Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-98**

AFFIDAVIT OF
WILLIAM S. BEANS, JR.,
MEREDITH R. HARRIS,
AND M. JOSEPH STITH
ON BEHALF OF
AT&T CORP.

AT&T EXHIBIT A

Filed May 26, 1999

Pursuant to 28 U.S.C. § 1746, Meredith R. Harris, William S. Beans, Jr., and M. Joseph Stith hereby depose and state as follows:

1. My name is William S. Beans, Jr.. My business address is 429 Ridge Road, Dayton, New Jersey 08810. I presently serve as Vice President Wireline Operations for AT&T Local Services. In my current position, I am responsible for all day-to-day network operations and engineering duties for AT&T's Local business, including the following functional responsibilities: National Field Operations, Engineering, Network Planning, Data Operations, National Payphones, 38GHZ Operations, Network Infrastructure Deployment, and the Network Control Center. These responsibilities support $1.9 billion in revenues, $600 million in expense, $2 billion in capital, and over 3000 employees nationwide. Additionally, I serve on the Executive Quality Council for AT&T, and the AT&T Network Services Executive Management Committee. I am a 1988 graduate of the University of Nebraska, with a BS in Construction Management, and have spent my career in the telecommunications industry working for such companies as Peter Kiewit, Inc., MFS, and TCG.

2. My name is Meredith R. Harris. My business address is 333 East 79th Street, Suite 55, New York, New York 10021. I was Vice President and Assistant General Counsel at TCG from October 1991 until it merged with AT&T in July 1998. I presently serve as Senior Right-of-Way Counsel, AT&T Local Network Services. During the last seven years, I have engaged in or supervised right-of-way negotiations with over one thousand local municipalities and other parties, and I am intimately familiar with the costs and delays that these negotiations impose on competitive local exchange carriers ("LECs"). I have discussed these costs and delays at a 1996 FCC forum on right-of-way management, and at various professional conferences, including conferences hosted by ALTS, Strategic Research Institute, United States Telephone Association,

and the Florida Telecommunications Association. I also have prepared a training manual and a white paper on this subject, and have published an article on this topic entitled "Roadblocks to Competition," which appears in the January 1997 edition of X-Change Magazine.

3. My name is M. Joseph Stith. My business address is 900 Route 202/206 North, Room 4A101K, Bedminster, New Jersey 07921. I presently serve as Manager, Corporate Access Provider Rates in Access Landscape Management. My responsibilities include managing a team of twelve analysts in their work evaluating access rates charged by regional suppliers. In this capacity, I am familiar with the availability of third-party dedicated transport, and the rates charged for this service. I also am familiar with the special access tariff rates charged by incumbent LECs, and how those rates compare to the rates for unbundled dedicated transport. I have a Ph.D. in Mathematical Statistics from the University of Missouri, have worked for AT&T for over sixteen years, and have served as statistical analyst for the National Science Foundation/Bureau of the Census.

4. We have been asked to describe the costs and delays that competitive LECs would encounter in the event that incumbent LECs are not required to provide unbundled access to their dedicated transport facilities. In this affidavit, we show that if incumbent LECs are not required to provide unbundled access to this network element, competitive LECs will be forced to either self-provide dedicated transport or to utilize third-party vendors. As we explain, these alternatives entail excessive costs, delays, feasibility problems, and limitations on the competitive LECs' addressable customer base, most of which, on a going forward basis, are borne solely by competitive LECs -- a disparity that provides the incumbent LECs with a significant competitive advantage, and one that could prove insurmountable in the early stages of local entry. Thus, these "alternatives" are not sufficient for competitive LECs, and unbundled dedicated transport must be

made available if the competitive marketplace envisioned by Congress and the Commission is to develop. We also show that the rates imposed by special access tariffs would limit severely the ability of competitive LECs to deploy their own switches or OS/DA platforms at certain customer volumes that would otherwise support the use of such facilities.

A. Competitive LEC Self-Provisioning.

5. Deploying new dedicated transport involves four critical steps. First, a competitive LEC generally must negotiate a right-of-way agreement with the local municipality in which the competitive LEC seeks to provide service. As described below, many municipalities have attempted to impose exorbitant fees and other onerous conditions on competitive LECs seeking such agreements. As a result, competitive LECs have incurred significant costs and delays in negotiating and litigating these agreements. In addition, competitive LECs frequently have been required to accept these burdensome conditions in order to avoid losing customers that are not willing to tolerate the excessive delays generated by the negotiation and litigation process, or have been forced to not provide service at all. Second, a competitive LEC will experience delays and costs in negotiating agreements with other parties, such as incumbent LECs or utilities, that have existing right-of-way capacity on the competitive LEC's desired route, or in developing new right-of-way capacity. Third, competitive LECs must incur additional costs and delays in acquiring the necessary collocation space and preparing that space to support interoffice transmission facilities. Fourth, competitive LECs must purchase or obtain access to transmission equipment (*e.g.*, multiplexers, concentrators, light terminating equipment), and then deploy, activate, and test the equipment on an end-to-end basis. These activities add yet another layer of delay and cost.

6. The costs and delays associated with this process are significant. We estimate that, as a result of these delays, it takes a minimum of nine months, and an average of ten to twelve months, for a competitive LEC to "enter" a particular market and provide service to customers served by a particular central office.[1] In some cases, the process has taken several years to complete. Even after the competitive LEC has entered the market, it takes an average of six to seven months to provide service to pools of customers served by additional central offices, even if the competitive LEC already has municipal authority to provide service in the targeted area.[2] These time intervals are several times longer than those typically required to provide service through the use of unbundled dedicated transport, and several times longer than those faced by the incumbent LEC. In addition, as is described in greater detail below, the costs associated with the self-provision of dedicated transport are extraordinarily high.

7. Going forward, most of these costs and delays are borne solely by competitive LECs. This disparity provides the incumbent LECs with a significant and continuing competitive advantage, and one that could prove dispositive in the early stages of local entry.[3] Indeed, even

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[1] These figures assume that competitive LECs are moving forward as quickly as possible by, for example, acquiring equipment and preparing collocation space while negotiating right-of-way agreements with local municipalities. Even when such parallel development is assumed, the typical negotiation process takes approximately four to six months to complete, and the typical process of acquiring and preparing collocation space and acquiring, deploying, and activating the dedicated transport facility and equipment takes an additional six to seven months to complete.

[2] Even if a competitive LEC can avoid the delays associated with obtaining and preparing incumbent LEC collocation space (*e.g.*, by connecting a large business customer directly to the competitive LEC's switch), it still takes the competitive LEC an average of seven months to provide service to that customer if the competitive LEC has not entered the market, and three to six months to provide service if the competitive LEC has entered the market and has municipal authority to provide service in the targeted area.

[3] Because incumbent LECs have already deployed an extensive interoffice facility network, they generally do not need to seek additional rights-of-way. Even when fiber has been deployed, adding substantial capacity may be achieved through a simple change out of electronics in the central

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when dedicated transport would otherwise be the most efficient means of transmission, these cost disadvantages may preclude the prospect of there being sufficient customer demand to generate the cash flows that would justify the competitive LEC's investment. The self-provision of dedicated transport also may be impossible in some circumstances due to capacity limits on rights-of-way or collocation space.

1. Right-Of-Way Agreements

8. Local municipalities increasingly are adopting ordinances that require competitive LECs to obtain right-of-way agreements before they can offer local service. This trend has resulted from the increasing belief among local municipalities that they have monopoly control over the right to require and enter into such agreements, and that they can use their "police power" to extract revenues from telecommunications providers and other entities that use the public rights-of-way. Indeed, many municipalities have hired "Municipal Leagues" or consultants to teach them precisely how to use this monopoly power to generate local revenues. These consultants often pursue their own interests in generating consulting and legal revenues by convincing municipalities and departments of transportation that there is substantial revenue to be obtained from competitive LECs, even if such aspirations violate state and federal law.

9. Because these local ordinances purport to give the municipalities the exclusive right to authorize local entry, competitive LECs must enter such agreements if they wish to self-provide dedicated transport in the municipality. In our experience, many municipalities have abused this monopoly power by requiring competitive LECs to agree to onerous terms and conditions as a

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office. For the competitive LECs, however, the initial investment in self-provisioned interoffice
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prerequisite to providing local service through self-provided network elements. In so doing, the municipalities have presented competitive LECs with three undesirable alternatives: agree to the municipality's terms, be denied authorization to provide local service through self-provided elements, or engage in protracted negotiation and litigation to obtain reasonable terms. While the Telecommunications Act of 1996 in theory should prevent municipalities from engaging in these practices, it has yet to have that effect.[4]

10. In the long term, competitive LECs cannot acquiesce to onerous terms and conditions that preclude local entry or that place them at a competitive disadvantage relative to incumbent LECs.[5] Hence, in response to the municipalities' tactics, competitive LECs often must engage in lengthy negotiations and litigation in order to secure reasonable and nondiscriminatory terms and conditions. For example, when TCG has sought right-of-way agreements, the typical negotiation process has taken approximately four to six months to complete. In some instances, however, negotiations have dragged on for years.

11. **Dearborn, Michigan**. TCG Detroit's experience with the city of Dearborn, Michigan -- a case in which we have been personally involved -- provides a good example of the types of problems that competitive LECs can face in their efforts to obtain authority to provide

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transport generally will represent a large fixed cost with substantially under-utilized capacity.

[4] In addition, in some instances the incumbent LECs have acted as the "franchise police" by demanding that a competitive LEC obtain a right-of-way agreement with a municipality before the competitive LEC is allowed to utilize the incumbent LEC's right-of-way capacity.

[5] When competitive LECs are forced to accept onerous terms in order to provide service to a customer that otherwise would be lost (usually to the incumbent LEC), competitive LECs attempt to include agreement provisions that allow them to retain their right to challenge the terms and conditions at a later date.

service in local municipalities, and how those problems impose significant costs and delays on competitive LECs.

12. On April 27, 1995, the Michigan Public Service Commission ("MPSC") granted TCG Detroit a license to provide basic local exchange telephone service in the Southfield, Birmingham, and Detroit district exchanges, which includes the entire city limits of Dearborn. On August 16, 1994, however, Dearborn adopted its Telecommunications Regulatory Ordinance 94-60594-605 which, as amended, provides in Section 1.3: "It shall be unlawful for any Person to own or operate a Telecommunications System within the City unless authorized by a valid grant of franchise." Section 1.10 of the Ordinance provides that a franchise fee shall be required as part of any franchise agreement, and Section 3.1 provides that Dearborn may suspend or revoke "any Franchise . . . for violation of any of the material provisions of this Ordinance."

13. On June 29, 1995, Dearborn tendered a draft franchise agreement to TCG Detroit. The draft agreement would have required TCG Detroit to pay Dearborn an annual franchise fee of 4% of TCG Detroit's gross revenues, a one-time $50,000 cash payment, and up to $2,500 of the costs incurred by Dearborn in connection with granting the franchise. It also would have required TCG Detroit to install, at no charge, an inner-conduit for the benefit of the City, should TCG Detroit at any time install its own conduit within Dearborn. It also contained numerous other requirements and regulatory oversight conditions including, but not limited to, transfer limitations which would prohibit TCG Detroit from selling or transferring its telecommunications business without Dearborn's approval; the annual filing of TCG Detroit financial statements with Dearborn; Dearborn audit privileges with regard to TCG Detroit's books and records; provision of services to the City at the lowest rate that TCG Detroit charges any of its commercial customers for

comparable services; accounting certifications regarding franchise fee payments; indemnity and limitation of liability provisions to benefit Dearborn; and various insurance requirements.

14. For obvious reasons, the June 29, 1995 draft franchise agreement was not acceptable to TCG Detroit, and TCG Detroit so informed to the City on September 20, 1995. Among TCG Detroit's concerns was whether Dearborn would be willing to include in any franchise agreement language whereby future changes in state and federal law would be reflected, because both the United States Congress and the Michigan legislature were considering bills dealing with telecommunications and local municipal authority. These legislative efforts eventually resulted in the passage of the Federal Telecommunications Act of 1996, effective February 8, 1996, and the 1995 amendments to the Michigan Telecommunications Act ("MTA"), effective November 30, 1995, both of which recognize limits on local governmental authority pertaining to telecommunication services and providers. The passage of these new laws was a critical event in the negotiations between TCG Detroit and Dearborn, in part because they clearly removed Dearborn's previously asserted (although disputed) authority to prevent any provider from furnishing service other than on the City's unilaterally dictated terms. Of particular importance was the MTA requirement that municipal compensation be limited only to the fixed and variable costs resulting from the granting of a permit and maintaining the rights-of-way used by the telecommunications provider.

15. TCG Detroit attempted to incorporate the relevant requirements of these new laws into its negotiations with Dearborn. Specifically, TCG sent Dearborn a letter application for a permit under the MTA. Despite the fact that the letter pointed out that state law required Dearborn to approve or deny the permit within ninety days from the date the application, the permit application was never approved or denied by Dearborn. Instead, the City sent a letter to TCG

Detroit asserting that the permit required by the MTA "takes the form of a franchise agreement."[6] Although TCG Detroit subsequently requested that Dearborn specify in writing what additional information was required for TCG Detroit to obtain a permit, and the City agreed to do so, no such information was ever provided by Dearborn. The City, instead, sent a letter to TCG Detroit stating that Dearborn planned to establish a system of rental fees, bonding, and issuance requirements for the permit, and that once the City had resolved those issues, it would then identify the information that applicants would need to submit. To date, none of these issues has been resolved by Dearborn, and there are no established procedures by which competitive LECs can apply for the statutorily required right-of-way permit.

16. On March 29, 1996, TCG Detroit sent a letter to Dearborn pointing out that Dearborn was not treating similarly situated telecommunication providers in a nondiscriminatory manner, as required by section 253 of the Telecommunications Act, because the City of Dearborn had not sought to impose a franchise agreement or franchise fees upon the incumbent LEC, Ameritech Michigan, which already was using the public rights-of-way. Dearborn never responded to TCG Detroit's March 29, 1996 letter, and effectively ended the parties' negotiations.

17. TCG Detroit refused to accept Dearborn's extortionate and discriminatory terms and conditions, and instead initiated litigation to vindicate its rights under federal and state law. Incredibly, the District Court for the Eastern District of Michigan refused to consider state law limitations on Dearborn's authority,[7] and upheld Dearborn's patently discriminatory and unlawful

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[6] The Michigan legislature specifically rejected "franchise" language proposed by municipalities when in enacted the 1995 provisions of the MTA, and instead adopted a provision requiring only a "permit" which municipalities were required to issue within 90 days of application.

[7] Pursuant to the decision of the District Court, TCG pursued its state law claims in state court. The state court rejected Dearborn's argument that the MTA's limitations are unconstitutional, and

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regime, ruling that Ameritech need not obtain any franchise agreement from the City or make any payments to it, but that TCG Detroit (and all other new entrants) must do so. *TCG Detroit* v. *City of Dearborn*, 16 F. Supp. 2d 785 (E.D. Mich. 1998). TCG Detroit has appealed the District Court's decision, and that litigation is still pending in the United States Court of Appeals for the Sixth Circuit.

18. As a result, more than four years have passed since TCG Detroit first began negotiations with Dearborn, and TCG Detroit still has not been able to secure the statutorily required permit to provide service in Dearborn. In the meantime, TCG Detroit was forced to enter into a limited, onerous, and discriminatory interim agreement with the City of Dearborn just so that it could provide service to an important customer. This interim agreement, moreover, fails to provide TCG with a sufficient basis on which it can continue to develop its local network. Indeed, as a result of the defects in this interim agreement and the uncertain outcome of the current litigation, TCG Detroit's local network development in Dearborn essentially has been placed on hold pending the outcome of the litigation, and TCG has been forced to decline to provide service to other significant customers.

19. TCG Detroit also has suffered significant economic detriment as a result of this delay, and has incurred substantial costs in attempting to secure these rights through negotiation and litigation. The costs of this self-provisioning process will only grow worse in the event that TCG Detroit is forced to abide by Dearborn's oppressive conditions -- a turn of events that likely

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held that the limitations apply to Dearborn. Dearborn has sought a re-hearing and has requested a temporary stay of its duty to comply with the MTA.

would preclude, and not simply impair, TCG Detroit's ability to provide local service to consumers in this area.

20. **Other Municipalities**. The problems encountered in Dearborn are not unique. In the course of our negotiations with local governments, the vast majority of municipalities have sought to impose burdensome conditions on competitive LECs seeking right-of-way agreements.[8] These conditions fall into five general categories: (i) excessive franchise fees and other charges, (ii) unfettered local municipality regulatory discretion, (iii) liability shifting and waivers of competitive LEC rights, (iv) discrimination against competitive LECs in favor of incumbent LECs, and (v) imposition of onerous conditions in the event that a competitive LEC ceases to provide service.

21. Franchise Fees And Other Charges. Numerous local governments have imposed "franchise" fees of up to 7% percent of gross revenues, despite the fact that state law typically requires such rates to be set at cost-based prices. Some even have impermissibly defined "gross revenues" to include revenues from sales of interstate services, and revenues generated by competitive LECs' affiliates and subsidiaries. Municipalities also have attempted to ensure the receipt of above-cost fees by requiring competitive LECs to agree to "most favored nations" provisions that require a competitive LEC to pay the city the highest fee that the competitive LEC pays to any other city, and have required excessive security deposits, bonds, and levels of insurance protection. These exorbitant charges are wholly unrelated to the municipalities' costs in administering their public rights-of-way. Other municipalities have attempted to require "in kind" payments that allow the municipalities to make use of the competitive LECs' network.

[8] Because AT&T and its affiliates are engaged in ongoing negotiations with the governments of many local municipalities, this affidavit will not identify these cities by name, and can only give a general description of the problems that have been encountered.

22. Municipal Regulatory Discretion. In addition to excessive charges, municipalities have imposed terms that give them unfettered regulatory discretion, such as provisions that permit the city to amend a right-of-way agreement or ordinance at any time, and that require competitive LECs to pay any fee imposed by the city at any time. They also have required competitive LECs to permit systems inspections at any time, and have claimed the right to install, affix, or maintain wires and equipment on competitive LEC facilities. Similarly, municipalities have required competitive LECs to provide confidential records, including financial statements, customer and building lists, network maps, five-year plans, customer agreements, and other franchise agreements -- all with no obligation on the part of the cities to keep this information confidential. By contrast, the local governments have imposed terms that severely limit the discretion of competitive LECs to provide service. For example, cities have reserved the right to regulate the types of services that competitive LECs can provide (e.g., resale restrictions and limitations on the ability to provide video and services), and the fees that the new entrants can charge their customers (*e.g.*, prohibitions on the pass-through of franchise fees to end users). Cities have ignored the fact that the right to regulate service is reserved to the state public service commissions and the FCC. They further have attempted to prohibit competitive LECs from providing services to any customer that purchases more than 10% of the competitive LEC's services, have precluded competitive LECs from leasing fiber or conduit within the municipality to others, and have prevented them from providing additional services without a separate permit.

23. Liability. Most municipalities have sought terms that reduce their liability in certain circumstances. For example, local governments have imposed conditions allowing the city to move or cut competitive LECs' fiber at the city's sole discretion, and have required the competitive LECs to pay the repair costs in the event that the city damages their property. Similarly,

municipalities have required competitive LECs to be liable for the city's own negligence for bodily injury, property damage, and all other claims, and to pay all relocation costs if the city requires the competitive LECs to relocate. Significantly, local governments also have required competitive LECs to waive their rights under federal and state law, including the right to challenge the city's authority to impose franchise or other fees, the right to use the courts as a forum for dispute resolution, and the right to be regulated in a nondiscriminatory manner. By contrast, municipalities have imposed civil and criminal liability for officers, directors, and partners of competitive LECs that violate local ordinances, right-of-way agreements, or other applicable law.

24. Express Discrimination. Some municipalities have exempted incumbent LECs from paying franchise fees or have required competitive LECs to agree to provisions that are expressly discriminatory. For example, local governments have demanded that competitive LECs stipulate that incumbent LECs are completely exempt from any franchise requirements, and that competitive LECs are required to use expensive underground facilities even though incumbent LECs are free to use less expensive, above-ground pole attachments.

25. Cessation of Service. Finally, local governments have imposed onerous conditions in the event that competitive LECs cease to provide service, including requirements that, upon abandonment, termination, or non-renewal, competitive LECs must remove their facilities or allow the city to take possession at no cost. They also have required competitive LECs that abandon their system, cease operation for six months, or assign the agreement without consent, to forfeit their already-excessive bonds in their entirety.

26. The critical effect of the municipalities' efforts to impose these onerous terms and conditions is that competitive LECs have been forced to incur significant costs and delays in

negotiating and litigating right-of-way agreements, and thus have been seriously impaired in their ability to provide local service using their own facilities in a commercially reasonable period of time.

27. The onerous terms imposed by these agreements also impair competitive LECs' ability to provide service vis a vis incumbent LECs. Indeed, incumbent LECs enjoy numerous advantages and generally receive preferential treatment as a result of their status as the entrenched local provider. In the case of Dearborn, Michigan (described above), for example, the federal district court determined that state law precluded the city from requiring the incumbent LEC, Ameritech Michigan, to enter into a right-of-way agreement. Ameritech Michigan therefore is not presently subject to the onerous provisions, including franchise fees, that govern TCG Detroit. Other incumbent LECs also have argued successfully that they are exempt from franchise agreement requirements because their right to provide service has been "grandfathered in" under state law, or because they have favorable long-term agreements in place that allegedly cannot be changed until their terms expire. Municipalities also have refused to level the playing field by allowing competitive LECs to operate under the terms of these long-term agreements prior to their expiration.

28. Even when municipalities have required incumbent LECs to enter into right-of-way agreements, incumbent LECs continue to enjoy special advantages and preferential treatment. For example, incumbent LECs have been able use their entrenched status and long-term relationships with state utility commissions to secure regulatory treatment that is more favorable than that afforded to competitive LECs. In addition, incumbent LECs' large customer base and long-term agreements with utility owners has allowed them to secure more favorable terms when seeking access to the right-of-way capacity owned by these parties. Incumbent LECs also have virtually

automatic access to the "common space" of particular buildings, whereas competitive LECs must negotiate leases to obtain such access, and may be denied access when additional capacity is not available. Even when incumbent LECs seek to traverse private property, they may have a statutory right to an automatic easement over the property – a privilege that often is denied to new entrants.

29. The most significant aspect of this differential treatment is that incumbent LECs have a tremendous and continuing advantage in attracting new customers and in retaining old ones. If a new customer calls up AT&T or another new entrant and wants to order service, the new entrant may not be able to provide that customer with service for many months (or even years) because the competitive LEC must negotiate and litigate right-of-way agreements, obtain collocation space, obtain access to buildings and common space, and perform all of the other self-provisioning steps described in this affidavit. The incumbent LEC, on the other hand, due to its entrenched position and embedded network architecture, may be able to offer service to that customer in weeks or days. There is simply no reasonable way for new entrants to compete on such a lopsided playing field.

30. Furthermore, even after competitive LECs obtain right-of-way agreements, they will incur additional delays and costs in the event that they seek to obtain existing right-of-way capacity from incumbent LECs or other parties (*e.g.*, utilities), or to develop their own capacity. Disputes between competitive LECs and these other parties will occur with increasing frequency as the demand for access to rights-of-way grows along with the development of local competition. The Commission has decided to learn about and resolve the problems that arise in the context of access to rights-of-way not involving existing poles, ducts, or conduit on a case-by-case basis -- a process that will involve significant delay in deployment of competitive LECs' own outside plant facilities and, in some instances, even the construction of wire centers whose location may depend on access

to and the cost of incumbent LEC and utility rights-of-way. In addition, while the Commission does have a complaint process to resolve disputes over access to rights-of-way, there is no deadline for completion of that process. As competitive LECs attempt to deploy more and more of their own outside plant facilities, the demands on Commission resources to resolve the inevitable disputes will increase dramatically.

31. In addition, the rates that competitive LECs must pay incumbent LECs and other parties to access their right-of-way capacity may be prohibitively expensive, even though they are theoretically limited by Section 224 of the Communications Act, 47 U.S.C. § 224, because the Commission has not issued rules governing such rates. The absence of clear rules will result in protracted negotiations between incumbent LECs and competitive LECs, and many entrants will find it necessary to resort to the Commission's dispute resolution process

32. To make matters worse, in virtually all cases of competitive LEC self-provision of dedicated transport, a "SONET ring" network architecture is used. A SONET ring is a form of "self-healing" network architecture that is extremely beneficial to consumers because it employs "diverse routing" to ensure that customers receive service even when particular segments of the ring are accidentally cut or experience other technical difficulties. Generally, this diverse routing is accomplished by constructing two physically separate fiber paths in a closed chain or "ring." To implement this network design, competitive LECs likely will have to deploy fiber in multiple rights-of-way, and may have to negotiate access to each of these rights-of-way with one or more local municipalities, and with incumbent LECs or other parties.

2. Collocation Delays And Costs.

33. Securing a right-of-way agreement is only the first step in deploying dedicated transport. A competitive LEC also must collocate equipment in the incumbent LEC's end offices. This step also can create delays as the competitive and incumbent LECs attempt to resolve issues such as space requirements, new construction, facility access, technical specifications, power supply, and costs. In our experience, incumbent LECs have falsely claimed that no qualified space is available, put in place processes that are incapable of handling the demand for collocation that has been generated by the industry, and engaged in a variety of other tactics, such as requiring the relocation of administrative space, all of which needlessly prolong the time required to obtain collocation space. As a result, establishing collocation space in a new location takes an average of six months, and has taken much longer in some circumstances.

34. The need to obtain collocation space also imposes significant costs on competitive LECs. Although recently released national collocation rules may eventually help to alleviate some of these costs, it remains to be seen whether those rules will in practice serve to make needed space readily available to competitive LECs, and those rules do not directly regulate the rates incumbent LECs may charge competitive LECs for collocation services. In some states, these incumbent LEC space preparation charges may increase the cost of entry for a single end office by $30,000 to hundreds of thousands of dollars. Even then, the space does not come ready to use, and the competitive LEC must first take further steps to prepare it. For example, the competitive LEC must install cable racks and adjust the power supplied by the incumbent LEC to levels that are appropriate for the competitive LEC's equipment.

3. Acquisition and Deployment Delays and Costs.

35. In addition to obtaining access to rights-of-way and obtaining and preparing collocation space, the competitive LEC must acquire and deploy its dedicated transport equipment. The equipment itself usually includes fiber distribution panels ("FDPs"), light (optical) terminating equipment, multiplexers (including add/drop multiplexers, such as OC3 ADMs, and/or digital cross connect systems), test access equipment, and digital loop carrier ("DLC") equipment (which provides analog-to-digital signal conversion, multiplexing, and concentration). The cost of the DLC and associated test equipment, standing alone, is about $117 per analog loop.[9] Thus, if competitive LECs are able to capture a very modest 10 million lines, the industry will have to access over $1.1 billion in capital just to purchase the necessary DLCs. Of course, all of the costs associated with acquiring and deploying the other equipment listed above must be added to this DLC figure to obtain the full costs of self-provisioned dedicated transport, and such additional costs can be twice as large as the investment in the DLC equipment.

36. Once a competitive LEC identifies a potential route, it must file an application with the appropriate party (generally the incumbent LEC) who then performs a records search to determine the availability of conduit along that route. If this search indicates that conduit is available, the existence of the conduit must be verified using a process called "rodding and roping." If conduit is indeed available, which may not always be the case, the competitive LEC must pay the cost of any necessary conduit repairs, and then inner duct, which provides protection for the fiber, usually must be pulled through the conduit. Once the inner duct is properly positioned, a "pull tape" technique is employed that allows fiber optic cable to be safely threaded through the conduit.

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[9] *See* Pfau Aff. ¶ 26.

If capacity is not available, the competitive LEC must dig its own trench and install conduit structures before using the pull tape technique to install fiber optic cable.[10]

37. Significantly, the cost of placing new conduit and fiber, which is the dominant mode of placement in densely populated areas, can easily exceed $200,000 to $300,000 per mile. Less commonly, competitive LECs may be able to bury fiber directly (*i.e.*, not place the fiber in conduit), or pull inner duct and fiber through existing conduit. These alternate placement methods, however, also entail significant costs. Direct burial typically costs competitive LECs $75,000 to $100,000 per mile, and pulling inner duct and fiber through existing conduit typically costs competitive LECs approximately $37,000 per mile.

38. In addition, once the fiber has been placed, it is properly classified as "dark fiber" because no electronics have been attached.[11] Hence, in order to provide transport functionality, competitive LECs must incur costs in attaching transmission electronics to each end of the fiber.

39. Conservatively, then, a competitive LEC providing its own transport must invest approximately $2 million in equipment and outside plant placement before the first customer is

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[10] The approximate time required to execute these steps is as follows: 1,000 feet of capacity can be "rodded and roped" per crew/per day; new conduit can be placed at the rate of 300 feet per crew/per day; inner duct can be pulled at the rate of 600 feet per crew/per day; and fiber can be pulled at the rate of 5,280 feet per crew/per day.

[11] Placing electronics on the fiber permits transmission of optical (light) signals. Once the electronics are installed, the fiber is considered "lit" rather than "dark."

served by a single office.[12] Based upon the number of lines served by such a configuration, the required investment is well in excess of $300 per line.[13]

B. Third-Party Vendors.

40. Excessive access charges have created a potential market for bypass of incumbent LEC access services in the most lucrative telecommunications markets. Such bypass requires alternative providers to deploy their own transport facilities between incumbent LEC end offices and locations desired by the providers' customers, who are typically interexchange carriers. The reality, however, is that little third-party transport capacity exists. The vast majority of AT&T's transport – approximately 82 percent - is provided by incumbent LECs. If purchases from MCI are excluded (because MCI is likely to utilize its own capacity internally on a going-forward basis) the figure jumps to approximately 94 percent.[14]

41. This limited capacity does not provide a meaningful alternative to unbundled dedicated transport. For third-party dedicated transport to serve as a meaningful substitute for unbundled dedicated transport, third parties would have to provide dedicated transport along virtually all the feasible routes between incumbent LEC end offices and tandem switches, competitive LEC points-of-presence, and customer premise switches on which competitive LECs

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[12] In this case, we assume a 200 foot collocation arrangement, housing 10 DLC, each with a maximum capacity of 672 lines. At 90 percent utilization, the arrangement would handle 6,048 loops.

[13] The per line figure is obtained by dividing the $2 million investment by the 6,048 lines served. Competitive LECs also will experience all of these costs and delays in the event that incumbent LECs are not required to provide unbundled access to their dark fiber.

[14] These figures are based on AT&T purchases of equivalent DS1 capacity from incumbent LECs compared to equivalent DS1 capacity obtained from alternative providers and incumbent LECs.

may need to rely. No existing market has anywhere near this degree of third-party dedicated transport availability.

42. In all events, reliance on third-party dedicated transport services would raise pricing concerns. Third parties are not subject to the unbundling requirements of the Telecommunications Act. As a result, third parties could demand rates exceeding TELRIC because they would need only price slightly under the incumbent LECs' special access rates. In fact, the only upward limitation on third-party pricing would be either the access rates for the incumbent LEC or the self-provisioning cost of the competitive LEC, assuming self-provisioning even is feasible.

43. Finally, it can take two months to two years to establish a relationship with an alternative provider. In some cases, negotiations have gone on for even longer periods without closure on an agreement.

C. Access Tariffs.

44. Incumbent LEC access tariffs are not a competitively viable substitute for unbundled dedicated transport. With rare exception, the pricing provisions of access tariffs would significantly increase the competitive LECs' local entry costs compared to the use of unbundled dedicated transport, and would limit the ability of competitive LECs to deploy their own switches or OS/DA platforms at certain customer volumes that would otherwise support the use of these facilities. Special access rates are not based on costs, and have been subject to little competitive pricing pressure. Indeed, as shown in Attachment 1, even if a competitive LEC could tolerate the necessary commitments to obtain access services at its lowest price point pursuant to an optional pricing plan that includes multi-year commitments, special access rates usually exceed TELRIC by a significant margin. Specifically, Attachment 1 lists access charges for a six state sample and the

corresponding unbundled dedicated transport rates, and shows that month-to-month access charges can be more than nine times the unbundled rate. This disparity exists even when service is provided pursuant to long term commitments, reaching multiples of four to five times the unbundled rate, even with a five year commitment. Further, Attachment 2 shows that access rates on average either have been increasing or only slowly decreasing over the last three years, thus providing additional evidence that such rates are not subject to competitive pressures. If a competitive LEC had no alternative but to take dedicated transport pursuant to special access tariffs, these excessive markups often would make local entry commercially unreasonable.

45. Substituting special access tariffs for unbundled dedicated transport also would increase barriers to entry. In order to obtain the lowest possible special access rates, competitive LECs must agree to multi-year commitments, a time frame markedly different from the month-to-month contract period of unbundled dedicated transport. Such a lengthy time commitment reduces an entrant's ability to reconfigure its network as it learns more about consumer demands and traffic patterns. For all practical purposes, the multi-year obligations eliminate a competitive LEC's ability to replace incumbent LEC transport with self-provisioned transport until such time as the special access pricing arrangement has expired. Such obligations can extend as long as 10 years in order to achieve the lowest price point, and in all cases erect an artificial barrier to a competitive LEC's ability to exit a market if competition proves unsustainable.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 1999.

William S. Beans, Jr.

Sworn to and subscribed to before me
This 24 day of May, 1999

Andrea Somers
Notary Public

ANDREA SOMERS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 17, 1999

I declare under penalty of perjury that the foregoing is true and correct. Executed on MAK ~~May 22, 1999~~.
MAY 25th 1999

NY: County
NY: State

x Meredith R. Harris
Meredith R. Harris

Sworn to and subscribed to before me
This ~~22nd~~ 25th day of May, ~~1999~~
MAY 25 1999

Bridgette V. Blyden
Notary Public

BRIDGETTE V. BLYDEN
Notary Public, State of New York
No. 31-4997509
Qualified in New York County
Commission Expires June 8, 2000

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 1999.

Joseph Stith

Sworn to and subscribed to before me
This 24 day of May, 1999

Notary Public

LISA E. MAYNARD
A Notary Public of New Jersey
My Commission Expires 07/10/2001

ATTACHMENT 1

Texas: Comparison of Special Access Pricing to Dedicated Transport Pricing

		COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI			COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITH OUT MULTIPLEXING								DS1 CHANNEL MILEAGE - WITH OUT MULTIPLEXING					
MONTHLY	6.5	168%	171%	177%	188%	193%		MONTHLY	157%	190%	253%	363%	412%
3-YR TPP	6.5	155%	155%	157%	160%	162%		3-YR TPP	129%	155%	203%	287%	324%
5-YR TPP	6.5	140%	141%	143%	146%	148%		5-YR TPP	120%	143%	186%	262%	295%
10-YR TPP	6.5	129%	129%	131%	135%	137%							
		min	129%						min	120%			
		max	193%						max	412%			
		mean	153%						mean	232%			
DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITH MULTIPLEXING								DS1 CHANNEL MILEAGE - WITH MULTIPLEXING					
MONTHLY	6.5	185%	186%	188%	192%	195%		MONTHLY	199%	210%	232%	273%	293%
3-YR TPP	6.5	164%	164%	163%	164%	156%		3-YR TPP	175%	184%	200%	231%	246%
5-YR TPP	6.5	142%	142%	142%	143%	144%		5-YR TPP	165%	172%	187%	215%	229%
10-YR TPP	6.5	137%	137%	137%	138%	138%							
		min	137%						min	165%			
		max	195%						max	293%			
		mean	158%						mean	214%			

Note DS1 price ratios are an arithmetic average of the price ratio for each of three different geographic zones within a term commitment Not volume commitments are applicable

Note DS3 price ratios are affect by zone & both volume and term commitments The ratios reflect the arithmetic average of 4 volume commitments across three geographic zones

New York: Comparison of Special Access Pricing to Dedicated Transport Pricing

	COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITH OUT MULTIPLEXING				
MONTHLY	96%	115%	149%	211%	238%
2-YR TPP	91%	109%	142%	200%	226%
3-YR TPP	87%	103%	134%	190%	214%
4-YR TPP	72%	86%	112%	158%	179%
5-YR TPP	63%	75%	97%	137%	155%
7-YR TPP	58%	69%	90%	126%	143%
	min	58%			
	max	238%			
	mean	131%			
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITH MULTIPLEXING				
MONTHLY	134%	148%	175%	225%	247%
2-YR TPP	127%	141%	167%	213%	235%
3-YR TPP	121%	133%	158%	202%	222%
4-YR TPP	100%	111%	132%	168%	185%
5-YR TPP	87%	96%	114%	146%	161%
7-YR TPP	80%	89%	105%	135%	148%
	min	80%			
	max	247%			
	mean	150%			

	COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
	DS1 CHANNEL MILEAGE - WITH OUT MULTIPLEXING				
MONTHLY	82%	101%	136%	206%	239%
2-YR TPP	74%	90%	123%	185%	215%
3-YR TPP	66%	80%	109%	164%	191%
4-YR TPP	62%	75%	102%	154%	179%
5-YR TPP	58%	70%	95%	144%	167%
7-YR TPP	53%	65%	89%	134%	155%
	min	53%			
	max	239%			
	mean	122%			
	DS1 CHANNEL MILEAGE - WITH MULTIPLEXING				
MONTHLY	54%	58%	65%	80%	87%
2-YR TPP	49%	52%	59%	72%	78%
3-YR TPP	43%	46%	52%	64%	70%
4-YR TPP	40%	43%	49%	60%	65%
5-YR TPP	38%	40%	46%	56%	61%
7-YR TPP	35%	37%	42%	52%	57%
	min	35%			
	max	87%			
	mean	55%			

Note The mux charge for Special Access (for both DS1 & DS3 transport) differs according to three zones The percentage difference with mux ong is the arithmetic average of the three zones

Michigan: Comparison of Special Access Pricing to Dedicated Transport Pricing

	COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITH OUT MULTIPLEXING				
MONTHLY	273%	284%	303%	327%	335%
2-YR TPP	234%	244%	258%	277%	283%
3-YR TPP	211%	215%	222%	230%	233%
4-YR TPP	202%	204%	207%	210%	211%
5-YR TPP	192%	189%	186%	181%	179%
	Min	179%			
	Max	335%			
	Mean	236%			
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITH MULTIPLEXING (DS3 TO DS1)				
MONTHLY	221%	228%	242%	264%	273%
2-YR TPP	190%	196%	207%	224%	231%
3-YR TPP	173%	176%	183%	192%	197%
4-YR TPP	167%	169%	173%	179%	182%
5-YR TPP	159%	160%	160%	161%	161%
	Min	159%			
	Max	273%			
	Mean	195%			

	COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
	DS1 CHANNEL MILEAGE - WITHOUT MULTIPLEXING				
MONTHLY	609%	661%	753%	899%	958%
2-YR TPP	495%	543%	626%	760%	814%
3-YR TPP	331%	366%	428%	527%	567%
4-YR TPP	320%	354%	412%	505%	542%
5-YR TPP	261%	293%	349%	439%	475%
3-YR TCP	391%	432%	505%	622%	669%
5-YR TCP	338%	379%	450%	564%	611%
Min		261%			
Max		958%			
Mean		521%			
	DS1 CHANNEL MILEAGE - WITH MULTIPLEXING (TO VOICE GRADE)				
MONTHLY	163%	169%	181%	205%	217%
2-YR TPP	130%	135%	146%	168%	178%
3-YR TPP	99%	103%	111%	126%	133%
4-YR TPP	95%	99%	106%	121%	128%
5-YR TPP	89%	92%	99%	112%	119%
3-YR TCP	108%	113%	122%	140%	149%
5-YR TCP	100%	104%	113%	130%	138%
Min		89%			
Max		217%			
Mean		130%			

Note: Percentage differences reflect the arithmetic average of three pricing zones applicable to both dedicated transport and Special Access

Comparison are made between similar zones then averaged

Georgia: Comparison of Special Access Pricing to Dedicated Transport Pricing

COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI		COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
					MONTHLY	149%	178%	236%	348%	402%
					24-48 months	122%	141%	179%	253%	289%
					49-72 months	113%	130%	163%	228%	259%
						min	113%			
						max	402%			
						average	213%			

Note: Percentage differences reflect the arithmetic average of three pricing zones for Special Access. Dedicated Transport UNE has no zone difference

Note: UNE DS3 AND MUX rates are to be determined in a future cost proceeding. There are no rates in the ICA.

Note: MUX rates are to be determined in a future cost proceeding. There are no MUX rates in the ICA.

California: Comparison of Special Access Pricing to Dedicated Transport Pricing

	COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI		COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3* - WITH OUT MULTIPLEXING						DS1 CHANNEL MILEAGE* - WITH OUT MULTIPLEXING				
MONTHLY	164%	159%	151%	141%	137%	MONTHLY	255%	274%	308%	358%	377%
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3* - WITH MULTIPLEXING						DS1 CHANNEL MILEAGE* - WITH MULTIPLEXING				
MONTHLY	133%	136%	142%	154%	160%	ZONE 1	133%	136%	142%	154%	160%

* There are no Term Pricing Plans for Pacific Bell

** Dedicated Transport has four (4) zones (Zone 1 = Metro; Zone 2 = Urban; Zone 3 = Surburban; Zone 4 = Rural)

***Special Access only has three (3) zones

Note: The percentage differences are the arithmetic average of the dedicated transport zones 2 through 4 compared (individually) to the similar Special Access zones 1 through 3

Colorado: Comparison of Special Access Pricing to Dedicated Transport Pricing

	COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITHOUT MULTIPLEXING				
MONTHLY	44%	45%	46%	48%	52%
1-YR TPP	43%	44%	45%	47%	50%
2-YR TPP	40%	40%	42%	44%	48%
3-YR TPP	40%	40%	42%	44%	47%
5-YR TPP	35%	36%	37%	38%	41%
10-YR TPP	35%	36%	37%	38%	41%
	min	35%			
	max	52%			
	average	42%			
	DS3 & DS3+ CHANNEL MILEAGE PER ACTIVE DS3 - WITH MULTIPLEXING				
MONTHLY	66%	65%	64%	62%	64%
1-YR TPP	64%	63%	62%	60%	62%
2-YR TPP	63%	62%	60%	58%	60%
3-YR TPP	60%	59%	58%	56%	58%
5-YR TPP	53%	52%	51%	49%	51%
10-YR TPP	53%	52%	51%	49%	51%
	min	49%			
	max	66%			
	average	58%			

	COST 1-MI	COST 2-MI	COST 4-MI	COST 8-MI	COST 10-MI
	DS1 CHANNEL MILEAGE - WITHOUT MULTIPLEXING				
MONTHLY	100%	100%	100%	100%	99%
3-YR TPP	90%	90%	90%	90%	89%
5-YR TPP	80%	80%	80%	80%	79%
	min	79%			
	max	100%			
	average	90%			
	DS1 CHANNEL MILEAGE - WITH MULTIPLEXING				
MONTHLY	125%	124%	122%	119%	115%
3-YR TPP	114%	113%	111%	108%	105%
5-YR TPP	100%	99%	97%	95%	92%
	min	92%			
	max	125%			
	average	109%			

NOTE: DT MUX rates are not in the ICA but reflect the rates in the upcoming final UNE Cost Order (5/99)

ATTACHMENT 2

	Average Annual Change in DS3 Special Access					
	month-to-month			5 year term plan		
	last 36 months	last 24 months	last 12 months	last 36 months	last 24 months	last 12 months
CO		4.22%	9.25%		4.23%	9.42%
MI	0.88%	1.33%	2.68%	-0.15%	-0.23%	-0.46%
CA		-1.08%	0.00%		-1.73%	0.00%
NY	3.32%	5.03%	10.30%	3.32%	5.03%	10.30%
GA	-1.84%	-3.21%	-6.32%	-9.70%	-4.93%	-9.61%
TX	0.00%	0.00%	0.00%	-0.42%	-0.63%	5.98%

	Average Annual Change in DS1 Special Access					
	month-to-month			5 year term plan		
	last 36 months	last 24 months	last 12 months	last 36 months	last 24 months	last 12 months
CO		-0.34%	0.00%		-0.33%	0.00%
MI	11.03%	6.64%	13.72%	4.36%	0.00%	0.00%
CA		-2.23%	0.33%		-2.40%	0.36%
NY	1.75%	2.64%	5.36%	-0.56%	-0.84%	-1.67%
GA	0.82%	1.65%	0.00%	-4.06%	-4.14%	-4.03%
TX	0.00%	0.00%	0.00%	-1.46%	-2.18%	-4.32%