

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
)  
Inquiry Concerning the Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable )  
and Timely Fashion, and Possible Steps )  
to Accelerate Such Deployment )  
Pursuant to Section 706 of the )  
Telecommunications Act of 1996 )

CC Docket No. 98-146

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF OPTEL, INC.

OpTel, Inc. ("OpTel"), submits these comments in response to the Notice of Inquiry ("NOI") in the above-referenced proceeding.

In the NOI, the Commission notes that the prevailing regulatory system is "uneven" and seeks comment on how it should be remodeled in order to promote the development of advanced telecommunications networks. Among other things, the Commission has asked for comment on the nature and extent of CLEC facilities deployment, the regulatory changes needed to foster the widespread use of high-bandwidth wireless technologies, and changes necessary to increase competition in the MDU environment.

OpTel distributes facilities-based multichannel video programming through franchised and "private" cable systems serving MDUs in eleven major U.S. cities. Using its advanced point-to-point microwave networks, OpTel also recently has begun to offer a variety of telephony services and now is able to provide an integrated package of voice, video, and data services to residents of the MDUs that it serves.

As set forth more fully below: (1) CLEC competition has fallen far short of its potential due to continued foot-dragging by incumbent local exchange carriers ("ILECs"), (2) federal rules regarding the telephone demarcation point should require all LECs to configure MDU wiring so as to promote competitive access, and (3) the Commission's microwave rules need to be substantially updated to accommodate the digital marketplace.

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## DISCUSSION

### **I. The Private Cable Industry Provides Competitive Telephone, Internet Access, Data, And Video Services To Consumers.**

The Commission is well aware of the growing competitive role that private cable systems are playing in the local multichannel video programming distribution ("MVPD") markets. As competitive multichannel video programming distributors, private cable operators are increasingly making in-roads into markets long-dominated by the incumbent franchised cable operators. OpTel's facilities alone now pass almost 400,000 households and OpTel has over 200,000 video subscribers in eleven major U.S. cities.

The Commission may not, however, be as aware of the other communications sub-markets in which private cable operators are beginning to provide much needed competition. Private cable operators are now able to bundle their video service offerings with private telephony, data, Internet access, and other enhanced services. For example, using its advanced microwave networks, OpTel markets an integrated package of voice, video, and data services to MDUs. Indeed, in two of its major markets (Houston and Dallas-Ft. Worth), OpTel now uses its own central office switch and its own transport network to provide facilities-based residential telephone competition to the ILEC.

OpTel is in the process of expanding its telecommunications infrastructure in other markets and expects, by the end of calendar year 1999, to offer facilities-based telecommunications in each of its major markets. OpTel now is licensed as a competitive local exchange carrier ("CLEC") in each of its major markets.

### **II. ILECs Thwart Facilities-Based Competition.**

The Commission has asked in the NOI whether CLECs are "likely to enter the mass market, and especially to become full, facilities-based competitors to the incumbent LECs on a large scale."<sup>1</sup> In particular, the Commission asks whether CLECs are "utilizing and installing technologies that will bypass incumbent LECs' essential facilities such as the local loop."<sup>2</sup> Unfortunately, any affirmative answer to either of these questions must be substantially qualified.

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<sup>1</sup> NOI ¶ 31.

<sup>2</sup> Id.

Two and a half years after passage of the 1996 Act, actual competitive entry into residential telephone services is scarce or nonexistent in most markets. It is certainly not even approaching the level at which CLECs can begin to provide a competitive check on the ILECs.

In the MDU marketplace, the principal reason for the limited deployment of CLEC facilities can be attributed to the obstruction and foot-dragging of the ILECs. In OpTel's experience is that ILECs will use every available means to delay, derail, diminish, or deter competitive entry. For example, OpTel's systems in Houston and Dallas interconnects with the networks of SWBT. Just in the last few months, however, OpTel has lodged numerous complaints with SWBT regarding SWBT's slowness to establish MDU demarcation points (see Section III below), repeated delays in completing interconnection of the networks in Fort Worth, Texas, and delays in implementing full interconnection in Dallas that have exceeded the twenty business-day standard.

Indeed, when OpTel began to provide facilities-based services, SWBT failed to update its COs with OpTel's NXX codes immediately and then took three weeks to do so from the date OpTel complained of the failure to SWBT. Similarly, two weeks passed before SWBT corrected problems with LIDB updates, which resulted in the inability of OpTel's customers to receive some collect calls.

OpTel has filed other complaints with state PUCs in response to SWBT's Section 271 application. As discussed below, however, one anticompetitive practice employed by the ILECs is particularly within the competence of the FCC to correct.

### **III. The Commission Should Revisit Its Telephone Demarcation Point Rules And Policies.**

The Commission asks in the NOI whether there are steps that can be taken to "open up access to the last hundred feet in office buildings, MDUs and other non-residential settings to ensure that customers have easy access to the choices they want."<sup>3</sup>

In the vast majority of cases, OpTel brings its telephone services to MDUs at the request of the MDU ownership or management, normally because of their dissatisfaction with the quality of service provided by the ILEC. In other cases MDU owners and managers are seeking to offer the choice of a less expensive telephone

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<sup>3</sup> NOI ¶ 53.

service as an incentive to potential tenants. Indeed, a by-product of the dawn of the information age has been that MDU residents regard the availability of high-quality, low-cost cable and communications services to be one of the most significant amenities that an MDU can offer.

Substantially all of the MDUs that OpTel serves are campus-style or garden-style complexes (*i.e.*, complexes comprised of several buildings). OpTel enters into service agreements with MDU property owners and ownership associations to provide services to the residents of the MDU. As part of its agreements, OpTel often upgrades and maintains all telecommunications architecture on the inside wiring side of the demarcation point, including premises wiring and campus distribution.

In those areas in which OpTel is providing residential local exchange telephone service, it does so at rates that generally are lower than those charged by the ILEC. For example, according to OpTel's market analysis, OpTel's retail rate for basic local exchange service is 5% lower than the price for the same service from the ILECs in Chicago, San Francisco, Los Angeles, San Diego, and South Florida. OpTel's basic retail rate is close to 10% lower than the ILECs' in Indianapolis, Denver, and Phoenix. The price differential grows when enhanced services are involved, which OpTel normally provides for about 65% of the rate charged by the ILECs.

#### **A. The "Demarcation Point" Barrier To Entry**

OpTel has found that many MDU networks, virtually all of which were installed or designed by ILECs, have been configured so as to create a barrier to entry for new competitors. For example, BellSouth designs MDU networks so that it can control the customer at the BellSouth switch, obviating the need to dispatch a service crew for most calls and also effectively foreclosing access by a competitor that does not wish to collocate at the BellSouth switch. BellSouth's position, accordingly, is that the demarcation point for each unit in an MDU is at the first jack in each individual unit. Collocation, however, is expensive and inefficient, requiring a CLEC to buy loops from the ILEC rather than use its own facilities.

Thus, when the demarcation point is located at the wall jack for single line customers in multi-customer buildings, as BellSouth maintains, CLECs seeking to provide residential service at an MDU have only one choice — they must install an entirely redundant and duplicative system in the MDU. This entails substantial excavation, wall and conduit opening, and rewiring to overbuild facilities throughout

the property and to each unit. Not only is such overbuilding cost prohibitive, often infeasible and always disruptive, it simply is not an acceptable approach for property owners.

Overbuilding in this context also involves an inefficient use of the competitor's resources. Once a CLEC overbuilds the existing ILEC network, the inside wire line installed by the ILEC would remain in the walls unused — a dead wire — following the resident's switch to CLEC service. Likewise, should the resident ever switch back to the ILEC for any reason, the overbuilt facilities would be superfluous. Any future competitor presumably would have to again overbuild the entire MDU complex to provide service.

Other ILECs use other configurations to the same end. US WEST, for instance, often uses several points of entry onto a single property with multiple structures, thus requiring CLECs to interconnect at numerous demarcation points. Whatever the precise configuration, however, the establishment of demarcation points by the ILECs in order to raise the cost of entry has operated as a barrier to competition.

In most states in which OpTel competes, the ILECs have refused to reconfigure their networks to accommodate new entrants. US WEST, for example, simply states that its tariff does not require it to reconfigure MDU networks to allow for a single demarcation point except in the case of new buildings and buildings that have been substantially remodeled. Indeed, OpTel has been told by US WEST officials that it is "not in the best interest of US WEST" to reconfigure MDUs to a single accessible demarcation point.

Further, even in markets in which state authorities have required ILECs to reconfigure their MDU networks to accommodate competitive entry, the ILECs have engaged in deliberate foot-dragging and insisted that the new entrant seeking to provide service pay (in advance) for network modifications necessary to allow competition.

By contrast, when OpTel configures or reconfigures an MDU network, it often is required by state law to bring all inside wiring on the premises to a single demarcation point so that others (including the ILEC) can have non-discriminatory access to the MDU. Indeed, even in states in which OpTel is not required to do so, it uses a single demarcation point configuration.

The tactics of the ILECs with respect to the establishment of a demarcation point in MDUs impede the development of competition by raising the cost of providing service beyond the point at which it is practical and undermining the credibility of the new entrant attempting to negotiate a service contract with the owners and managers of an MDU. OpTel's ability to provide dependable and timely telephone service has been severely damaged, and its credibility and reputation adversely affected by these behaviors. As a result, OpTel has been wrestling with these tactics on a state-by-state basis since the President signed the 1996 Act.

**B. The Time Has Come For A Uniform Federal Response.**

The FCC traditionally has left the establishment of demarcation points largely within the discretion of the ILECs themselves<sup>4</sup> and the ILECs' efforts to use that discretion to thwart competitive entry into residential telephone services has gone largely unnoticed at the federal level. Indeed, the only occasion that OpTel has had to raise the issue in formal proceedings under federal law is in the context of Section 271 applications by the RBOCs. Although it is altogether fitting and proper for the states, the Department of Justice, and the FCC to consider the issue in this context, Section 271 review simply does not provide a sufficient incentive for ILECs to allow practical and economic residential telephone competition in MDUs.

For that reason, the Commission should modify its demarcation point rules and policies. Competitive providers must have the ability to access MDU facilities at a single point on the property, proximate to the property boundary line, and ILECs must be required to provide the means of connection at this single demarcation point timely and without delay. Accordingly, the Commission should require ILECs to establish the demarcation point in any given MDU at the minimum point of entry ("MPOE") onto the premises, which should normally be the closest practical and accessible point to where the telephone company's wire crosses the property line.

Specifically, the FCC should require that all LECs establish a single demarcation point in any MDU of more than 50 units at the point of interconnection between the telephone company communications facilities and the MDU inside wire. In the multi-unit environment, a network interface device ("NID") required to interconnect the customer inside wiring to the telephone company network should be accessible to all

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<sup>4</sup> 47 C.F.R. § 68.3 (in most existing MDUs, the demarcation point is to be determined in accordance with the ILECs "reasonable and non-discriminatory standard operating practice"; in new installations, the ILECs "may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry").

certificated carriers and located at the demarcation point. At a subscriber's choice, carrier selection could then be accomplished by a simple and single cross-connect at the NID.

To make this rule effective, it should not apply only to new and remodeled buildings, and to situations in which the ILEC has no standard operating practice, but to all MDU installations involving more than 50 units. In buildings at which the ILEC maintains multiple demarcation points or otherwise has installed a network that does not comply with these rules, the ILEC should be required to reconfigure its wiring, without unreasonable delay, in accordance with these rules upon *bona fide* request by a CLEC seeking access to the premises.<sup>5</sup> The new competitor making the request should be required to share in the reasonable and actual costs of the required reconfiguration.

By establishing a single demarcation point at the MPOE and providing that all certificated carriers must be given access to the NID so that a change in service providers by any resident in the building can be effectuated by a single cross-connect at the NID, the FCC would help to make competitive local exchange service a reality in the MDU environment.

### C. Sub-Loop Access

In connection with actions requested above, the Commission should consider other means through which facilities-based competitors might obtain access to MDU residents on a non-discriminatory basis. For example, OpTel has in the past advocated sub-loop unbundling that would make available elements such as street cabinets, splicing cages, etc., at which lines (*i.e.*, twisted pair) dedicated to individual residential units terminate.<sup>6</sup>

ILECs often configure their networks on the line-side of the switch to include one or more street cabinets or other facilities located proximate to an MDU property. From the street facilities dedicated lines run to the individual buildings and units. As discussed above, there is no single demarcation point at the property because each cabinet may feed one or more of several buildings on a property.

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<sup>5</sup> Absent a showing to the contrary, the Commission should presume that any reconfiguration requiring more than 90 days is unreasonable.

<sup>6</sup> The Commission has requested comment on this issue in the NPRM companion to this proceeding, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147, *et al.* (Notice of Proposed Rulemaking (rel. Aug. 7, 1998)). OpTel will support the Commission's tentative conclusion that sub-loop unbundling should be required.

A competitor seeking to provide service at the MDU is required either to buy the entire loop from the ILEC or to build facilities all the way to each unit. Again, neither option is competition enhancing. Instead, competitive providers should have access to the street cabinet to cross-connect to a requesting customer without required reconfiguration at the property.

OpTel has, on several occasions, requested such access from ILECs, only to be refused on the basis that the FCC does not require sub-loop unbundling. The Commission should, therefore, in combination with reconsideration of the federal demarcation point requirements, revisit its decision not to require sub-loop unbundling. To help make competitive access a reality, ILECs should be required to make sub-loop elements dedicated to a customer's premises available to requesting carriers on an unbundled basis.

#### **IV. The Commission's Microwave Rules Should Be More Flexible.**

In the NOL, the Commission asks whether "regulatory and other barriers exist to greater, more widespread deployment of high-bandwidth wireless systems."<sup>7</sup> This issue is of particular importance to OpTel, which depends upon its ability to construct and operate advanced microwave networks to meet market demands. OpTel, therefore, offers the following suggestions to increase microwave licensing flexibility for private cable systems seeking to compete in the local MVPD and local exchange markets.

First, because of signal attenuation problems at 18 GHz, which is the frequency band used by most private cable operators, lower frequency microwave bands must be made available if private cable systems are going to compete on a widespread basis. A single 18 GHz microwave link cannot normally exceed 8 miles. This limitation artificially inhibits the growth of private cable system competitors.

In addition to the technical limitations of the 18 GHz band, recent regulatory changes also have impaired the future use of the band for private cable services. The FCC has established new "quiet zone" rules such that no new applications will be accepted in the 17.8–19.7 GHz bands within the Denver and Washington, D.C., areas. This change alone will stifle further growth or expansion of private cable competition in these two metropolitan areas. Moreover, several satellite licensees have urged the

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<sup>7</sup> Id. ¶ 43.

Commission to issue blanket licenses for satellite downlink operations throughout the 17.7-20.2 GHz band.<sup>8</sup>

For all of these reasons, OpTel has filed a petition for rulemaking requesting that the Commission open the 12 GHz CARS band to OFS licensees for the delivery of video programming material.<sup>9</sup> 12 GHz microwave facilities have double the range of 18 GHz microwave, and they are not affected by the new "quiet zone" rules or threatened by the satellite blanket licensing proposal. This change alone would allow private cable operators to offer integrated voice, video, and data services at 12 GHz and further the public interest "by promoting spectrum efficiency and increasing the flexibility of licensees."<sup>10</sup>

In addition, however, the Commission should take steps to eliminate archaic microwave rules that no longer serve important or substantial regulatory purposes. For example, OpTel has been advised by the staff that the restriction on private microwave carriage of video programming materials in Section 101.603 applies even if the programming is transmitted in a digital format. There is, however, no basis for this restriction in a digital world.

Once digitized, the "video" portion of a signal is indistinguishable from the voice and data portions of the transmission. A private cable operator using a fully digital system at 18 GHz to deliver an integrated package of services should not be required to limit the "video" portion of that signal to frequencies between 18.142-18.580 MHz. One cannot simply import analog rules into a digital market and expect a rational and coherent regulatory framework to result.

### CONCLUSION

Although the private cable industry is vibrant and growing, regulatory and market barriers remain that inhibit competition. Most importantly, the Commission should reexamine its microwave licensing rules to provide new competitors with

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<sup>8</sup> See Public Notice, IN Report No. 97-27 (rel. Sept. 5, 1997).

<sup>9</sup> OpTel Petition For Rulemaking, RM-9257 (filed Apr. 1, 1998). OpTel has, on occasion, used other bands, including 23 GHz, and it currently has pending a request for waiver of Section 101.603 to allow it to use the 10.7 GHz - 11.7 GHz frequencies for fixed point-to-point microwave transmission of video entertainment material. Its request, however, has been pending at the Commission for over a year, and that request was itself filed over a year after an earlier OpTel request for clarification of the OFS rules was filed seeking essentially the same relief.

<sup>10</sup> See Amendment of Part 94 of the Commission's Rules to Permit Private Video Distribution Systems of Video Entertainment Access to the 18 GHz Band, 6 FCC Rcd 1270, 1273 (1991).

maximum operational flexibility and revisit its telephone demarcation point rules to enhance MDU access.

Respectfully submitted,

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