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COMMISSION
CLERK

DATE: February 13, 2006

TO: Kay B. Flynn, Chief of Records, Division of the Commission Clerk & Administrative Services

FROM: Adam J. Teitzman, Senior Attorney, Office of the General Counsel *AT*
Kira Scott, Attorney, Office of the General Counsel

RE: Docket No. 041269-TP—Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

Please place the attached documents in the above referenced docket file.

AT

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State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 13, 2006
TO: All Parties of Record
FROM: Adam J. Teitzman, Senior Attorney, Office of the General Counsel
Kira Scott, Attorney, Office of the General Counsel
RE: Docket No. 041269-TP—Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

Agenda for February 13, 2006 Conference Call

1. Procedure for filing Amendments and Agreements on February 27, 2006.
2. Discuss staff's review of Amendments and Agreements prior to approval.
3. Discuss e-mails sent by Commission staff member. (Copies attached)

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 6, 2006
TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director
FROM: Adam J. Teitzman, Senior Attorney, Office of the General Counsel *AT*
RE: Docket No. 041269-TP - Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

Please be advised that the attached e-mail from Ms. Anita Megna regarding the above referenced docket was received by all Commissioners on January 27, 2006. It appears this e-mail is not from a party to the docket or, to the best of staff's knowledge, from a representative to any party.

Staff has confirmed that the document attached to the e-mail has not been viewed by any Commissioner. Further, it should be noted that Commissioners Carter and Tew are not assigned to this docket.

Nevertheless, in the abundance of caution, please place this memo and a copy of the attached e-mail in the docket file in accordance with the provisions of Section 350.042, Florida Statutes.

Adam Teitzman

Subject: FW: 041269 Issue 22

Attachments: 4071887923-041269.doc

From: anita magna [mailto:amagna1222@yahoo.com]

Sent: Friday, January 27, 2006 6:17 PM

To: Commissioners & Staffs

Subject: 041269 Issue 22

There appear to be a lot of unanswered questions, a lot of points not addressed.

What are the most popular cars? Find out at [Yahoo! Autos](#)

041269-TP Issue 22.

1. Does this recommendation agree with prior FPSC rulings, as in Docket 040156? No.
2. Pg 148 paragraph 1, you state the FCC distinguishes between mass market and enterprise market,
 - a. has the FCC defined those terms? No. See FTTC Recon Order fn 2
 - b. Does the TRO distinguish mass market from enterprise by categories other than service type? Yes, geographic and building type. TRO 326 distinguishes enterprise market as urban and multi-unit, mid to large business. Mass market would be primarily residential, predominately single unit, except for predominately residential MDUs.
3. pg 148 paragraph 2, you state that "FTTH is not included in the enterprise market section of the TRO.
 - a. What does the acronym FTTH mean? Fiber to the home.
 - b. Would a "home" be expected to be included in a enterprise market?
 - c. Is FTTH fiber-based? Yes
 - d. How are fiber-based technologies referred to in the enterprise market section? "Fiber"
 - e. Is "fiber" discussed as a loop type for the mass market? No. See TRO para 247.
 - f. What is the difference between "fiber" and "FTTH"? There is an architectural difference.
 - g. Is unbundling granted for FTTH architecturally based? Yes. See FTTC Recon ORDER para 18.
 - h. Does the ILEC make a distinguishment between "fiber" and "FTTH"? Yes FTTC Recon Order para 18.
 - i. Is the architecture used to deploy FTTH different from that used to deploy "fiber" to the enterprise market? yes
4. pg 148 paragraph 4, you state that the FTTH rule applies to customers who, in the absense of fiber, would be served by low capacity loop.
 - a. In a greenfield area, or a new development is the technology placed prior to the customer requesting service? Yes.
 - b. So is a decision of how the potential customer "would be" served made prior to the customer requesting a DS1 or DS3? Yes.
5. pg 148 last sentence, you state that unbundling of DS1 and DS3 loops is required where impairment exists.
 - a. Does impairment exist on FTTH loops? No. See TRO para 273
 - b. For these new developments, are entry barriers the same for CLECs and ILECs? Yes. See TRO para 275.
 - c. Are the FTTH restrictions based on impairment? No it is based on Section 706 goals. See TRO para 236.
 - d. Do you discuss Section 706 goals in your analysis? No.
6. On page 150 you state that DS1 and DS3 loops in impaired wire centers was an exception to FTTH unbundling exemption.
 - a. Does unbundling for DS1 and DS3 impairment takes precedent over FTTH unbundling exemption?
 - b. Does impairment take precedent over Section 706? No. Section 706 takes precedence over impairment. See TRO paras 236, 274, 278, 279.

- c. Would this recommendation permit unbundling of FTTH? Yes.
- d. Does the FCC permit unbundling of FTTH? No. see TRO fn 803. paras 273-284. TRRO para 12.
- e. There is a 10-1-05 edition of the FCC rules. Do the FCC's current rules provide this exception that you are recommending? No.
- f. Is the provision of DS1 and DS3 discussed under the fiber-to-the home section of the rules? No.
 - i. Is it discussed under the hybrid loop section of the rules? Yes.
 - ii. Is there a DS1 loop section in the rule? Yes
 - iii. Does the DS1 loop section discuss FTTH? No.
 - iv. Can it be concluded that the elimination of discussion of DS1 and DS3 in the fiber-to-the-home section was intentional? Yes.
 - v. Would provision for unbundling of DS1 and DS3 in fiber-to-the-home loops, where the FCC intentionally deleted this provision in its rules, be contrary to the reading of the rule? Yes.

Message

Page 1 of 3

White, Nancy

From: White, Nancy
Sent: Tuesday, December 06, 2005 1:15 PM
To: 'Anna Christie'
Cc: Mays, Meredith; Hendrix, Jerry D
Subject: RE: BellSouth Generic Arbitration- FTTH

While I appreciate your interest in and knowledge of this case, I am uncomfortable receiving such detailed emails from someone who I do not know. With all due respect, I would appreciate it if you would end your correspondence.

-----Original Message-----

From: Anna Christie [mailto:annachristies@yahoo.com]
Sent: Friday, December 02, 2005 10:42 AM
To: White, Nancy
Subject: BellSouth Generic Arbitration- FTTH

FTTH

Gillan makes the supposition that FTTH rules are limited only to the mass market. This is a new theory that wasn't mentioned in prior cases. This would produce a new record and give the Commission leeway to rule contrary to their own prior ruling. Although Gillan's supposition is not founded in the FCC's rules, perhaps there is enough reference to the mass market in the TRO, TRRO and in subsequent rulings that this supposition could be found to be true. Pointedly, the FCC did state in paragraph 210 that their rules were based on loop types and not customer class, but what if it was believed that this single sentence in the TRO was not sufficient to disregard the multitude of references to the mass market? If we were to set that sentence aside for a moment, then the question arises, what is the mass market?

FCC has yet to define where the mass-market ends and the enterprise market begins. In the TRO the FCC was delegating the definition to some extent to the states. The court ruled that the FCC could not delegate impairment findings to the states, so perhaps this leaves the states open to at least define the mass market.

Gillan presents that the definition of enterprise market is a consumer of DS1, or high-capacity services. Certainly, this is one of many descriptions the FCC used in defining the enterprise market. The FCC also stated in the TRO that mass market customers also use DS1s and enterprise customers also use DS0s. Perhaps such a definition alone is not firm enough ground to stand on. Would the use of this definition even be appropriate in a discussion of FTTH?

Gillan stated that an enterprise customer is one in which the CLEC desires to serve with a DS1. Now that is stepping way out there, defining a customer by what the CLEC desires! The FCC views dark fiber as the equivalent of an OCn, so using Gillan's definition (a customer to be served with DS1 or greater), that would make every consumer of FTTH an enterprise customer, wouldn't it?

Gillan also states that when a customer requests a DS1 that customer becomes or is becoming an enterprise customer. With FTTH there is such a thing as a greenfield application, so just how does his definition apply? When a company makes the decision to deploy FTTH in greenfield applications, they are looking at vacant property, perhaps a subdivision plat indicating that residences and perhaps small parcels for businesses will be built. For all intent and purposes this appears to be "mass market," so the choice is made to invest in a fiber infrastructure. Section 706 goals were to protect that investment in order to encourage more investment. But what if after expending great sums of money, and after the subdivision is built and customers move in, one of those

12/6/2005

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"mass market" customers decides to order a DS1, have they now become an "enterprise customer" and is that infrastructure now required to be unbundled? Is the protection the FCC afforded variable according to the whims of the consumer as Gillan would suggest?

The FCC stated, "Accordingly, we do not require incumbent LECs to provide unbundled access to new mass market FTTC loops for either narrowband or broadband services. In overbuild situations, because incumbent LECs have an entry barrier within their sole control, we conclude, as with FTTH loops, that competitive LECs should have continued access to either a copper loop or a 64 kbps transmission path in those situations. Finally, we note that, consistent with our recent *MDU Reconsideration Order*, FTTC loops serving predominantly residential MDUs will be subject to the same unbundling relief as FTTH loops." (FCC 04-248 para 14) The term "new mass market", isn't this is when no customer has moved in and ordered any service, before it is known whether they will request a DS1 or not? The ILEC is not then and not ever required to unbundle that loop. There is no variability here!

If the protection of a fiber infrastructure were variable, then it would be useless in making a sound financial business decision of whether to invest or not; there would simply be too much risk! So ultimately, it would be a disincentive for the ILEC to invest and it would be a disincentive for the CLEC to construct their own infrastructure; both are contrary to the FCC's 706 goals. So defining a customer using a FTTH architecture as a consumer of DS1 is contrary to the FCC's 706 goals, correct?

The FCC created FTTH rules to encourage the provision of broadband services to the mass market. Broadband is other than narrowband, anything over 64 kbps (DS0). A consumer of broadband is not a consumer of DS0, and according to Gillan is not a mass market customer, but not according to the FCC. What if the broadband customer requests HDSL? The FCC views HDSL as equivalent to DS1. Does that broadband customer become an enterprise customer? According to Gillan, he does, but not according to the FCC. According to the FCC, xDSL is associated with the mass market. So now we have two equivalent services associated with two presumably distinct markets yet services are being used to define and distinguish the markets; something fails in the logic!

The FCC stated that "FTTC [and FTTH] architecture offers considerable capability for providing advanced services, including the ability to offer voice, multi-channel video, and high speed data services. We thus expect FTTC deployments to lead to the offering of this "triple play" of services to end-users, furthering the goals of section 706." (FCC 04-248 para 13) The FCC was fully aware that in these FTTH networks the opportunity to provide high speed data services (ie, DS1) would arise, yet this did not deter their ruling. The FCC further stated that "treating FTTC loops the same as FTTH loops will encourage carriers to further deploy fiber architectures necessary to deploy broadband services to the mass market, and the benefits of such deployment outweigh the limited impairment that competitive carriers face" (Id.) Obviously, according to the FCC, Section 706 goals take precedent over, outweigh and overrule the impairment goals Gillan wishes to stress.

Moreover, the FCC concluded that denying unbundled access to FTTC loops will provide CLECs incentives to "seek innovative access options, including the deployment of their own facilities necessary for providing broadband services to the mass market." As with FTTH loops, both incumbent LECs and competitive LECs have comparable abilities to undertake the investment risk associated with deploying FTTC facilities. The *USTA II* court recognized that "[a]n unbundling requirement under these circumstances seems likely to delay infrastructure investment, with CLECs tempted to wait for ILECs to deploy FTTH and ILECs fearful that CLEC access would undermine the investments' potential return. Absence of unbundling, by contrast, will give all parties an incentive to take a shot at this potentially lucrative market." (FCC 04-248 para 16)

". . . if unbundling relief is tailored on an architectural basis, [and it is in the case of FTTH, it is not based on service type or market class as Gillan proposes] they might have difficulty identifying which loops are FTTC

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loops. BellSouth responds that both FTTC loops and FTTH loops bear an information code in their systems distinguishing those loops from other types of loop facilities, allowing competitive LECs to know in advance whether a particular loop is a FTTC loop or FTTH loop. We agree that it is important for requesting carriers to have the necessary information about whether particular loops would qualify as FTTC loops or FTTH loops, and we thus reiterate the requirement, stated in the *UNE Remand Order*, that incumbent LECs' OSS must provide competitive LECs with nondiscriminatory access to the same detailed information about the loop that is available to itself and such information must be provided to competitive LECs in the same time frame as provided to its own personnel. (FCC 04-248 para 18)

If FTTH is based on an architectural basis, and it is, then if it is to be deployed to the mass market and then identified by the ILEC, did the FCC presume that the ILEC, or in this case the FCC referred to, BellSouth, knows what a mass market is? So did anyone ask BellSouth for their definition of mass market?

If the mass market can't be defined in terms of service in an architecturally based decision, then what can it be defined in terms of? In the original writing of the Appendix to the TRO, FTTH was resigned to residential applications. I believe it is a given that residences are mass market. This would include home offices. The Appendix was corrected with an errata to extend FTTH to the end-user customer premises. So what is an "end-user customer premise"?

It appears that unbundling relief for fiber was extended to the premises rather than just to residences, seemingly making the opportunity to deploy to small businesses more real. So what is a "small business"? Could it be the premises of a single end-user customer?

In USTA II, the court also referred to the mass market. It was their understanding that it was residences and small to medium business within close proximity to the residential network. Now what is "close proximity"? Is it defined by the technical parameters of the architecture?

The FCC in its MDU reconsideration Order referred to "predominately residential." Could the term "predominately residential" be used to define the geographical area in which FTTH may be deployed? When looking at a green field are there indications of whether it will be predominately residential? Perhaps the available county subdivision plats or zoning codes and even the surrounding developments would give a clue. Sounds reasonable, but is there any indication in the record of this case that would give even a reasonable definition for mass market?

Could the Commission restrict FTTH to the "mass market" without providing a definition for the mass market? If so, would it be wise to produce language in agreements with undefined terminology? Should the Commission defer to the FCC, since it was the FCC who issued multiple Orders referring to a "mass market" without defining the term and no one has been able to get a mental grasp upon exactly what it is?

Perhaps the mass market isn't exactly anything! It may be something in flux. With the mass market getting fiber infrastructure and ordering broadband and high-capacity services, perhaps what was once viewed as a dual mass or enterprise market is merging into a single undefined entity with no distinction.

Perhaps the Commission should simply include language in the agreement devoid of any market terminology as the FCC chose to do in formulating their rules? Hmmmm.

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Fatool, Vicki

From: Anna Christie [annachristies@yahoo.com]
Sent: Thursday, December 01, 2005 9:21 PM
To: White, Nancy
Subject: RE: BellSouth Generic Arbitration Florida Briefs

Florida citizen full of questions. The case is open to the public. PSC commissioner ruled in opposition to its staff recommendation in prior case. Would a recommendation in this case be different? Is the record different? More commissioners to review this case than the prior one. A prior ruling in an arbitration case does not set a precedent and the opinion of one commissioner could be overruled. Questions were only food for thought. Pardon my interruption.
Anna Christie

"White, Nancy" <Nancy.White@BellSouth.COM> wrote:

Pardon me, but who are you? Nancy White

-----Original Message-----

From: Anna Christie [mailto:annachristies@yahoo.com]
Sent: Wednesday, November 23, 2005 6:17 PM
To: White, Nancy; Mays, Meredith
Subject: BellSouth Generic Arbitration Florida Briefs

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12/2/2005

Message -

White, Nancy

From: White, Nancy
Sent: Monday, November 28, 2005 10:32 AM
To: 'Anna Christie'; Mays, Meredith
Subject: RE: BellSouth Generic Arbitration Florida Briefs

Pardon me, but who are you? Nancy White

-----Original Message-----

From: Anna Christie [mailto:annachristies@yahoo.com]
Sent: Wednesday, November 23, 2005 6:17 PM
To: White, Nancy; Mays, Meredith
Subject: BellSouth Generic Arbitration Florida Briefs

Need to make the commingling case. Do not presume the the commission will follow suit as it did in Docket 040130.

Does the USTA II 271 combination ruling address commingling?

What are the commingling rules? Where are they found?

Were the commingling rules appealed?

Were the FCC commingling rules repealed?

Is the definition of commingling different from combining?

Does "unbundled from...other services" in section 271 checklist items 4-6,10 include a requirement not to combine or commingle?

The Act was written before the terms "combine" or "co-mingle" were defined. How should the plain language of the Act regarding those independent items be read?

The District Court in USTA II held that "no 251 ruling applies to 271", is that valid? Would this include commingling?

If the Commission ruled that 252 should be commingled with independent 271 checklist items, would there be merit that such a decision would be overturned in court?

If it is required to commingle 251 UNEs with "any wholesale services," what are wholesale services? Do they include 271 independent 271 items?

USTA II p. 52 stated "the independent section 271 unbundling obligations didn't include a duty to combine network elements." Did it include a duty to commingle?

251(c)(3) applies to all incumbent LECs. Do commingling rules apply to all incumbent LECs? Would it be discriminatory for 251 commingling rules to be applied to BOCs whose only obligation is 271, such as, with local switching?

TRO p. 13 "commingle...with other wholesale services, such as tariffed interstate special access service." "such as" is only an example and is not all inclusive, correct? What else would be included?

Does TRO para 579 define commingling as "connect, combine, or otherwise attach"?

TRO para 581 states "Act does not prohibit commingling of UNEs and wholesale services." Does it prohibit commingling of independent 271 checklist items?

It states permit commingling of UNEs with "wholesale services including interstate access service." What is meant by "including"? Is this only an example?

Would exempting checklist items 4-6,10 from commingling provide CLECs "a meaningful opportunity to

11/29/2005

Message ~

compete" (TRO fn 1787)? If so, how?

Did the FCC include anywhere in the final versions of the TRO or TRRO a description of 271 items as "Wholesale services" subject to commingling?

Rule 51.309(e) "commingle... with wholesale services obtained from an incumbent LEC." Are BOCs excluded?

In 040130 witness Blake stated that it is clear that both the FCC and D.C. Circuit have determined there is no requirement to commingle UNEs with section 271 independent checklist items. Was such a statement a part of the record in this proceeding?

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Message

Fatool, Vicki

From: Mays, Meredith
Sent: Friday, December 02, 2005 11:29 AM
To: Fatool, Vicki
Cc: White, Nancy
Subject: For the Anna Christie file

-----Original Message-----

From: Harper, Mike
Sent: Friday, December 02, 2005 10:47 AM
To: Mays, Meredith
Subject: FW: Anna Christie--BellSouth Generic Arbitration

Meredith,

I understand that you forwarded the original message from Anna Christie to Security. Thought you might want to have this response I received from her to my email inquiry I sent on Tuesday.

Mike Harper
404 330-0495
Ipage: mikeharper

-----Original Message-----

From: Harper, Mike
Sent: Friday, December 02, 2005 10:13 AM
To: Hobbs, Linda
Subject: FW: Anna Christie--BellSouth Generic Arbitration

Linda,

I sent an email to the mysterious Anna Christie on Tuesday and this is the response I received late last evening.

Mike

-----Original Message-----

From: Anna Christie [mailto:annachristies@yahoo.com]
Sent: Thursday, December 01, 2005 9:26 PM
To: Harper, Mike
Subject: Re: BellSouth Generic Arbitration

Sorry, I don't represent anyone.

"Harper, Mike" <Mike.Harper2@BellSouth.com> wrote:

Anna,
Several folks here at BellSouth saw your comments in the above proceeding but aren't sure what group or organization you represent. Can you enlighten me and I'll pass the word along?
Thanks,
Mike Harper

12/2/2005

Message

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. 162

Yahoo! Personals

Single? There's someone we'd like you to meet.

Lots of someones, actually. [Yahoo! Personals](#)

Rick Melson

From: Nancy White
Sent: Friday, February 10, 2006 3:00 PM
To: Rick Melson
Subject: FW: BellSouth Generic Docket 041269

This woman is at it again. Nancy White

-----Original Message-----

From: famnet@bellsouth.net [mailto:famnet@bellsouth.net]
Sent: Friday, February 10, 2006 2:28 PM
To: White, Nancy
Subject: BellSouth Generic Docket 041269

I was a employed with the State of Florida Public Service Commission and assigned to the BellSouth Generic Docket 041269. I had met with Fogleman and his supervisor, David Dowds, to discuss Issue 22 in this case. It is similar to Docket 040156, the Verizon Arbitration, where I addressed the same issue. In that case, I recommended and it was approved that in NO EVENT is FTTH to be unbundled. The body of the order for the related issue addressed DS1 and DS3 and Section 706 goals (which supercede impairment goals) and that the TRO clearly states that there is NO impairment in FTTH. The rules for hybrid address DS1 and DS3 unbundling; however, the FCC intentionally deleted any provisions for DS1 and DS3 in the FTTH rules.

In prior rulings by the FPSC, it established a precedent to abide by the rules, this was not done in this case. Fogleman would like to present that the unbundling rules for impairment of DS1 and DS3 in 'fiber' includes FTTH, or he would like to presume that there is non-clarity, giving him room to make an exception to the rules. However, the FCC made a clear distinction between "fiber" and "FTTH" in the TRO and in the rules.

In addition to our meeting to discuss this issue, several interoffice emails were sent from me to Fogleman addressing this issue. At the conclusion of our last meeting prior to his writing the recommendation, Fogleman said that he knew how he would handle his recommendation. After reading his recommendation, it was evident to me that his way of handling it was to present an incomplete recommendation, not revealing to the commission any discussion of 706 goals, the FPSC's prior ruling in 040156 or the 10-2005 edition of the rules.

Just prior to the commission staff's meeting with the writers of the recommendation, I submitted the attached document to the commission suite so that they could ask Fogleman about the key points that were missing from his analysis leading to his recommendation. However this document was intercepted and I was removed from the case and put on indefinite administrative leave on the afternoon of 2/3/06.

On the following Monday, 02/06/06, Management immediately released an errata to the recommendation so it would not appear that any reference to the FPSC order in the Verizon case was 'inadvertently' omitted, even though reference to the Verizon Arbitration was brought up by BellSouth as a part of the record. The letter to the commission by management implies that there was no dispute between the recommendation made in this case and the one in the prior Verizon Arbitration case; however that is clearly untrue.

There certainly would be grounds for reconsideration.

Subsequent to the voting on this case, on 02/09/06, I have resigned from employment with the commission.

Doris Moss
(850)597-2742

041269-TP Issue 22.

1. Does this recommendation agree with prior FPSC rulings, as in Docket 040156? No.
2. Pg 148 paragraph 1, you state the FCC distinguishes between mass market and enterprise market,
 - a. Has the FCC defined those terms? No. See FTTC Recon Order fn 2
 - b. Does the TRO distinguish mass market from enterprise by categories other than service type? Yes, geographic and building type. TRO 326 distinguishes enterprise market as urban and multi-unit, mid to large business. Mass market would be primarily residential, predominately single unit, except for predominately residential MDUs.
3. pg 148 paragraph 2, you state that "FTTH is not included in the enterprise market section of the TRO."
 - a. What does the acronym FTTH mean? Fiber to the home.
 - b. Would a "home" be expected to be included in an enterprise market?
 - c. Is FTTH fiber-based? Yes
 - d. How are fiber-based technologies referred to in the enterprise market section? "Fiber"
 - e. Is "fiber" discussed as a loop type for the mass market? No. See TRO Para 247.
 - f. What is the difference between "fiber" and "FTTH"? There is an architectural difference.
 - g. Is unbundling granted for FTTH architecturally based? Yes. See FTTC Recon ORDER Para 18.
 - h. Does the ILEC distinguish between "fiber" and "FTTH"? Yes FTTC Recon Order Para 18.
 - i. Is the architecture used to deploy FTTH different from that used to deploy "fiber" to the enterprise market? yes
4. On pg 148, paragraph 4; you state that the FTTH rule applies to customers who, in the absence of fiber, would be served by low capacity loop.
 - a. In a "greenfield" area or a new development is the technology placed prior to the customer requesting service? Yes.
 - b. So is a decision of how the potential customer "would be" served made prior to the customer requesting a DS1 or DS3? Yes.
5. On pg 148 in the last sentence, you state that unbundling of DS1 and DS3 loops is required where impairment exists.
 - a. Does impairment exist on FTTH loops? No. See TRO Para 273
 - b. For these new developments, are entry barriers the same for CLECs and ILECs?
Yes. See TRO Para 275.
 - c. Are the FTTH restrictions based on impairment? No it is based on Section 706 goals. See TRO Para 236.
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 - a. Does unbundling for DS1 and DS3 impairment takes precedent over FTTH unbundling exemption?
 - b. Does impairment take precedent over Section 706? No. Section 706 takes precedence over impairment. See TRO Paragraphs 236, 274, 278, 279.
 - c. Would this recommendation permit unbundling of FTTH? Yes.
 - d. Does the FCC permit unbundling of FTTH? No. See TRO fn. 803. Paragraphs 273-284. TRRO Para 12.
 - e. There is a 10-1-05 edition of the FCC rules. Do the FCC's current rules provide this exception that you are recommending? No.

- f. Is the provision of DS1 and DS3 discussed under the fiber-to-the-home section of the rules? No.
- i. Is it discussed under the hybrid loop section of the rules? Yes.
- ii. Is there a DS1 loop section in the rule? Yes
- iii. Does the DS1 loop section discuss FTTH? No.
- iv. Can it be concluded that the elimination of discussion of DS1 and DS3 in the fiber-to-the-home section was intentional? Yes.
- v. Would provision for unbundling of DS1 and DS3 in fiber-to-the-home loops, where the FCC intentionally deleted this provision in its rules, be contrary to the reading of the rule? Yes.

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