

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

In the Matter of

**Implementation of the Local Competition
Provisions of the Telecommunications Act
Of 1996**

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CC Docket No. 96-98

AFFIDAVIT OF KEVIN LYNCH

ON BEHALF OF

AT&T CORP.

EXHIBIT C

1. My name is Kevin Lynch. I am employed by AT&T Corp. ("AT&T") as Division Manager Local Network Planning. My business address is 429 Ridge Road, Dayton, New Jersey.

2. My current responsibilities include the planning of all of AT&T's local access initiatives in buildings across the country.

3. In this affidavit, I will describe the obstacles that AT&T faces in trying to obtain access to individual buildings in order to install AT&T loop facilities. I understand that the incumbent LECs have argued that the mere fact that some CLECs have deployed fiber facilities in various cities and have been able to build and deploy their own high-capacity loop facilities in

order to serve a limited number of high-volume business customers (and in some cases, multiple dwelling units (“MDUs”)) means that no CLEC needs access to unbundled loops at the DS1 level and above in most urban settings. Nothing could be further from the truth. Without access to unbundled loops at the DS1 level and above, CLECs, including AT&T, would not be able to compete for most of these customers, because of the difficulty in obtaining access to individual buildings.

4. Under the Federal Telecommunications Act, CLECs do not have a legal right to obtain leased space within buildings for the deployment of loop facilities. Moreover, under state and local law, incumbent LECs almost always have the *legal right* to enter a building to provide telephone service to its occupants. In sharp contrast, CLECs almost never have such a right. As a result, *even if AT&T has a fiber strand that passes directly outside a particular building*, it faces a very difficult and time-consuming process to obtain access to individual buildings so that AT&T could connect a customer to the fiber strand. Because of this, in most cases AT&T needs unbundled loops to serve customers – at a very minimum during a significant transition period – until we can secure the necessary access and install our own facilities.

5. The obstacles to obtaining building access are numerous. First, in some instances, landlords simply refuse to permit CLECs to enter the building at all. This is true even in areas such as Texas, which have granted CLECs a legal right of entry. But even in Texas AT&T has experienced numerous situations where landlords still assert a right to refuse us building entry – even when we have customers that want to use AT&T local service. In those circumstances, we have no choice but to rely on the incumbent LECs’ facilities to serve customers in those buildings.

6. Second, even where a landlord allows AT&T to place facilities in its building, we must routinely engage in arduous negotiations to obtain the necessary right of entry and to lease the necessary space. Because, as noted above, CLECs typically have no legal right of entry, landlords hold enormous leverage over CLECs, and they often use that leverage to impose burdensome restrictions and substantial fees on our use of their space. For example, landlords frequently impose fees of \$500 to \$1,000 per month to lease common space that amounts to little more than a closet. In addition, many landlords require payment of a separate fee of similar amount for the use of riser space. Because of such fees and other restrictions, which incumbent LECs do not face, there are some buildings – even buildings adjacent to AT&T fiber – that AT&T is simply not able to serve with its own facilities.

7. Although our negotiations with landlords can take as few as two months, they typically take four to six months (or even longer). As a CLEC, AT&T is seeking to lease only a very small space, and therefore from the landlord's perspective, we are usually the owner's lowest priority for negotiating an agreement. As a result, it is quite common for landlords to allow the timetable for negotiations to slip, which in turn threatens our ability to meet our customer-committed due dates using our own loop facilities. Negotiations can become even more complicated and time-consuming if the building owner has contracted with a third party to maintain its common and riser spaces for telecommunications facilities, which we find is increasingly common. When that is the case, we must first negotiate with the landlord for building access then negotiate with the third party managing the common space and riser.

8. Because these negotiations typically take a long time and are very expensive, CLECs *must* have the alternative ability to obtain unbundled loops at the DS1 level and above in order to serve customers at competitive rates. We often find that, while we are negotiating the

terms on which AT&T can enter a building, the incumbent LEC will approach the building's occupants and offer an upgraded, competing service which, unlike AT&T's, it can offer immediately and possibly pursuant to a multi-year contract. Unless we can immediately match that offer by providing service via the incumbent LEC's facilities, the incumbent LEC often wins that business.

9. Except in the rare cases where AT&T already has its facilities installed in the building, we almost always have to provide service initially using the incumbent LEC's facilities. In my experience, we serve roughly 80 percent of our high-volume customers initially using incumbent LEC facilities. We then transfer those customers to AT&T loop facilities at a later date, assuming we have obtained access to the building and have won enough business there to justify a full loop facilities build-out, including fees payable to the landlord. But without the ability to serve customers in those buildings using incumbent LEC facilities while negotiations are continuing with the landlord, we would have lost a substantial percentage of those customers.

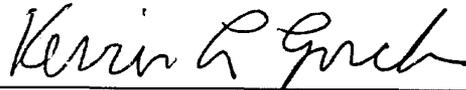
10. As a result of these obstacles, AT&T does not have its own loop facilities in a large number of buildings. For example, I understand GTE has claimed in this proceeding that CLECs have fiber strands within 1000 feet of 97% of the business customers in Dallas/Fort Worth, 27% in Tampa, and 25% in Los Angeles. The obstacles to obtaining access in buildings are so difficult, however, that AT&T in fact has deployed its own loop facilities in only 123 buildings in Los Angeles. Moreover, AT&T has facilities in the common space (where we could serve any customer in the building) of only about 26 of those 123 buildings; in the remainder, we have only "fiber to the floor" and can serve only the customers on those floors, not the whole building. The numbers are very similar in Dallas: we have loop facilities in about 170 buildings,

many of which are merely “fiber to the floor.” And in Tampa, AT&T does not have its own loop facilities in *any* building.

11. CLECs’ ability to serve high-volume customers through unbundled loops at the DS1 level and above is also hampered by the fact that some incumbent LECs fail to provide all necessary terminating equipment for unbundled loops and thereby make them unavailable as a practical matter. For example, incumbent LECs usually do not provide, as part of the unbundled loop, access to their facilities and equipment (such as channel banks and smart jacks) cross-connecting the loop facility to the privately owned wire inside the building. Without access to such facilities, equipment and the space in which it is placed, we have to acquire and place all such facilities in the building – which places us back in the same bind with respect to building access that we face with a full facilities build-out. Therefore, as a practical matter, AT&T has often been forced to utilize much more expensive incumbent LEC access facilities at the DS1 level (and above) purchased through the incumbent’s interstate access tariffs (rather than as a UNE-Loop), so we can obtain use of the incumbent’s facilities and equipment at the customer premises.

**Affidavit of
Kevin Lynch**

I declare under penalty of perjury that the foregoing is true and correct. Executed on 8th
of June, 1999.

A handwritten signature in cursive script, appearing to read "Kevin A. Lynch", written over a horizontal line.

Kevin Lynch

CERTIFICATE OF SERVICE

I, Scott M. Bohannon, do hereby certify that on this 10th day of June, 1999, I caused a copy of the foregoing Comments of AT&T Corp. to be served upon each of the parties listed on the attached Service List by U.S. First Class mail, postage prepaid.


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