

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers)	CC Docket No. 95-185
)	

REPLY TO OPPOSITIONS

MGC Communications, Inc. d/b/a Mpower Communications Corp. ("Mpower"), pursuant to Section 1.106 of the Federal Communications Commission's ("Commission") regulations, 47 C.F.R. § 1.106, submits this reply to the oppositions filed by SBC and USWest to Mpower's Petition for Clarification on Reconsideration of the *UNE Remand Order*.¹

I. INTRODUCTION

In its petition for reconsideration, Mpower addressed two circumstances that threaten to seriously hinder competitive carriers' ability to provide service: (a) some ILECs are not yet prepared to negotiate terms and conditions for dark fiber even though the Commission has designated dark fiber as a UNE, and (b) some ILECs apparently want to withhold dark fiber on the ground that it has been reserved for ILEC use. To remedy these problems, Mpower urged the Commission on

¹ *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 Nos. 96-98 & 95-185, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, DA 99-238 (rel. November 5, 1999) ("*UNE Remand Order*") (published in the Federal Register on January 18, 2000, 65 Fed. Reg. 2542).

reconsideration to: (a) clarify that ILECs must begin good faith negotiations for provision of dark fiber under Section 252 immediately, prior to the effective date of the new dark fiber rules, (b) prohibit ILECs from imposing unreasonable reservation standards for dark fiber, and (c) to require ILECs to make dark fiber available on a first-come, first-served basis.

II. THE COMMISSION SHOULD REQUIRE ILECS TO PROMPTLY NEGOTIATE TERMS FOR PROVISIONING DARK FIBER

Mpower is pleased that USWest does not object to Mpower's proposal that the Commission direct ILECs immediately to negotiate the terms and conditions under which they will make dark fiber available even though the Commission's rules designating dark fiber an unbundled network element will not become effective until May 17, 2000.² This is the only way that CLECs will have any opportunity to begin ordering dark fiber for delivery on or about the required date. None of the other ILECs who filed, or responded to, petitions for reconsideration have made this offer. In addition, it has been Mpower's experience that some ILECs are not showing any willingness to negotiate the provision of dark fiber. Accordingly, the Commission should take steps on reconsideration of the *UNE Remand Order* that will assure that ILECs promptly make dark fiber available as a UNE.

The Commission should require ILECs to propose and publish language for modifying interconnection agreements to serve as the starting point for negotiations and to immediately begin to negotiate terms and conditions for the provision of dark fiber. Further, as requested by Mpower in its petition for reconsideration, the Commission should take these steps on an expedited basis

² US West Opposition, p. 21.

before the May 17, 2000 effective date of the dark fiber UNE rules. These measures will go a long way toward assuring that, as a practical matter, CLECs can obtain dark fiber as UNEs.

III. THE COMMISSION SHOULD SET STANDARDS FOR ILEC RESERVATION OF DARK FIBER

In response to Mpower's petition, SBC contends that it is not necessary for the Commission to set standards for ILEC reservation of dark fiber because the negotiation and arbitration process can address this issue. Further, SBC states that, in fact, several SBC interconnection agreements with CLECs already address the priority of availability of dark fiber.³ Mpower submits that the negotiation and arbitration process does not provide sufficient assurance that ILECs will not use reservation of fiber as an excuse to not make dark fiber available as a UNE. Unfortunately, in most cases ILECs have the advantage in negotiating agreements. CLECs as new entrants must frequently make significant concessions in order to obtain an interconnection agreement within a reasonable time frame. ILECs, on the other hand, by virtue of their status as incumbents have no incentive to speed resolution of interconnection negotiations. Standards for ILEC reservation of dark fiber would help to assure that CLECs are not compelled to accept less than fair conditions for access to dark fiber in order to be able to initiate service within a reasonable time frame.

Moreover, the passages SBC provided from its interconnection agreements do not seem to have anything to do with reservation of dark fiber. They appear only to reference SBC's ability to

³ SBC Opposition, p. 49.

revoke a CLEC's right to use dark fiber in some circumstance.⁴ Accordingly, these excerpts do not show that the Commission should not set reservation standards for dark fiber.

USWest's opposition to reservation standards is also unconvincing. Its claim that the Commission should not impose a reservation limit of six months because the ground may be frozen for many months in northern states is unconvincing.⁵ Contemporary construction equipment is fully capable of penetrating, and installing equipment in, frozen ground. USWest's claim that reservation standards would interfere with USWest's need to maintain spare cable to assure uninterrupted service misses the point. ILECs' legitimate needs for reservation of dark fiber capacity can be accommodated in an appropriate reservation standard. The fact that ILECs may need to reserve some capacity does not eliminate the need for safeguards to assure that ILECs will not establish unreasonable reservation standards.

In its petition, Mpower suggested a reservation limit of six months, *i.e.* ILECs may not reserve more dark fiber capacity than is needed to accommodate internal ILEC needs for longer than six months. USWest and SBC have not provided any convincing reason why this would not be a reasonable reservation standard. Accordingly, Mpower urges the Commission to adopt this proposal.

The Commission should also require ILECs to make dark fiber available on a first come, first served basis to CLECs and for ILECs' own internal use subject only to a reasonable reservation standard. USWest's statement that this is unnecessary because the Act already requires ILECs to

⁴ "If SWBT can demonstrate within a twelve (12) month period after the date of a dark fiber lease that the LSP is using the dark fiber capacity at a level of transmission less than OC-12, ... SWBT may revoke the lease agreement with an LSP." SBC Opposition, p 49.

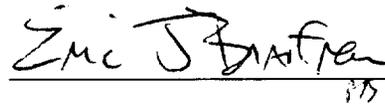
⁵ US West Opposition, p 22.

make UNEs available on a nondiscriminatory basis also misses the point.⁶ The issue is not ILEC discrimination between CLECs, but between ILECs' self-provisioning and CLECs' requests for dark fiber as a UNE. As discussed, Mpower submits that there is a significant risk that ILECs will unreasonably deny CLEC requests for dark fiber based on alleged reservation needs. The Commission should address this risk by establishing a first come, first served rule as between ILEC internal needs and CLEC requests for UNEs, subject only to a reasonable reservation standard.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant Mpower's petition for reconsideration.

Respectfully submitted,



Kent F. Heyman
Senior Vice President & General Counsel
Francis D.R. Coleman
Vice President, Regulatory Affairs
Richard E. Heatter
Vice President, Legal Affairs
MGC Communications, Inc.
171 Sully's Trail - Suite 202
Pittsford, NY 14534

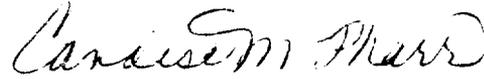
Eric J. Branfman
James N. Moskowitz
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W - Suite 300
Washington, DC 20007

Counsel for MGC Communications, Inc. d/b/a
Mpower Communications Corp..

⁶ US West Opposition, p. 22.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Oppositions of MGC Computer Corp. d/b/a Mpower Communications Corp. in CC Docket No. 96-98 was sent by United States First-Class Mail, postage prepaid, or hand delivered, on this 3rd day of April, 2000 to the parties on the attached list.



Candise M. Pharr

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW - TW-B204
Washington, DC 20554

VIA HAND DELIVERY

Dorothy Atwood
Office of the Chairman
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

International Transcription Service
445 12th Street, SW - CY-B400
Washington, DC 20554

VIA HAND DELIVERY

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Kyle Dixon
Office of Commissioner Powell
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Sarah Whitesell
Office of Commissioner Tristani
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Janice Myles
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Jordan Goldstein
Office of Commissioner Ness
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Michelle Carey
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Margaret Egler
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Chairman William E. Kennard
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Rebecca Beynon
Office of Commissioner Furchgott-Roth
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Robert Atkinson
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

VIA HAND DELIVERY

Michelle Carey
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

Edward Shakin
Michael E. Glover
Bell Atlantic
1320 North Courthouse Road - 8th Floor
Arlington, Virginia 22201

James G. Pachulski
TechNet Law Group, P.C.
1100 New York Avenue, NW - Suite 365
Washington, DC 20005
Counsel for Bell Atlantic

Mark C. Rosenblum
Roy E. Hoffinger
Richard H. Rubin
AT&T Corp
295 North Maple Avenue - Room 1127M1
Basking Ridge, New Jersey 07920

M. Robert Sutherland
Jonathan B. Banks
BellSouth Corporation
1155 Peachtree Street, NE - Suite 1800
Atlanta, Georgia 30309-3610
Counsel for BellSouth Corp. & Bell South
Telecommunications, Inc.

Mark D. Schneider
Jenner & Block
601 13th Street, NW
Washington, DC 20005
Counsel for MCI WorldCom

Anthony C. Epstein
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Counsel for MCI WorldCom

Constance L. Kirkendall
Regulatory Manager
@link Networks, Inc.
2200 Campbell Creek Boulevard - #100
Richardson, Texas 75082

Chuck Goldfarb
Richard S. Whitt
Cristin Flynn
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Jonathan E. Canis
Ross A. Buntrock
Kelley Drye & Warren, LLP
1200 19th Street, NW - 5th Floor
Washington, DC 20036
Counsel for Intermedia Communications

Jason Oxman
Covad Communications Company
600 14th Street, NW - #750
Washington, DC 20005

Albert H. Kramer
Jacob S. Farber
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037-1526
Counsel for Birch Telecom

James M. Tennant
President
Low Tech Designs, Inc.
1204 Saville Street
Georgetown, South Carolina 29440

Christy Kunin
Elise P.W. Kiely
Blumenfeld & Cohen
Technology Law Group
16525 Massachusetts Avenue, NW - #700
Washington, DC 20036
Counsel for Rhythms Netconnections, Inc.

Robert J. Aamoth
Steven A. Augustino
Todd D. Daubert
Kelley Drye & Warren LLP
1200 19th Street, NW - #500
Washington, DC 20036
Counsel for CompTel

Kent F. Heyman, Sr, Vice President & General Counsel
Francis D.R. Coleman
Mpower Communications
161 Sully's Trail #202
Pittsford, New York 14534

Carol Ann Bischoff
Executive V.P. and General Counsel
Competitive Telecommunications Association
1900 M Street, NW #800
Washington, DC 20036

Wendy Bluemling
Director, Regulatory Affairs
DSL.net, Inc.
545 Long Wharf Drive - 5th Floor
New Haven, Connecticut 06511

David R. Conn
Associate General Counsel & Vice President
Product & Policy
McLeod USA Telecommunications Services, Inc.
6500 C Street, SW
Cedar Rapids, Iowa 52406-3177

Patrick J. Donovan
Morton J. Posner
Swidler Berlin Shereff Friedman LLP
3000 K Street, NW - #300
Washington, DC 20007
Counsel for RCN Telecom Services, Inc.