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January 21, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery
Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation by the Association for Local Telecommunications Services; e.spire Communications, Inc.; Intermedia Communications Inc.; Metromedia Fiber Network Services, Inc.; and MGC Communications, Inc.

Deployment of Wireline Services Offering Advanced Telecommunications Capabilities: CC Docket No. 98-147

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's Rules, the Association for Local Telecommunication Services; e.spire Communications, Inc.; Intermedia Communications Inc.; Metromedia Fiber Network Services, Inc.; and MGC Communications, Inc. ("the parties") submit this notice in the above-captioned docketed proceeding of an oral *ex parte* presentation made and written *ex parte* materials distributed on January 21, 1999 during a meeting with Linda Kinney of Commissioner Ness's Office. The presentation was made by Heather Gold of Intermedia Communications, Inc., and Jonathan Canis and John Heitmann of Kelley Drye & Warren LLP.

During the presentation, the parties discussed a variety of issues related to the Commission's "Section 706 Rulemaking". Specifically, the parties discussed the need for Commission action to: (1) define the Enhanced Extended Link ("EEL") as an unbundled network element; and (2) find that the resale obligations of Section 251(c)(4) apply fully to all ILEC end user services.

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Pursuant to Sections 1.1206(b)(1) and (2), an original and two copies of this *ex parte* notification (with attachments) are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Jonathan E. Canis /sr

Jonathan E. Canis

cc: Linda Kinney

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January 20, 1999

Via Hand Delivery
Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Written *Ex Parte* Presentation by Intermedia Communications Inc.

Deployment of Wireline Services Offering Advanced Telecommunications Capabilities: CC Docket No. 98-147

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, Intermedia Communications Inc. ("Intermedia") submits the attached written *ex parte* presentation in the above-captioned docketed proceeding.

Pursuant to Section 1.1206(b)(1), an original and two copies of this filing are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Jonathan E. Canis /SH

Jonathan E. Canis

DC01/HEITJ/70663.1

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services	)	**CC Docket No. 98-147**
Offering Advanced Telecommunications	)	
Capability	)	

To the Commission:

WRITTEN *EX PARTE* COMMENTS OF
INTERMEDIA COMMUNICATIONS INC.

INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), by its undersigned counsel, hereby respectfully submits these written *ex parte* comments in the above-captioned proceeding. As more fully discussed below, Intermedia requests that the Commission take the following action in establishing rules to promote the deployment of advanced services:

1. Establish the "Enhanced Extended Link" or "EEL" as a new unbundled network element that provides CLECs with the functionality of loop, central office aggregating and routing equipment, and interoffice transport. Such action will eliminate the need for CLECs to collocate in every ILEC central office, thereby reducing the effective cost of interconnection and conserving central office space.

2. Establish rules that ensure that all advanced services provided by ILECs – and indeed all ILEC end user services -- are made available to CLECs for resale at wholesale rates based on avoided costs. In the case of advanced services filed in ILEC federal access tariffs, the Commission must find unequivocally that such services are subject to resale, and that the wholesale discount prescribed by the States apply to such services.

I. THE COMMISSION SHOULD ADOPT THE ENHANCED EXTENDED LINK ("EEL") AS AN UNBUNDLED NETWORK ELEMENT

As Intermedia discusses below, the record in the instant proceeding provides a compelling showing that an Enhanced Extended Link unbundled network element is critical to the establishment of a competitive environment and the promotion of advanced services.

A. THE RECORD IN THIS PROCEEDING DEMONSTRATES A COMPELLING NEED FOR THE ENHANCED EXTENDED LINK

The record of this proceeding contains considerable support for the establishment of the Enhanced Extended Link as a new UNE.[1] Moreover, the record contains overwhelming support for a regulatory solution that will eliminate the need for competitive carriers to collocate in every end office in order to provide service. Indeed, the majority of competitive carriers that filed comments in this proceeding have requested that the Commission provide such relief.[2] Some parties have proposed other methods, such as the "Bitstream" proposal,[3] or a proposal to redefine the "loop" for data services,[4] as a means of accomplishing the same procompetitive

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1 e.spire comments at 22, 34, 41-42; e.spire reply at 15; ALTS reply at 25; GST reply at 41.

2 ALTS comments at 58, 87; AT&T comments at 69-70; AT&T reply at 21, 78, 85; Covad comments at 53-54; ICG comments at 32-33; Illinois Commerce Commission comments at 16; Intermedia comments at 58; GST reply at 34; MCI WorldCom comments at 63-64; MCI WorldCom reply at 53; NextLink reply at 79; Northpoint comments at 17-20; Paradyne comments at 9; Sprint comments at 33-34; Transwire reply at 19-21; US Exchange at 10.

3 ALTS has put forth a proposal called the "Bitstream" solution, which would provide a transmission path of a pre-defined capacity from the end user to the CLEC's point of presence. (See also supporting comments in e.spire reply at 22-23.) This Bitstream approach is fully consistent with the EEL. Indeed, the EEL – by providing the functionality of loop, central office concertration/routing, and transport as a single UNE – is an efficient means of providing the Bitstream functionality sought by ALTS.

4 ALTS comments at 42; see, e.g., CompTel comments at 45-58; CompTel reply at 3-4; ICG comments at 29-32; MCI reply at 71.

results. All of these proposals attempt to achieve the same goal – providing a direct connection from the end user premises to the CLEC point of presence that obviates the need to collocate in each and every ILEC end office. Essentially, the EEL provides CLECs with the functionality of a loop from their premise to their end-user. The EEL is fully consistent with these approaches, and is in fact a straightforward and easily implementable means of realizing them.

If such relief is not forthcoming in the instant proceeding, CLECs will be forced to collocate in every end office, greatly increasing the cost of interconnection, and creating unwarranted scarcity in ILEC central office space, and erecting an uneconomic barrier to entry. Failure to provide for such a continuous transmission path from end user to CLEC point of presence will also force CLECs – and this Commission – to litigate extensively over the technical means of deriving unbundled local loops in cases where ILECs employ digital subscriber line and other mixed fiber/copper loop technologies. For all these reasons, the record in the instant proceeding provides compelling testimony on the need for an EEL UNE.

B. THE COMMISSION HAS AMPLE AUTHORITY TO ESTABLISH THE EEL AS A NEW UNBUNDLED NETWORK ELEMENT

The Commission is fully empowered to incorporate a series of discrete functions that are themselves defined as UNEs.[5] For example, many state commissions have required ILECs to provide subloop elements – the network interface device, distribution plant, concentrating equipment, and feeder plant – as four discrete UNEs. At the same time, the combination of these four functionalities is also provided as a single unbundled local loop UNE, as defined by the Commission. Using its uncontested authority to define UNEs, the Commission

[5] See, e.g., Intermedia comments at 47-49.

is fully empowered to define as a new UNE a similar combination of loop, central office concentration and routing, and interoffice transport functionalities.

The Commission has clear legal authority to define UNEs by function, including an EEL UNE, and this authority has recently been confirmed by the Eighth Circuit Court of Appeals' recent *Shared Transport Decision*.[6] In the *Shared Transport Decision*, the court noted that the statutory definition of network element[7] expressly "includes both individual network facilities and the functions which those facilities provide, either *individually or in consort*,"[8] and that, as presented, the shared transport UNE did not eliminate the distinction between unbundled access and resale.[9] In so stating, the Eighth Circuit expressly upheld the Commission's establishment of shared transport as a UNE, even though shared transport is composed of two functions that are themselves stand-alone UNEs – interoffice transport and local switching. This legal analysis is directly applicable to the UNE, and confirms the Commission's authority to provide the requested relief.

An extended link UNE would maintain a clear distinction between unbundled access under § 251(c)(3) and resale under § 251(c)(4), as purchasers of extended links would

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6 *Southwestern Bell Telephone v. FCC*, 1998 US App. LEXIS 18352 (8th Cir. 1998) ("*Shared Transport Decision*"). In the *Shared Transport Decision*, several ILECs challenged the FCC's shared transport UNE on grounds that: (1) the FCC has "no power to aggregate" ILEC transmission facilities into "a single network element"; and (2) the FCC's shared transport UNE was so broadly defined that it obliterated any meaningful distinction between unbundled access to UNEs (section 251(c)(3)) and total service resale (section 251(c)(4)). The Eighth Circuit rejected both of these arguments.

7 47 U.S.C. § 153(29).

8 *Shared Transport Decision* at 18352.

9 *Id.* Note, however, that the court left open the question of whether the pricing of shared transport could effect its status as a viable network element. The LECs argued that minute-of-use pricing for shared transport would unlawfully "obliterate" the distinction between UNEs and resale. Noting that state commissions have UNE pricing responsibility, the court declined to address this issue, stating that it "could do no more than conjecture as to whether the unbundled sale of transport will erode the careful distinctions between resale and unbundled access." *Id.*

provide their own switching, and the EEL would not resemble any end-to-end services tariffed by ILECs. An EEL UNE would therefore meet the requirements of the plain language of the Act and recent federal appellate court case law. Compelling precedent therefore determines that the Commission has ample authority to define an EEL UNE for all telecommunications services, including advanced services.

II. THE COMMISSION MUST ENSURE THAT THE RESALE REQUIREMENTS OF SECTIONS 251(C)(4) AND 252(D)(3) OF THE ACT IS FULLY IMPLEMENTED

The Commission has already found that the resale provisions of § 251(c)(4) of the Act apply fully to advanced services provided by ILECs.[10] The Commission must take further action, however, and clarify beyond a reasonable doubt a CLEC's ability to resell all ILEC end user services pursuant to § 251(c)(4) of the Act, at wholesale rates that exclude avoided costs, as required by § 252(d)(3). To accomplish this result, the Commission must adopt as a final rule its tentative conclusion that ILEC access services sold to end user customers must be resold at wholesale rates.[11] Moreover, the Commission must clarify that by removing the access service exemption, all ILEC end user services are now subject to the resale requirements of the Act, specifically including Special Access, Switched Access, and other services currently tariffed in interstate and intrastate access tariffs, ADSL-based services (whether tariffed on the Federal or State level), currently available non-ADSL advanced services (such as DS1 special access

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10 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, FCC 98-188, ¶ 32 (rel. Aug. 7, 1998) ("*Advanced Services NPRM*").

11 *Advanced Services NPRM,* at ¶¶ 188-89.

services provisioned over HDSL technology), and other advanced and non-advanced end user services that may be introduced in the future.

Recent developments have demonstrated the compelling need for such a finding. Since the issuance of the *Advanced Services NPRM*, a number of ILECs have introduced ADSL-based services in their federal access tariffs. To date, the Commission has approved five of these services, finding that they were properly included in these tariffs.[12] These advanced services are directly targeted to end user residential and business customers, including internet service providers, however, and as such fall directly within the resale obligation of § 251(c)(4) of the Act. As the Commission acknowledged in the *Advanced Services NPRM*, it previously exempted ILEC access services from the resale requirement based on its conclusion that the vast majority of access services were provided to carriers, and that Congress intended the resale provisions to apply to services targeted to end users.[13] The ILEC ADSL tariffs clearly demonstrate that this rationale is no longer applicable, and compel the imposition of the Act's 251(c)(4) resale obligations.

Moreover, when advanced services are tariffed at the federal level, it is incumbent upon the Commission to make clear that such services are available for resale at rates that reflect the avoided cost standard of § 252(d)(3). Specifically, in order to prevent any further delay in CLECs' ability to exercise their resale rights under the Act, the Commission should find that all ILEC end user services – whether tariffed at the Federal or State level – are to be provided to CLECs at the wholesale percentage discounts that have been established by State regulators. Intermedia urges the Commission to include this express prescription in its final order.

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12 *GTE Telephone Operating Cos.*, CC Docket No. 98-79, FCC 98-292 (rel. Oct. 30, 1998); *Bell Atlantic Telephone Cos.*, CC Docket No. 98-168, FCC 98-317 (rel. Nov. 30, 1998).

13 *Advanced Services NPRM* at ¶ 186.

III. CONCLUSION

For the reasons discussed above, Intermedia urges the Commission to act expeditiously to prescribe the Enhanced Extended Loop as an unbundled network element, and to require that ILECs provide *all* of their end user services – including advanced services and interstate and intrastate access services – to CLECs for resale at the wholesale discounts prescribed by State regulatory commissions.

Respectfully submitted,

INTERMEDIA COMMUNICATIONS INC.

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Dated: January 19, 1999

EX PARTE PRESENTATION
CC DOCKET NO. 98-147

January 20, 1999

Association for Local Telecommunications Services
e.spire Communications, Inc.
Intermedia Communications Inc.
Metromedia Fiber Network Services, Inc.
MGC Communications, Inc.

1.
THE COMMISSION SHOULD DEFINE THE ENHANCE EXTENDED LINK ("EEL") AS A SINGLE UNBUNDLED NETWORK

Definition of an Extended Link/EEL UNE would accelerate competitive deployment of traditional voice and advanced services and ease collocation space constraints.

- The Enhanced Extended Link ("EEL") provides an important functionality – composed of loop, aggregation/routing and transport (including the appropriate electronics and cross-connects) extending from the customer premise to the CLEC's point of interface (either a collocation arrangement in another ILEC office, or a separate CLEC point of presence).

- As such, the EEL eliminates the need for CLECs to collocate in every ILEC office in order to reach their customers – this *maximizes the number of customers that can be reached through a single collocation arrangement and thereby decreases CLEC collocation costs and conserves scarce ILEC collocation space.*

- While different commentors in this proceeding proposed different solutions (*i.e.*, ALTS's "Bit-Stream" approach) the record overwhelmingly demonstrates that this type of regulatory relief is essential. The EEL will *expand the reach of CLECs' traditional and broadband service offerings* by allowing CLECs to reach customers served through ILEC end offices where collocation is not yet economically justifiable or physically possible.

ILEC attempts to limit the use of an Extended Link – or any other UNE – to voice or local services must be rejected.

- Currently, some ILECs are making a concerted effort at the State level to restrict the use to which a CLEC may put the EEL or other UNEs – *in particular, seeking a decision that UNEs may not be used for data services.*

- Such attempts to limit the use of the EEL (or any other UNE) for voice service or "predominantly" voice applications have no rational legal or policy basis and run counter to the Commission's Section 706 mandate.

- ILECs should be required to offer *EELs for all loop and transport types* (for example, an EEL consisting of a 1.544 Mbps loop and 1.544 Mbps or higher transport can be used to provide dedicated transport for voice service, or can be used purely for data transmission as a Frame Relay Access Line).

- Because the functionality defined does not vary on whether the loop component of the EEL UNE employs "home run" copper or a DLC configuration, ILECs should not be permitted to limit access to Extended Links on the basis of that technology-based distinction – or any other.

The Commission has ample authority to define EEL as a UNE.

- Like the Commission's currently defined loop and NID combination, EEL is a common configuration that offers a prescribed functionality for serving end users. As many states have ordered sub-loop unbundling, the loop itself is a common configuration of feeder plant, aggregation equipment, distribution plant – and the NID. The Commission's definition of a loop UNE is not inconsistent with the states' complementary definitions of sub-loop elements as UNEs, or indeed with the Commission's own definition of the NID as a distinct UNE. The 1996 Act contemplates overlapping UNE definitions.

- The Eighth Circuit's *Shared Transport Decision,* 153 F.3d 597 (8th Cir. 1998), found that the Commission has the authority to use a *functional approach to defining UNEs.* The Eighth Circuit expressly upheld the Commission's definition of shared transport as a distinct UNE *even though it comprises two other UNEs – local switching and interoffice transport.* This decision represents the strongest possible support for the definition of the EEL as an independent UNE.

- Because the EEL does not provide an end-to-end service (it must be combined with a CLEC's own switching equipment) an EEL UNE *cannot be challenged on the basis that it blurs the line between cost-based unbundling of network elements and avoided-cost resale of retail services.*

Commission adoption of an EEL UNE would advance the best practices of the states.

- The New York PSC has required Bell Atlantic to provide EEL as a tariffed service in New York.
  - Bell Atlantic agreed to "voluntarily" offer EEL as a precondition to receiving the New York PSC's approval of its Section 271 application.
- The Texas PUC Staff has recommended that the Texas PUC adopt the EEL as a UNE.
  - This approach is superior to "voluntary" ILEC offerings, because it ensures that an ILEC cannot withdraw the EEL at a later date.
- Pursuant to negotiated interconnection agreements, CLECs had been able to order Extended Links from BellSouth; it is not clear how this functionality will be provisioned after existing agreements expire.
- A federally-defined EEL UNE would provide certainty and uniformity to CLECs on a nationwide basis.

2.

THE COMMISSION SHOULD FIND THAT THE RESALE OBLIGATIONS OF § 251(c)(4) APPLY FULLY TO <u>ALL</u> ILEC SERVICES PROVIDED TO END USERS

The Commission must ensure that the resale requirements of §§ 251(c)(4) and 252(d)(3) of the Act are fully implemented.

- The Commission already has found that the resale provisions of the Act fully apply to advanced services. (§ 706 Order, ¶¶ 60-61.) Currently, however, the Commission's rules exempt ILEC access charges from the resale requirement (based on a former finding that the vast majority of access customers were carriers, and that services provided to carriers, as opposed to end users, are not subject to resale).
  The Commission tentatively has concluded that this exemption must be eliminated because end-users are increasingly purchasers of ILEC access services. (NPRM at ¶¶ 188-89.) The record shows overwhelming support for such action. The Commission should:

  - Expressly eliminate the access service exemption from the Act's resale and resale pricing obligations – *clarifying that this applies to both interstate and intrastate access services.*

  - Expressly find that the ILEC resale obligations apply to *all* ILEC end user services, including: *ADSL-based services, Frame Relay and High Capacity Special Access.*

3.
THE COMMISSION SHOULD ELIMINATE RESTRICTIONS ON CROSS-CONNECTS BETWEEN COLLOCATED CLECs

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects.

- Recent ILEC Attempts to Place Technical Restrictions or Impose Unnecessary Costs:
  - Prohibit Fiber Cross-Connects
  - Require Unnecessary Cabling that Exhausts Available Conduit
  - Require that ILEC Performs All Work
  - Require Connection to ILEC Pot Bay or Other Equipment
  - Require CLEC Placement of Unnecessary Equipment in Collocation Areas
  - Offer ILEC Service (DS1, DS3, OC3, OC48) Instead of Connecting Cable, Which Forces Collocator to Install Unnecessary Electronics (i.e. optical multiplexers when only cross-connect panel is needed)

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

- Any Limitation on the Capacity of Fiber a CLEC can Bring into its Collocated Space Unreasonably restricts Service & Inflates Costs
  - MFN Is Uniquely Focused On Fiber Cross-Connects -- It Provides Fiber Connectivity with Virtually Unlimited Bandwidth to Carrier and CLEC Customers
    - Employs Multiple Fiber Backbone Cable (Each Carrying 100 Fiber Pairs or More), with Virtually Unlimited Capacity
    - ILEC Policies Requiring Cross Connects at Any Predetermined Capacity (DS3, OC3, OC48) Artificially Restricts MFN's Ability to Deliver Higher Capacities and Would Force MFN to Bring Multiple Cables Into the ILEC Office
    - This Would Impose Unnecessary Costs, and Use Up Scarce Space In the ILEC's Riser Conduit
  - Restricting Cross-Connect Capability Would Require Multiple Cables and Pulls into the Same Central Office

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

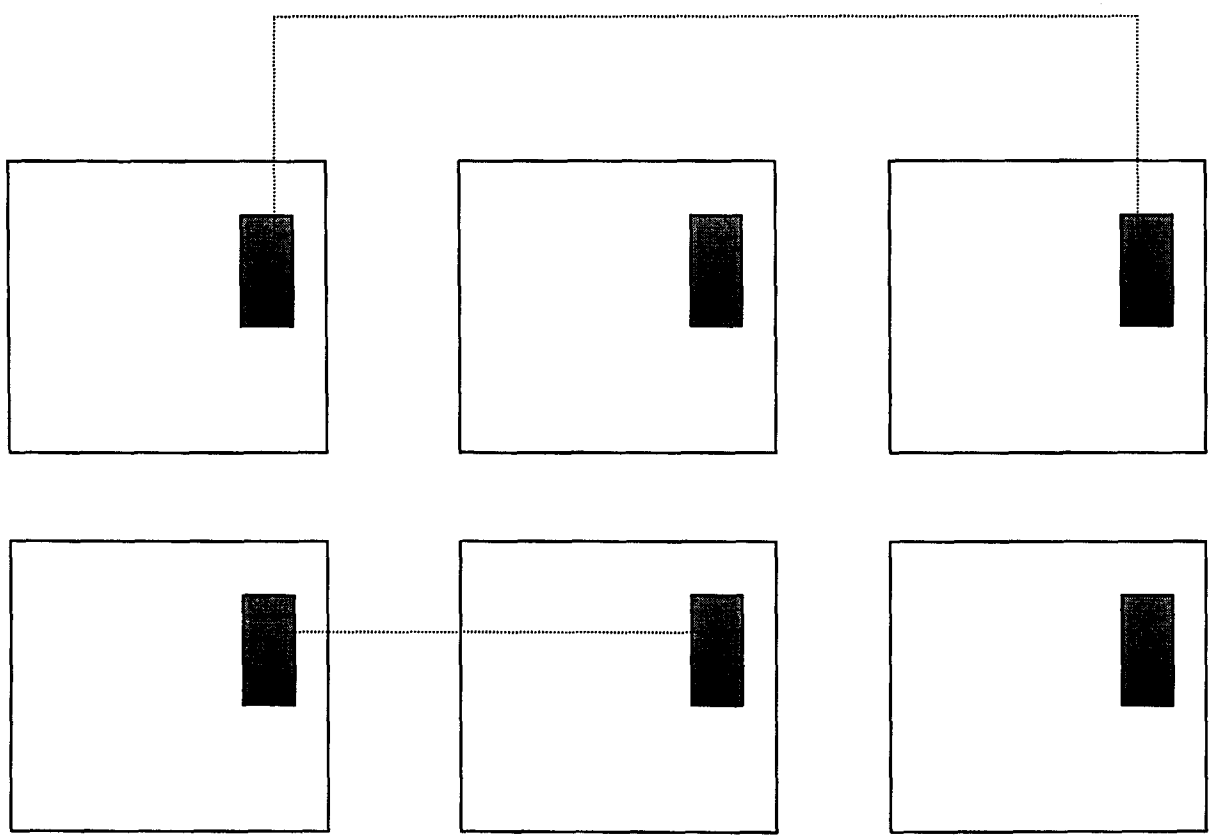
- Currently, Some ILECs Are Refusing Cross-Connections to Virtual Collocation Arrangements
  - Will Allow Cross-Connects Between Physical Arrangements In Same Room
  - Will Not Allow Connections Between Non-Contiguous Physical Arrangements
    - Can't Cross-Connect to CLECs On Different Floors In Same Office, or Different Collocation Rooms On the Same Floor
  - Will Not Allow Connections Between Physical and Virtual Collocation Arrangements
    - As Physical Collocation Space Becomes Exhausted, this Restriction Will Increasingly Prevent CLECs From Cross-Connecting

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

- The Commission Must Eliminate Unreasonable Restrictions/Costs:
  - Allow Direct Connections -- No routing via ILEC Pot Bays or NCTE
  - Require "Dark" Copper and "Dark" Fiber Connections -- Not ILEC Services
    - Eliminate ILEC Requirements to Cross-Connect at Predetermined Capacity (i.e., No Mandatory DS1, DS3, OC3, OC48 Cross-Connects)
    - Do Not Allow ILECs to Require Installation of Optical Line Terminating Multiplexers or Other Optical/Electrical Conversion Equipment If a Simple Optical Cross-Connect Panel Will Suffice
  - Allow CLECs to do Own Work Where Possible
  - No Dedicated Racks
  - No Multiple Cable Pulls

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

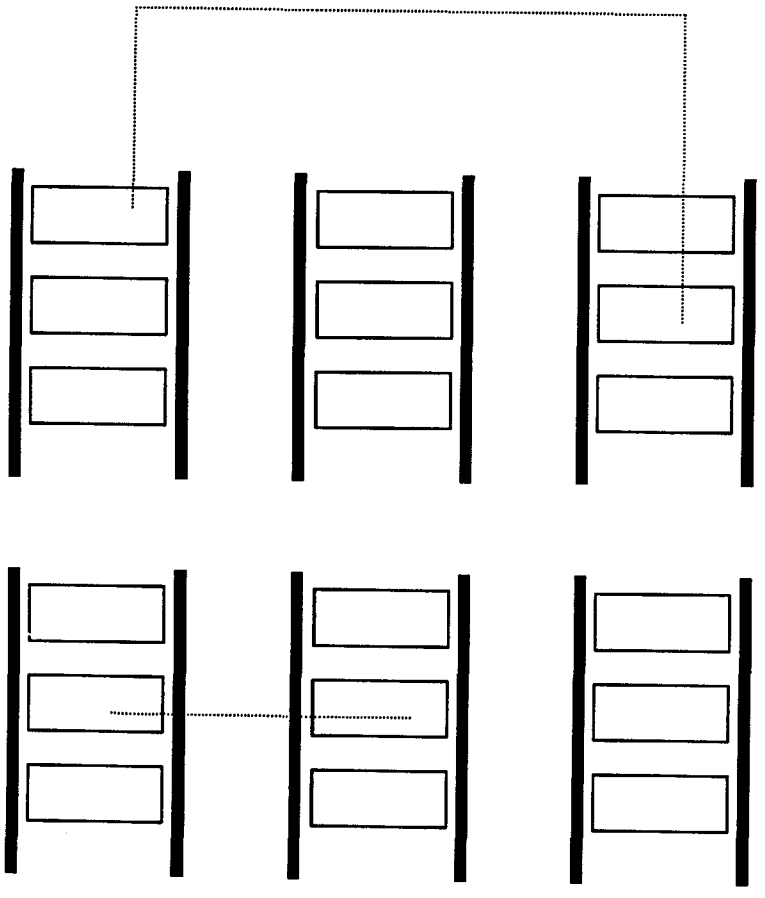
- TRADITIONAL COMMON AREA CAGED COLLOCATION



- CLECs Should Be Able To Perform Own Work In Common Areas
- No Charges For Dedicated Cable Racking
- "Jumper Cable" Cross Connect As Per NEBS
- "Dark Fiber" And Copper Connects

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

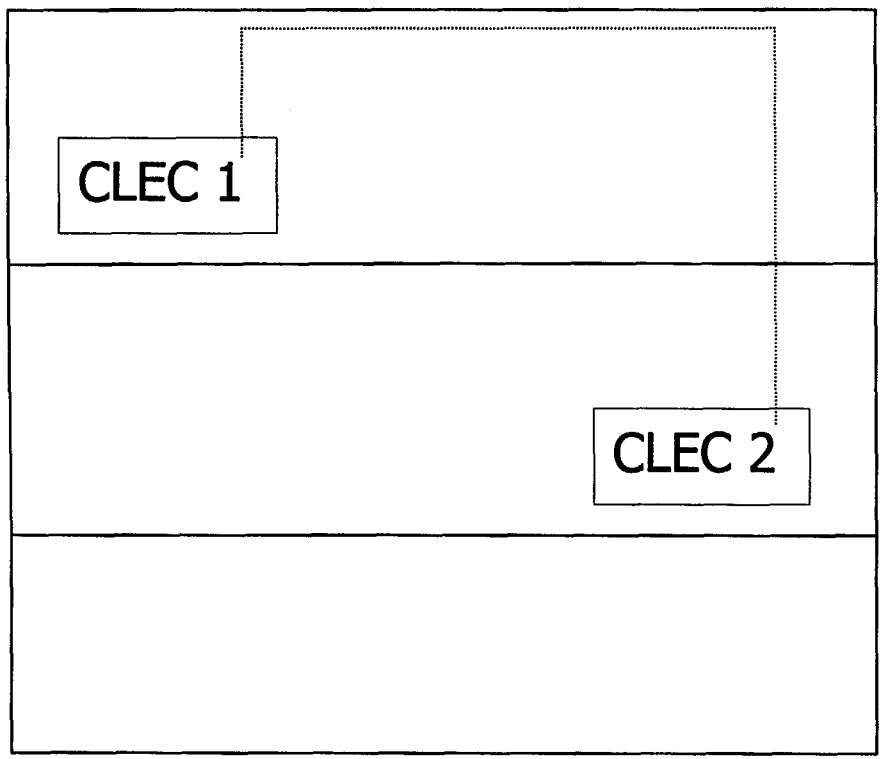
- COMMON AREA CAGELESS COLLOCATION



- In Common Area, CLECs Should Be Able To Perform Cross-Connection Work Themselves
- Direct Fiber and Copper "Jumper Cable" Per NEBS
- No Racking Required For Contiguous Equipment
- No Dedicated Cable Racking
- "Dark Fiber" And Copper Cross-Connects

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

- CROSS-CONNECTING NON-CONTIGUOUS AND NON-COMMON AREA EQUIPMENT



- Work May Be Performed By Approved Contractor
- ILECs May Not Charge For Dedicated Cable Racking
- Arrangements For "Dark Fiber" And Copper Without Electronics
- CLEC May Provide Own Cable, Just As With Entrance Facility

4.
THE COMMISSION SHOULD ELIMINATE RESTRICTIONS ON COLLOCATED EQUIPMENT

The Commission should eliminate restrictions on collocated equipment

- Ameritech Has Refused To Allow Collocation Of RSMs
  - Even When Offered Proof That Switching Was Disabled, And RSM Was Used Only For Routing, Muxing
  - Arbitration Pending In Illinois
  - Initial Staff Recommendation In Favor Of Prohibition Of RSM
- FCC Must Eliminate Restriction On Switching Equipment