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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, DC 20554

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

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[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).

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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

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[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

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[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

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[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.

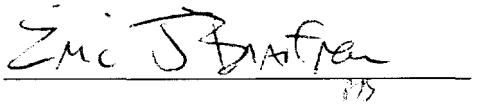
[5] US West Opposition, p 22.

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,



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[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.

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