commission's decision to reduce unbundling obligations for fiber loops to "predominantly residential" MDUs, notwithstanding a finding of impairment with respect to these loops, is inconsistent with the law and unsupported by the facts.³ Accordingly, the Commission should grant AT&T's request for reconsideration in its entirety. At a minimum, the Commission should replace the unworkably vague "predominantly residential" standard with a customer-specific approach, as discussed below.

I. Failure to Require Unbundling for Enterprise Customers in "Predominantly Residential" MDUs Is Inconsistent With the Commission's Prior Conclusions, and Not Supported by the Facts.

As detailed in AT&T's Petition, the *MDU Reconsideration Order* is deficient in a number of respects, including its reliance on section 706 of the Telecommunications Act of 1996,⁴ lack of record evidence, and adoption of a vague and unworkable "predominantly residential" standard.

Section 706. The Commission's reliance on section 706 considerations in support of its decision to remove unbundling obligations with respect to fiber loops for enterprise customers in "predominantly residential" MDUs is wholly inconsistent with prior Commission decisions concluding that incumbent LECs are already deploying high-capacity loops to serve enterprise customers and that these customers already have access to advanced services.⁵ Nor did the FCC make any effort to distinguish this prior

³ Petition at 1.

⁴ 47 U.S.C. § 157 note.

⁵ See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of

precedent. Indeed, the Commission expressly reaffirmed its earlier conclusion in paragraph 8 of the *MDU Reconsideration Order*, when it rejected a request to categorically “eliminate unbundling for enterprise customers [because] the record shows additional investment incentives are not needed [for these customers].”⁶

Lack of Evidentiary Support. The Commission also assumes that broadband deployment to MDUs is lagging behind, despite the lack of record evidence supporting this conclusion. Indeed, one would expect that the economies of scale associated with serving a single building with multiple residential units would make broadband deployment to such buildings economically viable. The *MDU Reconsideration Order*, however, equates the incentives to deploy fiber to a predominantly residential MDU with the incentives to deploy fiber to a single family home – notwithstanding the lack of evidentiary support for this conclusion and the lack of even the most rudimentary economic analysis of the issue.⁷

Vague Standard. The manner in which the Commission chose to implement the decision to require no unbundling to residential customers in MDUs – by focusing on “predominantly residential” buildings – is also a recipe for ILEC abuse and customer confusion. Because the FCC provided virtually no guidance regarding the standard, it is

Proposed Rulemaking, 18 FCC Rcd 16978, *as modified by* Errata, 18 FCC Rcd 19020, ¶ 209 (2003) (“*Triennial Review Order*”).

⁶ *MDU Reconsideration Order* ¶ 8.

⁷ *Id.* ¶ 7; Petition at 6-7 (noting that the evidence presented during the *Triennial Review Order* with respect to single family homes did not address the issue of fiber deployment to MDUs and further explaining that the subsequent pleadings relied upon by the Commission in the *MDU Reconsideration Order* “contain no analysis or substantive evidence whatsoever”); *see also MDU Reconsideration Order* ¶ 8 n.26 (citing petitioner SureWest’s statement that “fiber *already* is being deployed to multiunit premises”) (emphasis added).

unclear how it should be applied. For example, should a competitive LEC salesperson or an incumbent LEC count the number of residential tenants and compare it to the number of commercial tenants to assess whether an MDU is predominantly residential? Should they compare the total square feet controlled by commercial versus residential customers, or perhaps the amount of rent paid by each type of tenant? Or do some other criteria govern? Given the vagueness of the standard, it is virtually impossible for a salesperson – or, for that matter, a tenant in the building – to know whether a given MDU qualifies for unbundling.

The effect of this vague standard on competitive LECs seeking to serve multi-location customers is even more severe. In order to prepare a bid for a multi-location enterprise customer, a salesperson typically needs to know the number of customer locations and the types of services required at those locations. For example, a multi-location enterprise customer may request a bid for high-capacity and voice-grade lines serving 100 locations nationwide, and many of these locations may be in multi-tenant buildings, including MDUs. In order to develop a bid, the salesperson will need to know which of the MDU locations qualifies as predominantly residential. It is highly unlikely that the IT manager for the enterprise customer will know the information required to determine, for each location, whether it is in a “predominantly residential” MDU. Such ambiguities also greatly enhance the ability of incumbent carriers to restrain competition

by claiming that certain facilities qualify under the amorphous “predominantly residential” standard.⁸

II. At A Minimum, the Commission Should Replace the “Predominantly Residential” Standard with a Customer-Specific Approach.

The Commission should grant AT&T’s request for reconsideration of the current rule in its entirety. If the Commission declines to do so, it should consider a more narrowly-tailored alternative that has what the Commission perceives are the advantages of the rule, and none of the disadvantages. Specifically, the Commission should address the vagueness of the order’s “predominantly residential” standard by adopting a customer-specific approach.

One such approach would require incumbent LECs to unbundle fiber loops to business customers, but not residential customers, in MDUs. Under this approach, incumbent LECs would not be required to provide competitive carriers with unbundled access to fiber loops newly deployed (greenfield) to end users subscribing to residential service plans. Incumbent LECs would be required to provide unbundled access to fiber loops deployed to customers subscribing to business plans in the same MDU.

A customer-specific approach is more narrowly tailored to the FCC’s stated goal of fostering broadband deployment to residential customers and is vastly superior to the *status quo*. Under such an approach, carriers will (according to the FCC) have heightened incentives to deploy fiber to residential customers in all MDUs – regardless of whether the MDUs are “predominantly residential.” At the same time, competitors will

⁸ See Petition at 3, 9. The current standard also fosters disparate treatment of similarly-situated customers, based solely upon the characteristics of other tenants in the building. See *id.* at 3.

continue to have access to fiber facilities to serve enterprise customers – for which no additional incentive is needed nor created by the current rule – in those same MDUs. In contrast, the current rule is both underinclusive because it does not require incumbent LECs to provide access to unbundled loops for enterprise customers in “predominantly residential” MDUs, and overinclusive in the sense that it requires incumbent LECs to provide unbundled access for residential customers in MDUs that are not “predominantly residential.” A customer-specific approach, in contrast, is better suited to achieving the stated goals of the Commission.

III. Conclusion

For the foregoing reasons, MCI urges the Commission to grant AT&T's Petition for Reconsideration. Alternately, MCI requests that the Commission replace its “predominantly residential” standard with a customer-specific approach.

Respectfully submitted,

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November 12, 2004

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CERTIFICATE OF SERVICE

I, Ruth E. Holder, hereby certify that on this 12th day of November, 2004, I caused true and correct copies of the foregoing Comments of MCI in Support of AT&T's Petition for Reconsideration to be mailed to:

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