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May 4, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Comments of TransWire Communications, L.L.C.
In the Matter of Petition of the Alliance for Public Technology
Requesting Issuance of Notice of Inquiry and
Notice of Proposed Rulemaking to Implement
Section 706 of the 1996 Telecommunications Act
RM No. 9244

Dear Ms. Roman Salas:

Transmitted herewith, on behalf of TransWire Communications, L.L.C., are an original and nine (9) copies of its comments in the above-referenced proceeding.

In addition, also enclosed is a confirmation copy of this filing. Please date-stamp the confirmation copy and return it for our records.

Should you have any questions concerning this filing, please contact the undersigned attorney.

Very truly yours,

Randall B. Lowe

Randall B. Lowe

by KJK.

RBL/jm
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

Petition of the Alliance for Public Technology)
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Notice of Proposed Rulemaking to Implement)
Section 706 of the 1996 Telecommunications Act)

RM No. 9244

REPLY COMMENTS OF TRANSWIRE COMMUNICATIONS, L.L.C.

Randall B. Lowe
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Dated: May 4, 1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of

Petition of the Alliance for Public Technology)
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Section 706 of the 1996 Telecommunications Act)

To: The Commission

REPLY COMMENTS OF TRANSWIRE COMMUNICATIONS, L.L.C.

TransWire Communications, L.L.C. ("TransWire"), by and through its attorneys, hereby respectfully submits its reply comments on the above-captioned Petition of the Alliance for Public Technology ("APT") filed February 18, 1998 ("APT Petition").

Without question, TransWire favors actions that support "deployment of advanced telecommunications capability to all Americans" as set forth in Section 706 of the Telecommunications Act of 1996. TransWire is proud of its emerging role as an innovator in the provision of such service to the American public. Moreover, TransWire sees no choice but to continue that innovation in the future as the demands for information and technology converge in an unprecedented way. Competitive forces require no less.

Accordingly, TransWire hereby endorses APT's call for a *Notice of Inquiry* and seconds its recommendation that the Commission accelerate its initiation of a rulemaking on how to implement section 706 of the 1996 Act. TransWire further calls on the Commission, in so doing, to recognize the broad pro-competitive mandate of the 1996 Act. TransWire asserts that competitors should have guaranteed access to metallic loops on an unbundled basis in order to ensure that the potential of emerging copper-based technologies are fully realized. In addition, the Commission should recognize that a vibrantly competitive telecommunications marketplace

will not evolve from a narrowly defined set of parameters. Rather, competitors must be afforded full access to the ILECs' network infrastructure at all technically feasible points as required by section 251 of the 1996 Act. In order to ensure that the goals of section 706, namely timely and efficient deployment of advanced telecommunications services to the American people, are realized, competitors should not be hamstrung in their technological innovations and offerings by unduly restrictive policies.

In its consideration of Section 706, the Commission should recognize that the primary issue will be how to ensure that all competitors have an equivalent opportunity to deploy advanced services over the existing ILEC network in a non-discriminatory and competitively neutral manner. The 1996 Act makes no judgment as to how or where investment resources should be deployed to accomplish this purpose. Rather, the 1996 Act establishes a framework through section 251 whereby all carriers are enabled to make efficient investments in future technology on the same basis as the ILECs themselves by guaranteeing a level playing field in the use of the existing ILEC wireline network.

The inherent quandary confronted by the 1996 Act, however, is enforcement of these access guarantees. As it now stands, the ILECs have inherent conflicts of interest that interfere with their incentives to supply potential rivals with cost-based, non-discriminatory, and competitively neutral use of their local wireline networks. These conflicts are the barriers to entry in the conventional local exchange market, and these same conflicts also threaten to interfere significantly with the deployment of advanced telecommunications services by would-be ILEC rivals.

TransWire hopes that the Commission will consider the above-referenced APT Petition with the goal of ensuring increased opportunities for all carriers to deploy advanced telecommunications services and to deploy them efficiently. TransWire has discussed these issues in particular detail in its comments in response to the petitions of Bell Atlantic

Corporation, US West Communications, Inc., and Ameritech Corporation for relief from certain regulatory burdens which they assert is justified by the terms of Section 706 of the 1996 Act.

In TransWire's view, the Commission correctly found that fostering CLEC competition in the local market serves the goals of Section 706 for advanced telecommunications capabilities. With unbundled elements of the ILEC network available for recombination, or with the wholesale resale discount, CLECs can effectively compete with ILECs' introduction of advanced, broadband local access services. Thus, TransWire believes that it is entirely consistent with Section 706 for such services and network elements of advanced local access solutions to be available through Section 251(c) unbundling and wholesale resale obligations.

APT suggests that UNE obligations should run only to the existing elements in the existing ILEC voice exchange network, and not to future advanced capabilities.¹ Congress, however, defined "network elements" broadly, and did not limit the ILEC's unbundling obligations to only those elements of its network exclusively used for voice traffic.² 47 U.S.C. § 152(29) (1996) ("network element" means a facility or equipment used in the provision of a telecommunications service"). Thus, Congress has unequivocally set forth a statute with an underlying public policy for broad, open, and comprehensive access to the elements of the incumbent LECs' networks.³ As TransWire discussed in detail in its comments on the Bell Companies' Section 706 Petitions, deployment of xDSL by the ILECs would otherwise be

¹ APT Petition at 15.

² The 1996 Act makes perfectly plain that incumbent LECs must unbundle and provide access "at any technically feasible point," and offer all of its local telecommunications services for competing providers. 47 U.S.C. § 251(c)(3)&(d)(2).

³ Section 251(c) forbearance is beyond the Commission's forbearance authority, which is expressly limited: "the Commission may not forbear from applying the requirements of section 251(c) under subsection (a) of this section until it determines that those requirements have been fully implemented." 47 U.S.C. § 160(d). Here again, Congress has spoken in plain terms to requires the ILEC to open its local network up to competition, and to fully unbundle and resell pursuant to Section 251(c).

inherently married to the ILECs' existing monopoly over local services. Unbundling is part of the essential fabric of the 1996 Act and the federal policy to open up the local telecommunications market. Unbundling permits local telecommunications carriers to establish an early foothold in the marketplace, by allowing competitors to combine their own more limited facilities with the elements of the ILECs' ubiquitous network. As the Conference Report on the 1996 Act notes, "[i]t is unlikely that competitors will have a fully redundant network in place when they initially offer local service . . . [s]ome facilities and capabilities (e.g., central office switching) will likely need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251."⁴ Unbundling also ensures more competitive pricing of local retail services. Similarly, unbundling serves the public interest because it allows competing providers to recombine some telecommunications elements with other equipment to offer more efficient or niche services than the ILEC may be willing to furnish.

Of significant concern to TransWire and to other entities deploying emerging telecommunications technologies is access to the richness of the already existing ILEC copper infrastructure. Although media reports would generally lead the public to believe that copper is obsolescing and being overtaken by fiber, the burst of recent activity on the xDSL front and the emergence of other similarly promising copper-based technologies, including Nortel's consumer digital modem, or CDM, clearly demonstrate that copper remains a significant avenue for the provision of advanced telecommunications services to the American people.⁵ TransWire asserts, therefore, that as the Commission commences its consideration of how to implement section 706 of the 1996 Act, it should strive to ensure that unbundled access to copper loops are guaranteed to competing providers of advanced telecommunications technologies.

⁴ S. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 148.

⁵ To paraphrase Mark Twain, reports of the obsolescence of copper are greatly exaggerated.

In addition, functional collocation rights for competing carriers are also important in the near term as the ILECs begin to roll-out xDSL and other copper-based technologies. In particular, ADSL can only be offered to customers that are within close proximity (*e.g.*, a wired distance of 18,000 feet) of the ILEC central office. Thus, for instance, the RBOC-affiliated Internet service provider ("ISP") with collocation is able to achieve a technical and market advantage over another competing carrier, which lacks collocation.

By contrast, allowing competing carriers to obtain the dry copper pair and to locate their packet switching equipment in the central office, or its equivalent, will yield at least two public interest benefits. First, it will ensure the continued, highly diverse competitive market for Internet services in the U.S., in which incumbent LECs are one among many providers. Second, collocation will permit the diversion of Internet traffic prior to the PSTN circuit switch, and so alleviate concerns over alleged Internet congestion of the PSTN.

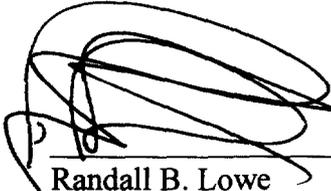
With guaranteed access to UNEs, such as copper loops, and collocation rights, competing carriers will be able to deploy new technologies and deliver diverse services without having to rely on the ILEC services for the "last mile." From TransWire's standpoint, these rights would improve the ability of competitors to enter and remain in the marketplace.

CONCLUSION

For the foregoing reasons, TransWire agrees with APT that the Commission should issue a *Notice of Inquiry* and accelerate its initiation of a rulemaking to implement section 706 of the 1996 Act. Such a proceeding should encourage the deployment of advanced telecommunications technology to the American public in a non-discriminatory, vibrant, and competitively neutral environment.

Respectfully submitted,

TRANSWIRE COMMUNICATIONS, L.L.C.

By: 

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May 4, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply Comments of Transwire Communications, L.L.C. was sent via first-class mail, except where otherwise indicated, to the individuals on the attached service list, this 4th day of May, 1998.

J. Todd Metcalf by tkk.
J. Todd Metcalf

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