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Metromedia Fiber Network Services, Inc.
CC Docket Nos. 98-147 and 96-98
November 14, 2000

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	**CC Docket No. 98-147**
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-98**

REPLY COMMENTS OF METROMEDIA FIBER NETWORK SERVICES, INC.

Jonathan E. Canis
Erin R. Swansiger
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

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SUMMARY

Both accepted principles of statutory interpretation and the record *overwhelmingly* supports MFN's position that, as previously determined by the Commission in its *Advanced Services Report & Order,* Section 251(c)(6) encompasses cross-connects between collocators and requires ILECs to permit the collocation of CLEC cross-connects as "necessary" to establish interconnection and access to UNEs. This includes cross-connections for the provision of interoffice transport, as such cross-connections are integrally related to, and thus "necessary," for purposes of interconnection and access to UNEs" where one collocated carrier connects to a second collocated carrier that is interconnecting with the ILEC or buying UNEs from the ILEC. To interpret Section 251(c)(6) in a more narrow fashion would serve only to defeat the pro-competitive goals of Sections 251(c)(2) and (3) and would result in perpetuating the ILEC monopoly over the interoffice transport market – a result that Congress could not possibly have intended when it promulgated Section 251.

Legitimate statutory interpretation and the record also contain substantial support for MFN's argument that the term "interconnection," as used in Section 251(c)(6), encompasses both direct *and indirect* interconnection between two collocated carriers, as contemplated by Sections 251(c)(2) and (c)(3). This position is buttressed by the fact that nothing in the express language of Section 251(c)(6), as it refers to Sections 251(c)(2) and (3), limits such interconnection to *direct* interconnection alone, nor did the *GTE v. FCC* decision include any language that would limit such interconnection to *direct* interconnection alone.

Under the extremely narrow interpretations of Section 215(c)(6)'s collocation obligations offered by the ILECs, competition virtually would be cut-off at the knees, and one of

the central premises of this statute and the Act in general – to provide CLECs with non-discriminatory access to ILEC networks – will be undermined. Given that ILECs can and do connect with CLECs in the central office, failure to permit CLECs to connect with other CLECs in the central office necessarily discriminates against CLEC access to the ILEC network and places CLECs at a competitive disadvantage, resulting in greater costs to CLECs and less consumer choice.

If, however, the Commission does not find that the collocation of cross-connects falls squarely within Section 251(c)(6) -- as MFN has shown that it should – the Commission should strongly recommend that the ILECs collocate alternative network configurations such as the Competitive Alternate Transport Terminal ("CATT") or the Stable Manhole Zero as evidence of ILEC "best practices." As a further alternative, the Commission should use its authority under other provisions of the Act to require the ILECs to provide cross-connection as an unbundled network element, or, as a final alternative, to require ILECs to tariff a cross-connection service, in accordance with the language of Sections 201(a) and 251(a)(1).

Lastly, the Commission should specify that the Fiber Distribution Frame ("FDF") is a piece of equipment that may be collocated *by itself* under Section 251(c)(6) of the Act.

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REPLY COMMENTS OF METROMEDIA FIBER NETWORK SERVICES, INC.

Metromedia Fiber Network Services, Inc. ("MFN"), through undersigned counsel, hereby files its Reply Comments in the above-captioned proceeding.

I. INTRODUCTION AND OVERVIEW

MFN is a leader in the deployment of optical infrastructure used to provide advanced telecommunications services within key metropolitan areas in the United States and abroad. MFN operates both as a carrier's carrier, providing principally intracity transport to other carriers, and as a competitive local exchange carrier ("CLEC") providing optical communications solutions to enterprise customers. As noted in its Initial Comments, one of MFN's goals is to become the foremost fiber-based carrier's carrier to incumbent local exchange

carriers ("ILECs") and CLECs. To make this goal a reality, MFN has negotiated interconnection agreements with multiple ILECs that enable it to provide virtually unlimited bandwidth to its carrier customers and to end-users across the U.S. It is critical that the collocation rules adopted as a result of this rulemaking support and uphold the existing agreements that enable MFN to obtain collocation and interconnection and to provide competitive transport to itself and to other carriers throughout the country.

ILECs, such as Qwest and BellSouth, seek to restrict efficient access to competitive fiber within the central office environment by gaming the regulatory process and creating artificial barriers to entry for MFN and other competitive carriers. For example, while Qwest has agreed to connect MFN's fiber distribution frame ("FDF") to Qwest's dark fiber loops, Qwest refuses to permit MFN to interconnect its FDF with dark fiber *transport*. In so doing, Qwest arbitrarily has restricted MFN's resale of interoffice transport Likewise, BellSouth has invented its own baseless cross-connect distinctions. For example, just last month BellSouth suddenly and unilaterally advised MFN of a newly contrived and invented the position that if more fibers were used for cross-connection than for access to unbundled network elements, MFN would be out of compliance with the interconnection agreement. This position is both unfounded and absurd. Such efforts to restrict the number of cross-connects that MFN may collocate and the types of elements to which they are connected have no basis in the law and, in fact, are little more than attempts to control CLEC businesses. For its part, SBC has refused to process orders in Texas and Illinois using the FDF for the purposes of accessing dark fiber loops -- *the same lawful configuration* that both Qwest and BellSouth have confirmed is consistent

with MFN's interconnection agreement.[1] Flimsy distinctions such as these result in the creation of artificial barriers that restrict the availability of competitive fiber choice for competitive carriers and deny carriers like MFN the interconnection that they are entitled to under the Act.

In order for the Act's promise of telecommunications competition to be fulfilled, carriers *must* be permitted to collocate solely for the purpose of providing competitive interoffice transport. Denial of collocation for dark fiber and interoffice transport providers would significantly retard fiber-based broadband deployment and would eliminate the promise of unlimited bandwidth that is already being fulfilled by MFN.

Clearly, the nation's communications infrastructure is going through a period of transformational change. Alcatel, Ciena, Cisco, JDS Uniphase, Lucent, Nortel and many others are in the press almost daily regarding their success and innovative initiatives in leading the optical revolution and improving the telecommunications infrastructure. The ILECs, well-aware that this optical infrastructure needs fiber to work, continue to thwart the ability of other competitors to offer it. They use their monopoly power and "more equal" status to abuse the system by imposing their own baseless barriers to interconnection and collocation. For example, the ILECs have no problem providing *power companies* with the central office access "necessary" to distribute the electricity required to operate their equipment and provide telecommunications services. However, where access to fiber is "necessary" to move the photons required to provide advanced telecommunications services, the ILECs refuse to afford *CLECs* the opportunity to access the fiber required to offer their telecommunications services.

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1 MFN notes, however, that both Qwest and BellSouth recently have tried to renege on aspects of interconnection agreements negotiated with MFN in good faith under the Act.

Such refusal is evidence of the continued cavalier treatment with which competitive carriers are treated at the hands of the ILECs – companies who clearly are more powerful than ever before.

The Commission has held that, without access to dependable, economically priced transport, CLECs are impaired in their ability to offer the services that they wish to provide, and that such facilities are not readily available from third-parties.[2] MFN urges the Commission to recognize that the pro-competitive goals of Sections 251(c)(2) and (3) will be thwarted if interoffice transport continues to remain an ILEC monopoly market – a result that Congress could not possibly have intended when it promulgated Section 251. Specifically, MFN asks that the Commission unequivocally declare that wholesale transport carriers are entitled to collocation. Absent such action, further reliance by CLECs on ILEC-provisioned transport is inevitable, with the result that the Act's promise of facilities-based competition for advanced services will remain unfulfilled.

MFN will not reiterate at length each of the substantive arguments proffered in its Initial Comments as these arguments are clearly advanced in the Initial Comments and are summarized below. Rather, MFN will use this opportunity to focus on calling the Commission's attention to the *overwhelming* amount of support received for the position that, as previously determined by the Commission in its *Advanced Services Report & Order,* Section 251(c)(6) encompasses cross-connects between collocators and requires ILECs to permit the collocation of CLEC cross-connects in ILEC central offices for the provision of interoffice transport.

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2 *See In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297, (rel. August 10, 2000) (*Second Further Notice*) at para. 83.

A. Overview of All Points Advocated by MFN in its Initial Comments.

- carrier-to-carrier cross-connects are "necessary" for interconnection and access to UNEs under Section 251(c)(6) and 251(c)(2) and (3) of the Act;

- the collocation rules adopted by the Commission in this proceeding must preserve existing agreements with ILECs that enable MFN to provide competitive interoffice transport to itself and to other carriers;

- carriers must be permitted to collocate solely for the purpose of providing competitive interoffice transport;

- a designated network entry point – either a Competitive Alternate Transport Terminal ("CATT") (an efficient form of collocation and interconnection in which MFN installs a fiber distribution frame ("FDF") in the ILEC's cable vault) -- or a "Stable Manhole Zero" network configuration (an arrangement in which CLECs may designate one manhole outside the ILEC central office as a single point for distributing fiber to collocated CLECs) – is "necessary" under the Act.

- an FDF, *taken by itself*, constitutes sufficient "equipment" pursuant to the Act, and ILECs may not refuse to allow collocation and interconnection using such equipment *alone*;

- ILECs must allow CLECs to collocate, on a non-discriminatory basis, any equipment that provides the same functionality(ies) provided by the ILECs. This includes the collocation of equipment used for multiple functions as most of the functionalities built into multi-functional equipment today are "necessary" for interconnection and access to UNEs to provide the types of advanced services customers demand;

- the Commission should confirm that ILECs may not withdraw transport as a UNE if cross connections – or a proven alternative such as CATT -- are not available to collocators;

- it is imperative that the Commission establish uniform, national standards for collocation.

B. Summary of Points Advocated in these Reply Comments

In these Reply Comments, MFN requests that the Commission find the following:

- carrier-to-carrier cross-connects are "necessary" for interconnection and access to UNEs under Section 251(c)(6) and 251(c)(2) and (3) of the Act;

- "interconnection" as used in Section 251(c)(6) encompasses both direct *and indirect* interconnection between two collocated carriers, as contemplated by Sections 251(c)(2) and (3) of the Act;

- carriers must be permitted to collocate *solely* for the purpose of providing competitive interoffice transport;

- the Commission should recommend that ILECs collocate the CATT and, as a second alternative, MFN's "Stable Manhole Zero" network configuration as evidence of ILEC "best practices;

- the Commission should use its authority under other provisions of the Act to require the ILECs to provide cross-connection as an unbundled network element, or, as a final alternative, to require ILECs to tariff a cross-connection service, in accordance with the language of Sections 201(a) and 251(a)(1);

- the FDF is necessary for MFN to interconnect with ILEC dark fiber loops and transport (*i.e.* UNEs) in order to provide telecommunications services. Accordingly, the FDF *alone* constitutes sufficient "equipment" pursuant to the Act and is entitled to collocation.

II. THE RECORD REVEALS OVERWHELMING CONSENSUS THAT SECTION 251(C)(6) MUST BE INTERPRETED IN SUCH A WAY SO AS TO BE CONSISTENT WITH THE FULL IMPLEMENTATION AND STATUTORY MEANING OF SECTIONS 251(C)(2) AND (3) OF THE ACT.

A. Background

In the *Advanced Services First Report and Order*, the Commission required ILECs to permit collocating carriers to construct their own cross-connect facilities between equipment collocated on ILEC premises, subject to reasonable safety requirements.[3] However, earlier this year, in *GTE v FCC*, the D.C. Circuit found that Section 251(c)(6) is "focused solely on connecting new competitors to LECs' networks" and that the Commission, in its *Advanced Services First Report and Order*, had not shown that cross-connects were "necessary for interconnection or access to UNEs."[4] To this end, the Court remanded the Commission's cross-connect rule for further clarification. In so doing, however, the Court emphasized that it was not vacating the *Advanced Services First Report and Order* "to that extent that it merely requires LECs to provide collocation of competitors' equipment that is directly related to and thus necessary, required or indispensable to 'interconnection and access to unbundled network elements,'" although a "better explanation" from the Commission was required for "anything beyond this.[5] Importantly, the Court also explicitly stated that the disputed terms in Section 251(c)(6) are "ambiguous in their meanings."[6]

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3 In re *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4779-80 (1999) (*Advanced Services First Report & Order*), *aff'd in part and remanded in part sub nom. GTE Services Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) (*GTE v. FCC*).

4 *GTE v. FCC* at 423.

5 *Id.* at 424.

6 *Id.* at 421.

In response to the Court's remand, the Commission solicited comment from the industry as to whether Section 251(c)(6) encompasses cross-connects between collocators; whether the term "interconnection," as used in Section 251(c)(6), refers both to the interconnection of two collocators' equipment and network, as well as the interconnection of a collocator's equipment and network to the ILEC's network; and whether Section 251(c)(6) encompasses both direct and indirect interconnection.[7] In response to the Commission's *Second Further Notice*, MFN filed initial comments in support of, *inter alia*, Section 251(c)(6)'s inclusion of cross connections between collocators as both "necessary" to enable access to interconnection and unbundled network elements by other competitive carriers, and to ensure that ILECs fully meet their interconnection and unbundling obligations under the Act.[8]

In its initial comments, MFN explained that where one collocated carrier connects to a second collocated carrier that is interconnecting with the ILEC or buying UNEs from the ILEC, " a cross-connect between the two is integrally related to such interconnection or access"[9] and thus is "necessary" for purposes of interconnection and access to UNEs by the second carrier.[10] MFN emphasized that failure to require the collocation of cross-connects for competitive transport providers would have a "chilling effect" both on carriers' abilities to

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7 In re *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 at para. 88, Second Further Notice, FCC 00-297 (1999) (*Second Further Notice*).

8 *See* Joint Comments of Arbros Communications, Inc., Association for Local Telecommunications Services, Competitive Telecommunications Association, E.spire Communications, Inc., Fairpoint Communications Solutions, Intermedia Communications, Inc., Jato Communications Corp., KMC Telecom, Inc., Metromedia Fiber Network, New South Communications, Inc. and Pathnet Communications ("Joint Comments").

9 MFN Comments at 20-21; Joint Comments at ii and 43-44.

10 Joint Comments at 44.

provide advanced telecommunications services and on the development of a competitive interoffice transport market.[11] MFN explained that it intends to compete with the ILECs in *every* central office – not just those in which MFN itself has end user customers – and that in such offices, MFN directly connects or cross-connects its fiber to UNEs leased from the ILEC by MFN's CLEC customer.[12] Given its collocation arrangements, MFN requested in its initial comments that the Commission declare that where MFN is cross-connected in an ILEC central office to a CLEC that is purchasing UNEs from the ILEC, both MFN and the CLEC are interconnected for purposes of obtaining access to UNEs under the Act.[13]

B. Mandating that ILECs Provide CLECs with the Ability to Cross Connect with Each Other is Consistent with the Statutory Premises of Section 251(c)(6) of the Act.

1. Collocation of cross-connects are "necessary" to enable competitive carriers to interconnect and access unbundled network elements in the ILEC networks.

Legitimate principles of statutory interpretation and the record support a finding by the Commission that Section 251(c)(6) requires ILECs to permit competitive carriers to construct cross-connects as "necessary" to establish interconnection and access to unbundled elements in the ILEC network. Specifically, the record contains substantial support for the argument of both MFN and the Joint Commenters that the term "necessary," as used in Section 251(c)(6) is not limited to the strict sense of "required or indispensable."[14] The lengthy list of commenters who support a statutory interpretation of Section 251(c)(6) as requiring ILECs to

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11 Joint Comments at iii, 45.

12 MFN Comments at 20.

13 *Id.* at 21.

14 Joint Comments at 14.

permit competitive carriers to construct cross-connects as "necessary" to establish interconnection and access to UNEs includes: @Link Networks, Inc.;[15] ATG;[16] Allegiance;[17] AT&T;[18] COMPTEL;[19] Covad;[20] CTSI and Waller Creek;[21] Fiber Technologies;[22] Focal;[23] GSA;[24] Lightbonding;[25] MFN; [26] MPOWER;[27] PF.Net;[28] RCN;[29] RythymsNet;[30] Sprint[31] Telergy, Adelphia Business Solutions and Business Telecommunications;[32] and WORLDCOM.[33] MFN wishes in particular to commend the General Services Administration ("GSA") for its recommendation that the terms "required" and "indispensable" be interpreted by the Commission in a broader sense as to do otherwise would serve only to exclude much of the equipment that

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15 @Link Networks, Inc. Comments at 26.

16 ATG Comments at 2-3.

17 Allegiance Telecom, Inc. Comments at 69-70.

18 AT&T Corp. Comments at 32.

19 Competitive Telecommunications Association ("COMPTEL") Comments at 7.

20 Covad Communications Company Comments at 26-27.

21 CTSI, Inc. and Waller Creek Communications Inc. d/b/a Pontio Communications Corporation Comments at 16.

22 Fiber Technologies, LLC Comments at 8.

23 Focal Communications Corporation Comments at 14.

24 General Services Administration ("GSA") Comments at 11-12.

25 Lightbonding.com, Inc. Comments at 3-5.

26 MFN Comments at 24.

27 Mpower Communications Corp. Comments at 26.

28 PF.net Communications Comments at 3.

29 RCN Telecom Services Comments at 16.

30 Rythyms Netconnections Inc. Comments at 27.

31 Sprint Corporation Comments at 12.

32 Telergy, Inc., Adelphia Business Solutions, Inc., and Business Telecommunications, Inc. Comments at 32-33.

33 WORLDCOM, Inc. Comments at 10-11.

competitive carriers need to serve their customers.[34] MFN also wishes to support the GSA for its pro-CLEC position in advocating that ILECs should allow cross-connects between multiple competitors collocated in their central offices.[35]

Predictably, with the exception of Sprint,[36] who has both CLEC and ILEC internal interests, none of the ILEC commenters supported a finding that the Act requires ILECs to permit CLECs to cross-connect to each other for purposes of interconnection and access to UNEs.[37] Indeed, most of these carriers strongly urge the Commission to interpret the term "necessary" as narrowly as possible, so as to avoid having to collocate cross-connects under any circumstances.[38] BellSouth actually would have the Commission accept its ridiculous and untenable assertion that an extremely narrow interpretation of the equipment "necessary" for

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34 GSA Comments at 11-12.

35 *Id.*

36 Sprint Comments at 3, 12-14.

37 BellSouth Comments at 7; SBC Comments at 23-25; USTA Comments at 5; Verizon Comments at 12-13 While Qwest does not adopt the absolute standard advanced by the other ILECs and states its support for the ability of CLECs to cross-connect where such CLECs are already lawfully collocated in the central office, Qwest nevertheless refuses to permit CLECs to collocate cross-connects for the sole or primary purpose of providing interoffice transport. Qwest Comments at 16.

38 BellSouth Comments at 4-5; SBC Comments at 10; USTA Comments at 4; Verizon Comments at 1-4. Again, Qwest does not adopt as rigid a standard as the others. In an attempt to balance its internal CLEC and ILEC needs, Qwest states that where significant efficiencies can be achieved in collocating the equipment and where the equipment is actually used for interconnection and access to UNEs, it would "seem to meet the 'necessary' test under Section 251(c)(6) of the Act. Qwest Comments at 3-4. While this position is supported in Qwest's recent press release announcing a new, liberal policy towards CLECs in its region (see September 19, 2000 Qwest Press Release, stating that Qwest would now allow CLECs to directly connect with each other within a central office for local traffic exchange), in practice, Qwest is attempting to restrict CLEC-CLEC cross-connects in order to eliminate MFN as a transport competitor in Qwest's territory.

collocation on ILEC premises will actually "encourage the development of collocation alternatives for competing carriers"[39] -- when in reality, the opposite undoubtedly will occur.

However, as several commenters to this proceeding have advocated, to interpret the term "necessary" as the D.C. Circuit has suggested would devoid Section 251(c)(6) of its intended meaning,[40] and would render it virtually incompatible with the objectives of Sections 251(c)(2) and (3).[41] Rather, this term should be interpreted in a manner that is consistent with a reasonable reading of the word and that furthers the purposes the statute was designed to advance.[42] To this end, MFN supports the view that Section 251(c)(6) should be viewed as an *enabling* clause of the Act, rather than a limiting one, given the fact that it specifically refers to ILEC obligations inherent in other sections – specifically, Sections 251(c)(2) and (3) -- of the Act.[43]

As stated in its Initial Comments, MFN and other competitive transport providers provide service to many different types of carriers offering advanced telecommunications services. Denial of the ability to collocate cross-connects effectively would prevent MFN and these carriers from providing competitive transport to themselves and to others. Collocation of cross-connects for purposes of providing dark fiber or interoffice transport are therefore, "necessary," because, without such network configurations, MFN and other carriers would

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39 BellSouth Comments at 4.

40 Lightbonding Comments at 7.

41 Joint Comments at 14.

42 *Id.* at 13.

43 *See* @Link Networks, Inc. Comments at 18.

simply be unable to offer these services.[44] Absent competitive dark fiber or interoffice transport offerings, there will be no alternative to ILEC interoffice transport. This result not only is inconsistent with the Act's purposes of promoting competition in telecommunications, including advanced services, but also provides a compelling rationale for interpreting such cross-connections as "necessary" for interconnection and access to unbundled network elements and for the provision of advanced services, given the fact that, without them, MFN and other carriers would simply be unable to offer these services and there would be no alternative to ILEC monopoly transport.

2. Interconnection" as used in Section 251(c)(6) encompasses both direct *and indirect* interconnection between two collocated carriers, as contemplated by Sections 251(c)(2) and (3) of the Act.

The record also contains substantial support for MFN's argument that the term "interconnection," as used in Section 251(c)(6), encompasses both direct *and indirect* interconnection between two collocated carriers, as contemplated by Sections 251(a)(1) and 251(c)(2) and (c)(3).[45] As noted by PF.Net, competitive carriers must be permitted to collocate facilities in the ILEC central office "even when they are not directly interconnected with the ILEC" because "by interconnecting with the CLEC at the CLEC collocation site, the [competitive carrier] is also interconnected with the ILEC network," given the fact that the CLEC is collocated at the ILEC facilities "in order to obtain access to ILEC UNEs and otherwise interconnect with the ILEC network."[46] In its comments, SBC specifically acknowledges that where a requesting carrier has collocated equipment to interconnect with the ILEC's network or

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44 The Commission has determined this to be true. *See Second Further Notice* at para. 83.

45 MFN Comments at 20-21; Joint Comments at 43-44; PF.Net Comments at 3.

to access UNEs, such a carrier "[c]ould, of course, collocate its own fiber transport facilities, *including facilities provided by a third party on a subcontract basis.*"[47] This statement strongly supports the position of MFN, the Joint Commenters -- and the vast majority of commenters to this proceeding – that if a CLEC that is lawfully connected to the ILEC network may collocate cross-connects for purposes of transport, a third party competitive transport provider should be entitled to do the same. Moreover, allowing a transport provider to collocate cross-connects would avoid space exhaustion issues that could attend a situation where *each* CLEC was required to collocate its own cross-connection equipment in the ILEC central office.

While it is true that the D.C. Circuit found Section 251(c)(6) to be "focused solely on connecting new competitors to LECs' networks"[48] the Court mentioned nothing in its opinion that would limit such interconnection to *direct* interconnection alone. Rather, the Court found that it is permissible for the Commission to require ILECs to collocate the equipment of competitors (*e.g.* cross-connects) that is "directly related to and thus necessary, required or indispensable to 'interconnection and access to unbundled network elements.'"[49] As a result, where one CLEC or competitive transport carrier collocates and connects to a second collocated CLEC that is directly purchasing UNEs from the ILEC, this standard is undoubtedly satisfied because the cross-connect between these competitive carriers is "directly related to and thus necessary" to enable the second carrier to access the ILEC network. There can be no doubt but

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46 PF.Net Comments at 3.

47 SBC Comments at 17 n. 16 (emphasis added).

48 *GTE v. FCC* at 423.

49 *Id.* at 424.

that the transport carrier's sole function is to enable the second carrier to interconnect with and access the ILEC UNEs.

Moreover, as emphasized in the Initial Comments of MFN and throughout this Reply, absent competitive dark fiber or interoffice transport offerings, which are made possible through cross-connection, there will be no competitive alternative to ILEC interoffice transport.[50] And without the presence of the transport carrier, the second carrier may find it unjustifiable to collocate and purchase interconnection or UNEs from the ILEC.[51] Quite clearly, such a result would be contrary to the market-opening, pro-competitive tenets of Section 251 and the Act as a whole. Without question, such principles require the Commission explicitly to recognize that indirect interconnection is sufficient to trigger ILEC interconnection and collocation obligations under Section 251.

BellSouth's position that collocating carriers are cross connecting merely "among themselves,"[52] and not with the ILEC fails to acknowledge the ultimate (*i.e.* indirect) interconnection with the ILEC network that is the result of such cross connections. Likewise, SBC's position that "cross-connections between collocating carriers . . .have absolutely nothing to do with, connecting collocating carriers to the incumbent LEC's network" is unfounded.[53] Both BellSouth and SBC would have the Commission ignore the reality that the transport carrier is in fact enabling other carriers to purchase indirect interconnection and access to unbundled elements in the ILEC network – a situation that may not otherwise have been economically

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50 MFN Comments at 9; Focal Comments at 3, 17; NorthPoint Comments at 17; PF.net Comments at 3-4; Sprint at 13; *supra* n. 1.

51 Joint Comments at 44.

52 BellSouth Comments at 8.

feasible *but for* the existence of the transport carrier. The fact remains that nothing in the express language of Section 251(c)(6), as it refers to Sections 251(c)(2) and (3), would limit such interconnection to *direct* interconnection alone.

Moreover, as stated in MFN's Initial Comments, certain ILECs, such as the former GTE, have been willing to negotiate interconnection arrangements that *specifically recognize* that a carrier that is interconnected with CLECs that are directly interconnected with the ILEC through ILEC UNEs is *indirectly* interconnected with the ILEC network.[54] The GTE interconnection agreement acknowledges that MFN, through its direct connection with the CLEC and indirect connection with GTE, is interconnected for the purposes of Sections 251(c)(6) and (c)(2). This agreement is proof-positive that ILECs can – and should be required to -- enter into negotiated collocation arrangements with CLECs that not only satisfy the ILEC obligations under Section 251(c)(6) of the Act, but that also achieve desired efficiencies for *both* parties.

Legitimate principles of statutory interpretation, the overwhelming amount of support that the Commission has received in this proceeding and the record established herein adequately demonstrates that the Commission *reasonably* has interpreted the collocation requirements under 251(c)(6) for interconnection or access to UNEs as referring not only to the interconnection of a collocator's equipment or network to the ILEC network but also to the interconnection of two collocators' equipment or networks. Such support should make it evident to the D.C. Circuit that the Commission has, in fact, provided a "better explanation"[55] for its rational interpretation of Section 251(c)(6) as requiring ILECs to collocate cross-connects.

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53 SBC Comments at 23.

54 MFN Comments at 6.

Accordingly, MFN requests that the Commission clarify that the ILEC obligations under Section 251(c)(6) encompass both direct *and* indirect interconnection, and require the ILECs to permit CLECs to physically collocate cross-connections for purposes of direct or indirect interconnection and access to unbundled network elements as contemplated by Sections 251(c)(2) and (3).

3. The extremely narrow positions urged by SBC, Verizon and USTA would undermine the potential for collocation to be a pro-competitive means of implementing the objectives of Sections 251(c)(2), (3) and 706.

The vast majority of ILEC interpretations of Section 251(c)(6) would render section 251(c)(6) a nullity, effectively prohibiting UNE-based competition in the local exchange market. SBC contends that dark fiber and "stand-alone" competitive interoffice transport facilities are "not necessary to connect a requesting carrier's facilities to the incumbent LEC's network because the requesting carrier can always connect directly to that network . . . ."[56] SBC further claims that CLECs simply may resort to leasing costly cross-connection facilities out of ILEC access tariffs as they have done "for decades."[57] Such a position all but ignores the fundamental, market-opening principles Section 251 and provides no viable solution for ILEC competitors. Furthermore, the cross-connects that may be leased out of SBC's access tariff are limited to those required to provide lit fiber *only* and not the dark fiber that carriers such as Allegiance and MFN need to provide customers with access to unlimited bandwidth. Likewise, as explained herein, *supra* n.38, while Qwest *appears* to support a policy which would allow CLECs to directly connect with each other within a central office for local traffic exchange, in

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55 *GTE v. FCC* at 424.

56 SBC Comments at 17.

reality, Qwest would restrict cross-connects to only those required to provide Plain Old Telephone Service ("POTS") – an artificial distinction, given that the ILECs long have tariffed private line services in their local tariffs.

Verizon's position that interconnection between collocators is not "necessary' under Section 251(c)(6) since there is "nothing unique about the incumbent local exchange carrier's central office that prevents collocators from connecting to each other elsewhere"[58] likewise ignores the underlying pro-competitive goals of the Act and would result in gross inequities and unreasonably discriminatory interconnection costs for CLECs. USTA similarly advocates a strict interpretation of Section 251(c)(6) as precluding the Commission from "ignor[ing] the fact that collocation of equipment required for cross-connection of CLEC facilities was not necessary for access to ILEC interconnection and UNEs."[59]

Under any of the interpretations offered by these ILECs, competition virtually would be cut-off at the knees; indeed, it is questionable whether the collocation of *any* equipment would be deemed "necessary" under the extreme position taken by SBC. Moreover, the interpretations urged by these ILECs would give ILECs a huge competitive advantage such that the ILEC obligation to provide collocation in a just, reasonable, and non-discriminatory manner effectively would be interpreted out of existence. Section 251(c)(6) simply cannot be rendered a nullity in this way.

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57 *Id.* at 24-25.

58 Verizon Comments at 12-13. MFN notes, however, that despite this stated position, Verizon has been supportive of interoffice transport competition by virtue of fact that it has permitted MFN to collocate the CATT as an alternative to collocation of cross connections in Verizon central offices.

59 USTA Comments at 2.

By contrast, ILECs such as Sprint, support the need for CLEC cross-connections. Sprint's opinion in this regard is noteworthy as it demonstrates an internal balancing of both CLEC and ILEC interests – precisely what the Commission is tasked to do in this proceeding. In this regard, it is significant to note that when Sprint took into account a set of rules that would "facilitate CLEC entry on economically viable terms and in a fashion that minimizes the ability of other ILECs to increase artificially the costs of entry and delay the entry process,"[60] it came out, *unquestionably*, in favor of allowing CLECs to collocate their own cross-connect facilities in ILEC central offices in order to interconnect directly with other CLECs.[61] Notably, Sprint supported its position on the collocation of cross-connects with a statement that "forcing a CLEC to use the ILEC for transport entrenches ILEC market power," and that, "without CLEC-CLEC interconnection, CLECs that do have their own transport facilities are deprived of the opportunity to increase the utilization of such facilities by transporting the traffic of other CLECs."[62]

The ILECs cannot avoid the fact that they must provide physical collocation pursuant to Section 251(c)(6) and "on rates, terms and conditions that are just, reasonable, and nondiscriminatory."[63] The *sole limitation* on this obligation arises where the ILEC can demonstrate to a State commission "that physical collocation is not practical for technical reasons or because of space limitations."[64] Section 251(c)(6) provides specific statutory

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60 Sprint Comments at 2.

61 *Id.* at 13.

62 *Id.*

63 47 U.S.C. § 251(c)(6).

64 *Id.*

authority for the Commission to require the ILECs to provide CLECs with the collocation necessary for interconnection and access to UNEs. This statutory requirement can only be accomplished where the ILECs are required to collocate the physical equipment of competitors that is directly related to and thus necessary, required or indispensable to 'interconnection and access to unbundled network elements.'" Such equipment undoubtedly includes the cross-connects necessary to enable competitive carriers to indirectly access the ILEC network.

4. Requiring ILECs to Permit CLEC-CLEC Cross Connects Is a "Just, Reasonable and Nondiscriminatory" Term of Collocation under Section 251(c)(6).

ILEC refusals to permit CLEC-CLEC cross connection violates the requirement that ILECs collocate with other carriers on a non-discriminatory basis. Specifically, any rule limiting the ability of CLECs to cross-connect with each other violates a central purpose of both the Act in general and section 251(c)(6) in particular – *i.e.* to provide CLECs with "non-discriminatory access" to ILEC networks.[65] As many commenters to this proceeding have noted, ILECs should be required to permit CLECs to self-provision cross-connects with other CLECs as a reasonable condition of the ILEC requirement to offer physical collocation of equipment necessary for interconnection and access to UNEs.[66]

The provision of such cross-connection is vital to the CLEC's ability to effectively compete in the local exchange marketplace.[67] Given that ILECs can and do connect with CLECs in the central office, failure to permit CLECs to connect with other CLECs in the

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65 Joint Comments at 45-46; Comments of Mpower at 26.

66 @Link Networks, Inc. Comments at 26; Allegiance Comments at 69-70; Conectiv Communications, Inc. Comments at 21; Telergy, Adelphia Business Solutions and Business Telecommunications Comments at 33.

67 Allegiance Comments at 69-70.

central office necessarily discriminates against CLEC access to the ILEC network and places CLECs at a competitive disadvantage, resulting in greater costs to CLECs and less consumer choice.[68] Where ILECs are not required to permit cross-connection between collocators, CLECs are forced either to connect directly with the ILEC or to incur the cost-prohibitive expense of inefficient, multiple pulls into the central office. This not only results in greater costs to CLECs but also may thwart CLEC advanced optical networking initiatives that require the lease of dark fiber.[69]

C. Carriers Must be Permitted to Collocate *Solely* for the Purpose of Providing Interoffice Transport

As explained fully in MFN's Initial Comments and throughout this Reply, without access to dependable, economically-priced transport, CLECs will be unable to provide competitive transport to themselves and to others, and will be forced to rely on ILEC-provisioned transport -- a result that will thwart the Act's promise of facilities-based competition for advanced services. As advanced by MFN in its Initial Comments, the benefits of cross-connecting at the central office – efficient access to the ILEC network and UNEs, the elimination of multiple pulls into the central office, and effective access to competitive transport -- are indisputable.[70] The only basis, therefore, that an ILEC has for refusing such collocation and interconnection is a desire to disadvantage competitive transport providers. For example, SBC's decision to limit its tariffed provision of cross-connects to only those used to provide lit fiber,

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68 CTSI and Waller Creek Comments at 16. *See also* Allegiance Comments at 69; Corecomm, Vitts Network and Logixs Comments at 29.

69 RCN Comments at 16; Telergy, Adelphia Business Solutions and Business Telecommunications Comments at 34.

70 MFN Comments at 21.

and not the dark fiber that competitive transport carriers require to provide customers with advanced telecommunications services, is carefully calculated to preclude competition from taking root in its monopoly transport market, and to prevent deployment of advanced services such as high bandwidth fiber – acts that are clearly contrary to the fundamental tenets of Sections 251 and 706 of the Act.

In the *UNE Remand* proceeding, Bell Atlantic (Verizon), Bell South, SBC and U S WEST (Qwest) all *explicitly acknowledged* that the market for interoffice transport is competitive and has been open to competition since the 1980's.[71] As a point of fact, in that proceeding, these ILECs argued that there was *so much* transport competition that the Commission should eliminate transport as an unbundled network element.[72] In the comments filed by the ILECs in the instant proceeding, however, the majority of ILECs argue that the Act does not require the collocation of carrier cross-connects to enable CLECs to provide transport.[73]

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71 *See* Bell Atlantic *UNE Remand* Comments at 26-27 (declaring that "competing carriers have offered transport services on a competitive basis for at least 14 years" and that "competing carriers began offering competitive transport services in the mid-1980s); U S WEST *UNE Remand* Comments at 48-49 (asserting that "[s]ince at least the early 1980s, interoffice transmission facilities have not been a natural monopoly, and the market for such transport has been open to competition."); BellSouth *UNE Remand* Comments at 47.

72 *See* Bell Atlantic *UNE Remand* Comments at 31 (claiming that, "given the extensive development of competitive transport services over a period of more than 14 years, incumbent carriers should not be required to unbundle interoffice transport facilities. Competitors have already demonstrated their ability provide (sic) these services by investing in their own facilities. They don't need to use the incumbents' network elements. At a minimum, the Commission should not require unbundling of interoffice transport facilities in any area where at least one carrier has deployed its own network and collocated its own transmission equipment in Bell Atlantic's wire center. In these areas, competitors do not need access to Bell Atlantic's interoffice transport facilities on an unbundled basis."; US WEST *UNE Remand* Comments at 51-52 (arguing that "[t]he Commission should consider adopting a uniform rule eliminating mandatory unbundling requirements *nationwide*, even where there is not yet direct evidence of competitive transport."; BellSouth *UNE Remand* Comments at 53-54.

73 *See* Qwest Comments at 16 (asserting that "the Act does not allow at CLEC to obtain collocation from an incumbent LEC for the *sole* or *primary* purpose of cross-connecting

Given their previous claims of excessive competition in the transport market, the ILECs' current position begs the question -- if CLECs are not even permitted to collocate cross-connects for purposes of providing interoffice transport, how then has competition existed "since the 1980's" in the interoffice transport market? Indeed, how will competition ever develop in this market? The ILECs should be estopped from making such arguments given that their claims of viable transport competition "for years" in the context of the *UNE Remand* proceeding implicitly suggest that the collocation of cross-connects is permitted -- for how else could transport competition exist? Moreover, how can this market be competitive in the absence of a fiber-based UNE?

MFN transport customers, such as Focal and Allegiance, support the need for competition in the interoffice transport market.[74] A number of other competitive carriers to this proceeding also advocate this need.[75] Even ILECs like Sprint have balanced their internal CLEC/ILEC concerns and have come out in favor of requiring CLEC-CLEC cross connects.[76]

The purpose of the Act is not to protect ILEC interoffice transport revenues but to foster competition in the local exchange market. As noted by Focal, failure to require CLEC provisioned cross-connects would not only be contrary to the Act, it would ensure continued

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to other CLECs"); SBC comments at 17 (declaring that interoffice transport is unnecessary given that a requesting carrier always can interconnect directly with the ILEC); BellSouth Comments at 7: "[O]nly telecommunications carriers that are interconnecting with BellSouth or accessing UNEs are permitted to collocate in BellSouth's central offices. Carriers that are only providing their fiber and fiber terminations or interoffice transport to be used by other carriers with no intention of interconnecting with BellSouth or accessing UNEs are not entitled to collocate on BellSouth's premises."

74 Allegiance Comments at 70; Focal Comments at 3.

75 *Supra* n.50.

76 Sprint Comments at 3, 12-14.

ILEC monopoly over the interoffice transport market.[77] Surely, this is a result unintended by the Act. In attempting to use Section 251(c)(6) to stifle competition in the interoffice transport market, the ILECs are doing little more than using – or attempting to use -- one section of the Act to undermine the general pro-competitive principles of the entire Act as a whole. The Commission cannot permit such a "gutting" of the explicit Congressional intent behind the Act to succeed.

III. THE FCC COULD ESTABLISH REASONABLE ALTERNATIVES TO MANDATING CLEC CROSS-CONNECTIONS UNDER SECTION 251(C)(6) FOR PURPOSES OF PROVIDING ALTERNATIVE INTEROFFICE TRANSPORT.

While MFN *prefers* to be able to collocate cross-connects in the ILEC central office under Section 251(c)(6), and indeed agrees with the vast majority of commenters that such cross-connects are in fact *required* under Section 251(c)(6), MFN wishes again to emphasize that there are other workable solutions that the Commission could mandate through the authority given it under the Act that would provide efficiencies to both CLECs and ILECs alike. MFN is operationally flexible and, accordingly, is open to the establishment of workable, negotiated alternative collocation arrangements provided that any such arrangement makes economic sense and achieves network efficiencies. Indeed, any one of the three collocation solutions negotiated by MFN and explained in detail in MFN's Initial Comments will allow MFN to provide competitive interoffice and long haul transport to itself and other carriers.[78] MFN emphasizes, however, that, as fully advocated in its Initial Comments, all three types of collocation are

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77 Focal Comments at 3.

78 MFN Comments at 15-20.

statutorily *required* under the Act and the Commission should *specifically* find this to be the case.

In particular, MFN urges the Commission to recommend that the ILECs collocate the Competitive Alternate Transport Terminal ("CATT") and, as a second alternative, MFN's Stable Manhole Zero" network configuration as evidence of ILEC "best practices." As additional alternatives, the Commission should use its authority under other provisions of the Act to require the ILECs to provide cross-connection as an unbundled network element, or, as a final alternative, to require ILECs to tariff a cross-connection service, in accordance with the language of Sections 201(a) and 251(a)(1).

A. Competitive Alternate Transport Terminal (CATT)

As advanced in great detail in its Initial Comments, MFN believes that a finding that carriers may collocate cross-connections within the ILEC central office for purposes of providing interoffice transport will enable MFN and other carriers to deploy the CATT network configuration -- an efficient form of collocation and interconnection in which MFN installs a fiber distribution frame ("FDF") in the ILEC's cable vault.[79] Should the Commission find itself unable to determine that the collocation of cross-connects for purposes of interoffice transport is mandated by the Act, the CATT, which is the *functional and technical equivalent* to a cross-connect, is a demonstrated alternative that will serve MFN's purposes as a competitive transport carrier. Accordingly, MFN recommends that the Commission classify this arrangement as an ILEC "best practice."

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[79] Under this arrangement, a fiber extension is connected from the FDF in the ILEC cable vault to the virtual and physical collocation nodes of MFN's CLEC and carrier customers.

MFN wishes to reiterate that the collocation of the CATT, a technically equivalent arrangement to cageless collocation, is a "win-win" situation for all parties involved, both CLEC and ILEC. MFN's experience in deploying the CATT, pursuant to its interconnection agreement with the former Bell Atlantic (Verizon), has shown that the CATT accomplishes the following desirable goals: (1) avoids multiple digs, often prohibited or restricted by law; (2) decreases cost of collocation due to single fiber pull, which in turn reduces costs to consumers; (3) avoids space exhaustion; and (4) represents an easy, ministerial check of the records for the ILECs that will not strain ILEC resources. Moreover, the CATT is an extremely efficient collocation arrangement, and, given that it makes use of considerably less ILEC duct riser to get to cable vault, it is actually cheaper to deploy than the Stable Manhole configuration. The CATT is a proven, workable solution that achieves efficiencies for both the collocated CLECs and the ILEC. As a result, MFN recommends that the Commission adopt the CATT as an alternative collocation arrangement.

B. <u>Stable Manhole Zero</u>

Again, as explained in great detail in MFN's Initial Comments, MFN has deployed another type of alternative collocation arrangement, this one with SBC, known as "Stable Manhole Zero." This configuration allows MFN to distribute dark fiber to its CLEC and other carrier customers through a permanently assigned entrance facility around SBC's central offices and precludes the need for MFN to interconnect with unbundled elements, and that minimizes the amount of fiber pulls necessary to serve customers in SBC central offices, thereby saving time, money, and engineering resources for MFN and its customers, as well as for SBC. While this alternative necessitates the use of repeated pulls into the ILEC central office, with all

of its associative engineering operations, time and expense for both parties, and therefore is a less-desirable collocation arrangement than the CATT, both the CATT and the Stable Manhole configuration permit MFN with one designated point at which it can terminate its fiber and thereby provide access to its carrier customers. These arrangements achieve efficiencies for both CLECs and ILECs alike and as such, represent workable alternative collocation solutions.

As a result, if the Commission does not find that the collocation of cross-connects falls squarely within Section 251(c)(6) -- as MFN has shown that it should – the Commission should use its authority under the Act to recommend the deployment of alternative "best practice" collocation arrangements such as the CATT and Stable Manhole Zero.

C. UNE and Tariff Alternatives

As a final option, if the Commission does not find that the collocation of cross-connects falls squarely within Section 251(c)(6) -- as MFN has shown that it should – and if the Commission declines to classify alternative network collocation arrangements, such as the CATT and the Stable Manhole Zero, as ILEC "best practices," the Commission should use its authority under other provisions of the Act to require the ILECs to provide cross-connection as an unbundled network element. This position has significant support in the record.[80]

As advanced in the Initial Comments of the Joint Commenters, carrier-to-carrier cross-connects clearly are network elements, and undoubtedly meet the "impair" standard set forth by the Commissioner in the *UNE Remand Order*.[81] Failure to establish cross-connects as a UNE would force carriers to collocate outside of the ILEC central office at considerable and

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80 Allegiance Comments at 65; Focal Comments at 21; Joint Comments at 47-51; Northpoint Comments at 14.

81 MFN Comments at 21; Joint Comments at 49.

burdensome expense.[82] Given the "impairment" that would occur as a result of forcing CLECs to collocate fiber pulls outside of the central office, when a much more efficient alternative easily and inexpensively could take place inside of the ILEC central office, cross-connects clearly qualify as network elements under the Commission's current framework for identifying UNEs.[83]

As a final – and least desirable – alternative, the Commission should require ILECs to tariff a cross-connection service, in accordance with the language of Sections 201(a) and 251(a)(1).

IV. THE COMMISSION SHOULD CLARIFY THAT COLLOCATION OF FIBER DISTRIBUTION FRAMES MAY NOT BE RESTRICTED IN ANY WAY

The Commission must also ensure that carriers' carriers like MFN are not limited in the *types* of equipment they use to establish collocation and interconnection. To this end, MFN again urges the Commission to find that an FDF, which is necessary for MFN to interconnect with ILEC dark fiber loops and transport (*i.e.* UNEs) in order to provide telecommunications services, constitutes sufficient "equipment" pursuant to the Act and is entitled to collocation. In the past, ILECs, such as SBC, have argued that the FDF is too "basic" a piece of equipment or is a facility that does not draw power and therefore may not be collocated *alone*.[84] However, under any credible interpretation of Section 251(c)(6), an FDF, as

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82 *Id.* at 51.

83 MFN supports Allegiance' position that cross-connects are "functionally identical to interoffice transmission facilities between CLEC wire centers." Allegiance Comments at 66. In this regard, MFN also notes that most of the ILECs already offer zero-mileage or intra-building transport to commercial customers in their tariffs.

84 In May of 2000, SBC established a region-wide policy in this regard, which it has advanced mid-way through its interconnection discussions with MFN. Specifically, and despite stating repeatedly in letters with the Commission that it would allow MFN to collocate its FDF in SBC's central offices where MFN purchased UNEs, SBC now claims that MFN may not gain access to SBC UNEs solely through a collocated FDF.

the minimum essential piece of equipment needed to achieve interconnection and access to fiber UNEs, is *necessary* for interconnection and access to UNEs. Indeed, as specifically noted by Alcatel in its Initial Comments, the FDF is an ideal point of interconnection.[85] As advocated by MFN in its Initial Comments, the FDF constitutes sufficient "equipment" under the Act, the FCC's rules and common sense interpretation of the word, and ILEC claims to the contrary are erroneous. The Commission must make clear that collocation of FDFs may not be restricted in any way under the Act.

To this end, MFN specifically supports Sprint's two-step approach regarding how to determine the types of equipment that may be collocated, and, in particular, Sprint's "safe harbor" list of equipment that, *at this time*, clearly is "necessary for interconnection and access to UNEs."[86] MFN urges the Commission to make the FDF the first piece of equipment on such a list, or, alternatively, to employ precise language in the rules that it will adopt in this proceeding, to mandate that ILECs permit the collocation of the FDF *alone*. Such specific clarification is necessary, given the fact that, in the absence of such an explicit list, or of precise Commission

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This issue has been the subject of informal mediation with the Enforcement Bureau, and it is MFN's understanding that the Enforcement Bureau will not address this issue until the conclusion of this proceeding.

85 Alcatel Comments at 26.

86 Sprint Comments at 7. MFN also supports Sprint's proposal that the Commission establish an expedited dispute resolution process to address situations where the collocation of pieces of equipment not on the Commission's safe harbor list are objected to by ILECs. *Id.*, pp. 7, 10-12.

language, carriers like SBC will not permit MFN to collocate the FDF *by itself*. However the Commission chooses to do so, it is *imperative* that the Commission be as clear as possible in establishing the FDF as a piece of equipment that may be collocated *alone* under Section 251(c)(6) of the Act.

Respectfully submitted,

By: _____

Jonathan E. Canis
Erin R. Swansiger
KELLEY DRYE & WARREN, LLP
200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

November 14, 2000

Metromedia Fiber Network Services, Inc.
CC Docket Nos. 98-147 and 96-98
November 14, 2000

CERTIFICATE OF SERVICE

I, Michele Depasse, hereby certify that on this 14th day of November, 2000, I served copies of the attached Reply Comments by hand on the following:

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Janice Myles
Common Carrier Bureau
Policy & Program Planning Division
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Jordan Goldstein
Legal Advisor to
Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Rebecca Beynon
Legal Advisor, Common Carrier Matters, to
Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Deena Shetler
Legal Advisor to
Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Kyle Dixon
Legal Advisor to
Commissioner Michael K. Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Christopher J. Wright
General Counsel
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Michelle Carey
Common Carrier Bureau
Policy & Program Planning Division
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

William A. Kehoe III
Common Carrier Bureau
Policy & Program Planning Division
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Carol Mattey
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Anna Gomez
Senior Legal Advisor to
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

Michele Depasse