

**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

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

MCI, Inc. (“MCI”) hereby submits these reply 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

As AT&T demonstrated in its Petition for Reconsideration, the Commission should reconsider its decision to limit the requirement that incumbent local exchange carriers (“LECs”) provide unbundled access to fiber and hybrid fiber-copper loops deployed to “predominantly residential” multi-dwelling units (“MDUs”). Competitors

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.

continue to be impaired without access to such loops, and the evidentiary record does not support a conclusion that reducing incumbent LEC unbundling obligations will actually increase incentives to deploy broadband facilities to predominantly residential MDUs.

I. Competitors Are Impaired Without Access to Fiber and Hybrid Loops Deployed to Serve Mass Market and Enterprise Customers in MDUs

In its opposition to AT&T's Petition for Reconsideration, Verizon argues that competitors are not impaired without access to fiber and hybrid loops deployed to MDUs, and claims that multiple intermodal broadband alternatives exist.² As the Commission properly held in the *Triennial Review Order* and reaffirmed in the *MDU Reconsideration Order*, competitors are in fact impaired without access to fiber and hybrid loops deployed to serve both mass market and enterprise customers in MDUs.³ Moreover, as MCI and others recently demonstrated in their comments in the *UNE Remand* proceeding, intermodal competitors do not today constitute adequate substitutes for mass market services provided by incumbent LECs, and competitors remain impaired without access to network elements used to provide service to the mass market, including fiber and hybrid loops.⁴

² Verizon Opposition at 1-2 (Nov. 12, 2004); see also Ciena Opposition at 4-5 (Nov. 12, 2004); AFC Opposition at 4 (Nov. 12, 2004).

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Reconsideration, 19 FCC Rcd 15856, ¶ 4 (2004) (citing *Triennial Review Order* ¶ 197 n.624) (“*MDU Reconsideration Order*”). The Commission relied upon Section 706 of the Telecommunications Act of 1996 to support its decision to further limit access to fiber and hybrid loops deployed to predominantly residential MDUs, notwithstanding its finding of impairment. *Id.*

⁴ See, e.g., MCI Comments, WC Docket No. 04-313, at 86-98 (Oct. 4, 2004); Covad Comments, WC Docket No. 04-313, at 25-39 (Oct. 4, 2004), EarthLink Comments, WC Docket No. 04-313, at 9 (Oct. 4, 2004).

II. The Commission's Broadband Unbundling Rules Apply to Fiber and Hybrid Loops Used to Serve Mass Market Customers

Verizon further suggests that the Commission can cure any arbitrariness in the *MDU Reconsideration Order*'s "predominantly residential" standard "by eliminating any unbundling requirements for new broadband facilities, regardless of the customer served."⁵ In support of its request, Verizon argues that "the Commission made clear [in the *Triennial Review Order*] not only that [fiber-to-the-premises] networks are not subject to unbundling, but also that any transmission path over a fiber facility that is used to transmit packetized information is not subject to unbundling, without regard to the identity of the customer being served."⁶ Accordingly, Verizon claims that the Commission's unbundling rules "make clear that the new [fiber-to-the-premises] deployments, such as those Verizon is rolling out, are not subject to an unbundling requirement, regardless of the speed of service offered and *regardless of the customer served*."⁷

Contrary to Verizon's claims, the FCC's broadband rules apply to fiber and hybrid loops used to serve mass market – not enterprise – customers.⁸ In the *Triennial Review Order*, the Commission repeatedly limited its unbundling analysis to fiber and

⁵ Verizon Opposition at 12. According to Verizon, there is an ambiguity with respect to its duty to provide access to dark fiber used to serve enterprise customers, including those in predominantly residential MDUs. *Id.* at 13.

⁶ *Id.* at 12.

⁷ *Id.* at 12-13 (emphasis added).

⁸ The sole exception to this rule occurs in the reconsideration order at issue here, where the Commission expressly recognized that, by extending the fiber-to-the-home rules to all customers in "predominantly residential" MDUs, it would eliminate unbundling for enterprise customers in those units. *MDU Reconsideration Order* ¶ 8.

hybrid loops used to provide service to the mass market.⁹ Indeed, to avoid confusion regarding the effect of its rules on enterprise loops, the Commission expressly stated in its mass market unbundling analysis that it was not eliminating the existing rights that competitive carriers have to obtain unbundled access to loops capable of providing DS1 and DS3 service to enterprise customers.¹⁰

The Commission's recent order scaling back the requirement that incumbent LECs provide unbundled access to fiber-to-the-curb ("FTTC") hybrid loops confirmed the scope of the Commission's findings in the *Triennial Review Order*, and similarly limited its analysis to FTTC loops *deployed to serve mass market customers*:

In the *Triennial Review Order*, the Commission limited the unbundling obligations imposed on *mass market* FTTH deployments to remove disincentives to the deployment of advanced telecommunications facilities in the *mass market*. We find here that those policy considerations are furthered by extending the same regulatory treatment to incumbent LECs' *mass market* FTTC deployments. Similarly, just as we found no impairment with respect to *mass market* FTTH loops in the *Triennial Review Order*, we also find that the level playing field for incumbents and competitors seeking to deploy FTTC loops, and increased

⁹ 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 Proposed Rulemaking, 18 FCC Rcd 16978, as modified by Errata, 18 FCC Rcd 19020, ¶ 278 (2003) ("*Triennial Review Order*") ("we determine that . . . removing incumbent LEC unbundling obligations on FTTH loops will promote their deployment of the network infrastructure necessary to provide broadband services to the mass market"); *id.* ¶ 219 (identifying FTTH as a type of mass market loop); *id.* ¶ 227 ("The record demonstrates that current deployment of FTTH for providing telecommunications services to the mass market is still in its infancy."); *id.* ¶ 277 ("The record indicates that deployment of overbuild FTTH loops could act as an additional obstacle to competitive LECs seeking to provide certain services to the mass market."); *id.* ¶ 288 ("We decline to require incumbent LECs to unbundle the next-generation network, packetized capabilities of their hybrid loops to enable requesting carriers to provide broadband services to the mass market.").

¹⁰ *Triennial Review Order* ¶ 294. Moreover, impairment for fiber and hybrid loops was analyzed in the "mass market loops" section. Compare *Triennial Review Order*, § VI.A.4.a. ("Mass Market Loops"), with *id.* § VI.A.4.b ("Enterprise Market Loops").

revenue opportunities associated with those deployments, demonstrates that requesting carriers are not impaired without access to *mass market* FTTC loops.¹¹

The Commission's Section 706¹² analysis further confirms that the broadband unbundling rules apply only to fiber and hybrid loops deployed to mass market customers. In particular, the Commission relied on Section 706 considerations to support its decision to remove unbundling obligations with respect to fiber-to-the-home loops because it concluded that doing so would promote "deployment of the network infrastructure necessary to provide broadband services *to the mass market*."¹³ In contrast, the Commission has held that additional investment incentives are not needed to spur deployment of broadband or other advanced services to enterprise customers, because incumbent LECs are already deploying such services to these customers.¹⁴

Finally, Verizon's current argument that the broadband unbundling rules apply without regard to the identity of the customer being served is inconsistent with its own recent positions on this matter. Just last month, Verizon asked the Commission to "*clarify . . . that next-generation fiber-to-the-premises networks are not subject to unbundling obligations, regardless of the customer served.*"¹⁵ According to Verizon, clarification was necessary because, although "[t]he Commission has made it clear that

¹¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Reconsideration, 19 FCC Rcd 20293, ¶ 2 (2004) ("*FTTC Order*") (emphases added).

¹² 47 U.S.C. § 157 note.

¹³ *Triennial Review Order* ¶ 278 (emphasis added).

¹⁴ *MDU Reconsideration Order* ¶ 8.

¹⁵ Verizon Comments, WC Dkt. No. 04-313, at 146 (Oct. 4, 2004) (emphasis added).

next-generation fiber-to-the-premises networks that serve mass-market customers need not be unbundled,” the Commission had not yet specified which business customers were included in the mass market.¹⁶ Accordingly, Verizon urged the Commission to adopt a “clear, uniform national rule defining the circumstances under which no unbundling obligation applies . . . so that carriers planning fiber deployments will know which customers benefit from the Commission’s so-called ‘fiber-to-the-home’ rules.”¹⁷

Verizon’s prior positions on the scope of the Commission’s fiber and hybrid loop unbundling rules thus undermine its arguments in this proceeding. MCI nonetheless agrees that the Commission should clarify its definition of mass market at its earliest opportunity, for example, in an order in the *UNE Remand* proceeding.¹⁸

¹⁶ *Id.* at 145.

¹⁷ *Id.* Inexplicably, and without citation to any intervening order, Verizon’s reply comments, filed barely two weeks later in the same docket, no longer seek clarification of the scope of the FTTH rules. Rather, Verizon claims, as it does here, that “new [fiber-to-the-premises] deployments, such as those Verizon is rolling out, are not subject to an unbundling requirement, . . . regardless of the customers served.” Verizon Reply Comments, WC Dkt. No. 04-313, at 163-64 (Oct. 19, 2004) (citing *Triennial Review Order*).

¹⁸ *See, e.g.*, Letter from Chris A. Davis, McLeod USA, to Chairman Powell, FCC, WC Dkt. No. 04-313 (Nov. 9, 2004) (urging the Commission to define the mass market as consisting of residential customers).

Conclusion

For the reasons discussed above and in its initial comments, MCI urges the Commission to grant AT&T's Petition for Reconsideration, or, alternately, to replace its "predominantly residential" standard with a customer-specific approach. In any case, the Commission must reject Verizon's argument that the broadband unbundling rules for fiber and hybrid loops apply regardless of the customer being served.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ruth E. Holder, hereby certify that on this 22nd day of November, 2004, I caused true and correct copies of the foregoing Reply Comments of MCI in Support of AT&T's Petition for Reconsideration to be mailed to:

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