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Before the  
Federal Communications Commission JUN 10 1999  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )  
)  
Interconnection between Local Exchange )  
Carriers and Commercial Mobile Radio )  
Service Providers )

CC Docket No. 96-98

**REPLY OF OPTEL, INC.**

OpTel, Inc. ("OpTel"), submits this reply to the comments filed in response to the above-referenced Second Further Notice of Proposed Rulemaking ("NPRM").

**DISCUSSION**

**I. The Commission Should Identify Loop And Subloop Elements As UNEs.**

Although the comments filed in this proceeding touch on numerous issues, new entrants into the telecommunications markets and facilities-based competitive local exchange carriers ("CLECs") generally agree on one point — the Commission should, in order to faithfully implement the terms of the Telecommunications Act of 1996, identify loop and subloop network elements as nationwide UNEs.

Those incumbents that disagree do so for either of two reasons: They argue that subloop unbundling would raise network reliability concerns and/or they assert that subloop unbundling is not "necessary" and, therefore, that it is unwarranted on legal grounds.<sup>1</sup> One ILEC goes so far as to claim that "as long as CLECs have access to the loop — defined as a dedicated single, copper transmission facility between the LEC central office frame and the end-user customer premise — they have all they need to compete."<sup>2</sup> Neither of these objections can be sustained.

<sup>1</sup> See, e.g., Comments of SBC Communications Inc. at 31-32; Comments of GTE Service Corporation at 87-88.

<sup>2</sup> Comments of SBC at 32; see also Comments of GTE at 88 ("mandatory sub-loop unbundling is unnecessary because CLECs can take the whole loop and will not be impeded from providing competitive services").

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First, as OpTel noted in its initial comments, the “network reliability” boogiemanager has been revealed to be a myth. Indeed, various forms of subloop unbundling already have been ordered in a number of states without degrading the quality or reliability of network services.<sup>3</sup> Subloop elements, for the most part, constitute passive physical facilities which can be interchanged and interconnected without substantial risk to the integrity of the network. Where there are legitimate technical barriers to interconnection or access at a certain point, ILECs remain free to raise that objection. Technical barriers to subloop unbundling should not, however, be presumed.

Second, the claim that subloop unbundling is unnecessary because unbundled loops are available is inconsistent with the terms and purposes of the 1996 Act. As virtually every commenting party recognized, the Commission’s responsibility under the Act is to encourage CLECs to build-out networks based on as many of their own facilities as possible. Allowing CLECs to purchase from ILECs only those subloop facilities that the CLECs cannot themselves economically duplicate will promote competition and encourage efficient network deployment.<sup>4</sup> Conversely, requiring CLECs to purchase loops when they need only a subloop element is “wasteful and needlessly expensive, [and would] discourag[e] facilities-based entry strategies.”<sup>5</sup>

## II. Intra-MDU Wiring Should Be Made Available As A UNE.

Several CLECs commented on the importance of access to MDU on-property wiring for new entrants seeking to provide service. Indeed, lack of access to the on-property network at MDUs was identified as “one of the key roadblocks”<sup>6</sup> to competitive entry into the MDU market which, as WinStar points out, is perhaps

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<sup>3</sup> See, e.g., Comments of the Public Utility Commission of Texas at 15; Comments of the Public Utilities Commission of Ohio at 18; Comments of Teligent, Inc. at 11-12 & nn.19, 20, 21.

<sup>4</sup> First Interconnection Order, 11 FCC Rcd 15499, 15687, 15695 (1996); see also Comments of the Public Utility Commission of Texas at 15 (sub-loop unbundling would be consistent with the 1996 Act as providing access to only those network elements that CLECs would need in order not to be “impaired” in providing the desired services. It would also promote the Act’s goals of encouraging the development and use of the ILEC’s own facilities, and the facilitation of technological advancements in the types of services provided).

<sup>5</sup> Comments of Teligent, Inc. at 7-8; see also Comments of the Public Utilities Commission of Ohio at 20. (“it is uneconomical to require the CLEC to purchase the entire loop” when it needs only part of the loop).

<sup>6</sup> Comments of RCN Telecom Services, Inc. at 21.

the most important market segment for new entrants seeking to gain a competitive foothold.<sup>7</sup>

Put simply, “in most customer installations, especially in multi-unit dwellings, CLECs will not be able to provide service if they must essentially rewire the [property] in whole or in part in order to provide service. Nor would this make any sense if existing wiring is suitable for the provision of services.”<sup>8</sup> To break down this barrier, several facilities-based CLECs have urged the Commission to “designate premises and building entrance facilities such as junction and utility boxes, house and riser cable, and horizontal distribution plant as UNEs.”<sup>9</sup>

Further, once the on-property network is defined as a UNE, it must be made accessible to multiple service providers. Thus, ILECs and CLECs alike should be required to configure MDU on-property networks that they own or control such that they terminate to a single point of interconnection (“SPOI”) at or near the MDU property line.<sup>10</sup> The SPOI should be constructed with a neutral cross connect box permitting pin and jack coordination that would enable multiple carriers to serve customers at the property.

The unbundling of on-property network, along with the mandatory establishment of SPOIs, would break down the MDU access barrier. As Teligent noted, MDU owners “understandably prefer to avoid” substantial rewiring of their properties.<sup>11</sup> If CLECs were able to interconnect with the on-property network at a junction box at or near the MDU property line, they would have no need to retrench and rewire the property itself, and they would have far more options when deciding where to site their facilities. As a result, the resistance of some MDU owners to multiple LEC access would be reduced and, in many cases, because facilities might be

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<sup>7</sup> Comments of WinStar Communications, Inc. at 2 (one-third of the residential units in the U.S. are in MDUs).

<sup>8</sup> Comments of KMC Telecom Inc. at 22; Joint Comments of Choice One Communications, Network Plus, Inc., GST Telecom Inc., CTSI, Inc., and Hyperion Telecommunications, Inc. at 24.

<sup>9</sup> E.g. KMC comments at 22; see also Comments of Teligent at 4. This suggestion also has been raised by the Wireless Telecommunications Bureau as a means of lowering entry barriers for carriers that use wireless technologies to reach MDU properties. See Communications Daily (June 8, 1999) at 1.

<sup>10</sup> See, e.g., Comments of Teligent at 2-3.

<sup>11</sup> Comments of Teligent at 7.

located entirely off-property, MDU owners may not have the ability to limit competitive service.

In short, the single fastest way for the Commission to promote facilities-based residential telephone competition would be to identify MDU on-property network as a UNE under Section 251, and to require that access to that UNE be made available through the establishment of an SPOI at each property where competitive access is sought.

#### CONCLUSION

For the reasons set forth herein and in OpTel's initial comments, the Commission should identify subloop elements as UNEs under Section 251 and require the reconfiguration and unbundling of MDU on-property distribution networks.

Respectfully submitted,

OPTEL, INC.



/s/ W. Kenneth Ferree

W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT  
1229 Nineteenth Street, NW  
Washington, DC 20036  
(202) 429-4900

Its Attorneys

#### Counsel

Michael E. Katzenstein  
Vice-President and General Counsel  
OpTel, Inc.  
1111 W. Mockingbird Lane  
Dallas, TX 75247

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments of OpTel, Inc. was sent by first-class mail, postage prepaid, this 10th day of June, 1999, to each of the following:

Patrick J. Donovan  
James N. Moskowitz  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Dana Frix  
Patrick J. Donovan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Joseph A. Kahl  
Director of Regulatory Affairs  
RCN Telecom Services, Inc.  
105 Carnegie Center  
Princeton, NJ 08540

Andrew D. Lipman  
James N. Moskowitz  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Eric J. Branfman  
Michael R. Romano  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Chairman Pat Wood, III  
Commissioner Judy Walsh  
Commissioner Brett A. Perlman  
Public Utility Commission of Texas  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, TX 78711-3326

Robert M. Lynch  
Roger K. Toppins  
Michael J. Zpevak  
Kathleen E. Palter  
SBC Communications, Inc.  
One Bell Plaza, Room 3703  
Dallas, TX 75202

Michael K. Kellogg  
Rachel E. Selinfreund  
Kellogg, Huber, Hansen, Todd & Evans, PLLC  
1301 K Street, N.W.  
Suite 1000 West  
Washington, D.C. 20005

William P. Barr  
M. Edward Whelan  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

Ward W. Wueste, Jr.  
Thomas R. Parker  
GTE Service Corporation  
1255 Corporate Drive  
Irving, TX 75038

Steven G. Bradbury  
Paul T. Cappuccio  
John P. Frantz  
Kirkland & Ellis  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005

Jeffrey S. Linder  
Suzanne Yelen  
Wiley Rein & Fielding  
1717 K Street, N.W.  
Washington, D.C. 20006

Steven T. Nourse  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 7th Floor  
Columbus, OH 43215

Robert Berger  
Russell Merbeth  
Barry Ohlson  
WinStar Communications, Inc.  
1146 19th Street, N.W.  
Suite 200  
Washington, D.C. 20036

Russell M. Blau  
William L. Fishman  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Laurence E. Harris  
David S. Turetsky  
Terri B. Natroli  
Carolyn K. Stup  
Teligent, Inc.  
8065 Leesburg Pike  
Suite 400  
Vienna, VA 22182

Philip L. Verveer  
Gunnar D. Halley  
Willkie Farr & Gallagher  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20036

/s/ Susan Jamieson  
Susan Jamieson

