



52-Week Analysis of Certain Telecom Companies For April 4, 2001 Mid Day*

Ticker	Company	52-wk High/Low	Today's Price	% Growth Over Past 52 Weeks	Shares Outstanding	Current Market Cap
ABIZ	Adelphia	66.125/3.063	3.75	-95%	70,531,000	264,491,250.0
ALGX	Allegiance	80.25/8.5	12.25	-89%	109,637,000	1,343,053,250.0
CKCP	CapRock	.002/.001	0.001		N/A	N/A
CWON	Choice One	41.125/3.563	5.0	-91%	37,886,000	189,430,000.0
CONV	Convergent	12.25/.063	0.0625	-99%	29,910,000	1,869,375.0
COMM	CoreComm	46.688/.094	0.125	-99%	40,502,000	5,062,750.0
COVD	Covad	49/1	0.9063	-99%	155,931,000	141,320,265.3
CPTL	CTC Comm.	45.625/3.875	4.4531	-92%	26,513,000	118,065,040.3
DSLN	DSLNet, Inc.	23.25/.469	0.8125	-98%	63,003,000	51,189,937.5
ESPIQ	e.spire	8.25/.015	0.0625	-99%	54,929,000	3,433,062.5
ELIX	Electric Lightwave	25.25/2.0	2.0313	-92%	50,074,000	101,715,316.2
FCOM	Focal Comm.	63.688/6.063	7.125	-91%	60,857,000	433,606,125.0
ICIX	Intermedia	51/3.625	13.25	-93%	54,661,000	724,258,250.0
ITCD	ITC DeltaCom	39/4.375	4.3438	-89%	61,612,000	267,630,205.6
MCLD	McLeodUSA	29.5/5.875	7.0938	-80%	590,647,000	4,189,931,688.6
MPWR	Mpower	45.828/1.562	1.9375	-97%	56,479,000	109,428,062.5
NTKK	Net2000	25.875/1.313	2.9375	-95%	38,438,000	112,911,625.0
NASC	Network Access	24.75/.438	0.6	-98%	47,951,000	28,770,600.0
NPLS	NetworkPlus	41.75/1.688	2	-96%	61,809,000	123,618,000.0
NPNTQ	NorthPoint	.5/.01	0.012	-98%	128,397,000	1,540,764.0
PACW	Pac-West	32/1.875	2.9375	-94%	35,935,000	105,559,022.5
RTHM	Rhythms	35.625/.156	0.25	-99%	77,769,000	19,442,250.0
TGNT	Teligent	65.875/.25	0.375	-99%	63,684,000	23,881,500.0
TWTC	Time Warner	80.375/28.187	28.9375	-65%	105,777,000	3,060,921,937.5
CLEC	US LEC	41/3.25	5.4375	-92%	27,661,000	150,406,687.5
WCII	WinStar	61.5/.281	0.4375	-99%	92,422,000	40,434,625.0
XOXO	XO	63.906/2.875	2.8125	-96%	305,145,000	858,220,312.5
ZTEL	Z-tel	42.125/2.813	2.75	-93%	33,718,000	92,724,500.0
				<u>-94%</u>		<u>12,562,916,402.5</u>
BLS	BellSouth	53.5/35.5	40.4	-34%	1,872,467,000	75,647,666,800.0
Q	Qwest	59.87/32.12	31.35	-46%	1,656,098,000	51,918,672,300.0
SBC	SBC	59/38.44	43.3	-35%	3,384,971,000	146,569,244,300.0
VZ	Verizon	66/39.06	48.12	-41%	2,702,000,000	130,020,240,000.0
				<u>-39%</u>		<u>404,155,823,400.0</u>
T	AT&T	58.81/16.5	20.17	-72%	3,759,581,000	75,830,748,770.0
GX	Global Crossing	42/9.25	10	-78%	885,650,000	8,856,500,000.0
FON	Sprint	67/19.62	20.89	-71%	884,296,000	18,472,943,440.0
WCOM	WorldCom	49.969/13.5	17.8125	-73%	2,879,100,000	51,283,968,750.0
AWE	AT&T Wireless	36/16.37	17.2	-55%	2,310,010,000	39,732,172,000.0
				<u>-70%</u>		<u>194,176,332,960.0</u>

* Source: Nasdaq Info Quotes Fundamentals - Mid Day Reports (Nasdaq.com)



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

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

**DECLARATION OF C. MICHAEL PFAU
ON BEHALF OF AT&T CORP.**

1. My name is C. Michael Pfau. My business address is 295 North Maple Avenue, Basking Ridge, New Jersey 07920. I have a Bachelors of Science degree in Mechanical Engineering and a Master of Business Administration. I have a Professional Engineering license from the state of Pennsylvania.

2. I am employed by AT&T Corp. ("AT&T"), and I serve as Division Manager in the Law and Public Policy Division. My responsibilities include developing public policy as it relates to interconnection with incumbent local exchange carriers ("ILECs") and the use of unbundled network elements that they are obligated to provide under the Telecommunications Act of 1996 ("the Act") and the Commission's rules implementing the Act. In that capacity I am required to understand the operational needs of the various business units so that their interests are reflected in the policy positions taken by AT&T. I also help those units understand how provisions of the Act and the Commission's rules affect their business plans. Since 1997, I have participated in developing the written comments that AT&T has filed in most of the Commission dockets addressing unbundled network elements, interconnection and building access – *i.e.*, CC Dockets Nos. 96-98, 98-

147 and 99-217. I have also supported AT&T's positions in *ex parte* meetings and through direct testimony in various state proceedings

I. PURPOSE AND SUMMARY

3. My declaration demonstrates that the report entitled "Competition for Special Access Service, High Capacity Loops, and Interoffice Transport," dated April 5, 2001 and submitted by the United States Telecom Association on behalf of BellSouth, SBC, Qwest and Verizon ("USTA Report") is deeply flawed, both in its analytical design and in its assertions of fact. It presents a wildly distorted – and factually wrong – view of the real world in which competitive carriers ("CLECs") must operate. Contrary to the ILECs' claims, CLECs cannot generally construct competitive high-capacity loop and transport facilities, or obtain alternative facilities from third parties, to carry their customers' special access traffic. Moreover, when properly filtered and analyzed, the ILECs' own data support this same conclusion.

4. Part II below demonstrates that the USTA Report grossly overstates the CLECs' "market share" for special access services. Rather than the 36% share asserted by the ILECs, CLECs today account for, at most, only about a 22% share of that business. Part III below demonstrates that the ILECs' claims regarding CLEC fiber deployment are also overstated, both because the USTA Report is simply inaccurate and because it fails to distinguish between long haul and local fiber facilities. The latter are the only facilities that competitors can actually use in lieu of special access services. Part IV below demonstrates that the availability of competitive alternatives cannot be judged on the basis of the number of collocations established in an area, because (a) the ILECs have imposed restrictions on CLECs' use of collocations that makes it difficult or impossible for CLECs to use

alternative facilities providers; (b) the mere presence of a collocation site does not demonstrate that a CLEC has the ability to serve the other end point of a dedicated facility; and (c) a large number of collocation sites were constructed solely to provide advanced services and are simply not equipped to provide service that is competitive with ILEC special access. Finally, Part V demonstrates that the USTA Report's figures on CLEC building penetration are grossly overstated. The USTA Report simply get the numbers wrong. It excludes a huge number of business buildings from its penetration calculations, thereby making it look like CLECs serve a higher percentage of commercial buildings than they actually do. Then, through double counting, it overstates the number of buildings that CLECs have actually penetrated. At the same time, the USTA Report ignores the fact that CLECs often only have access to particular customers or floors, not to an entire building. Thus, contrary to the USTA Report's claim, CLECs have actually penetrated less than 6 percent of commercial buildings, and for many of those buildings, serve only particular floors or customers.

II. THE USTA'S "FACTS" GROSSLY OVERSTATE CLECS' SPECIAL ACCESS "MARKET SHARE"

5. The first "indicia" of special access competition the ILECs rely upon is the CLECs' "share" of the special access "market." According to the USTA Report (at 6), CLECs had a special access market share of 33% in 1999 and of 36% in 2001. As I explain below, the USTA Report can provide these figures only by employing questionable analytical techniques that result in flawed conclusions. When properly analyzed, the relevant data show that CLECs had, at most, a 21.8% market share in 2000, which represents only a 2.1% increase over 1999.

6. As a threshold matter, it is important to emphasize that, in this context, the *change* in CLEC market share is just as important as the absolute share. USTA filed a similar “fact” report in 1999 to support its claim that high capacity loops and transport are ubiquitously available outside incumbent networks and therefore CLECs were not impaired if they were denied access to these ILEC facilities.¹ The Commission, however, rejected this claim in its 1999 *UNE Remand Order*, specifically finding that the existing level of telecommunications services CLECs provided to large businesses over their own facilities did not demonstrate that any loop or transport facility – including high speed loop and transport facilities – were generally available outside incumbents’ networks and that CLECs would be impaired by denial of access to such facilities as UNEs.² Thus, even taking the USTA Report at face value, the ILECs’ own data do not show an appreciable change in the competitive situation – a CLEC share increase of 3 percent in one year. Such a modest change provides no factual basis for the Commission to abandon its existing rationale, analysis and conclusion.
7. I now turn to the inaccuracies in the USTA Report’s “market share” calculation. Although the basis of the USTA Report’s claims is the New Paradigm Research Group (“NPRG”) estimate of dedicated access and private line revenues for CLECs as reported in Table 18 of NPRG’s *2001 CLEC Report*, it does not use those data faithfully. Table 18 states that CLECs had 1999 revenues of \$6.131B and 2000 revenues of \$7.378B. The USTA Report, however, assumes CLEC revenues of \$5.7B for 1999, based on an out-dated and now-

¹ See *Special Access Fact Report*, Submitted by USTA, Prepared for Bell Atlantic, BellSouth, GTE, SBC and US WEST, CC Docket No. 96-98 (filed FCC Jan. 19, 2000).

² Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696, ¶¶ 176-78, 322-24, 334-60 (1999) (“*UNE Remand Order*”).

superseded figure. See USTA Report, Table 3. Thus, even accepting all of the USTA Report's questionable assumptions as true and ignoring all its methodological errors, but simply correcting the USTA Report's calculation to reflect *current* NPRG data, the CLEC market share was 34.5% in 1999 compared to 36% for 2000.

8. The bottom line, therefore, is that the ILECs assert the Commission should ignore its prior impairment findings in the *UNE Remand Order* because CLECs' market share has increased 1.5% in one year. However, given the inherent variability in the data due to both the underlying estimation process and the incompleteness of the data, such an increase in market share is simply not significant and cannot support any such finding. For all intents and purposes the two share figures are the same.
9. Further, the USTA Report's mix and match approach to data sources significantly inflates the reported overall CLEC market share levels. Because the USTA Report does not actually describe how it calculated CLECs' market share, it is ultimately impossible to determine precisely what data sources it used for each step of the calculation. Nonetheless, through "reverse engineering" I have been able to ascertain at least the broad contours of the approach that was used.
10. Although the USTA Report cites the Commission's own Industry Revenue Reports ("IR Reports"), which comprehensively provide ILEC, CLEC and interexchange carrier special access and local private line revenues, it appears to selectively ignore those data. Instead, the USTA Report unnecessarily uses data from at least two (if not more) different sources, apparently using incumbent LEC revenues reported in the Commission's Statistics of Communications Common Carriers ("SOCC Report") for 1998 and then "growing" these revenues to 1999 and 2000 revenues using an incomprehensible and unexplained process.

In order to arrive at a CLEC market share, it turns to yet a different source – an unexplained projection based upon estimates in a consultant report prepared by NPRG.

11. Clearly, the NPRG data – which is derived from various financial estimates, discussions with companies and proprietary analysis – may be correct when used in a manner consistent with how NPRG developed and portrayed the figures. However, the USTA Report apparently misuses the numbers and the result of the misuse is an inflated revenue figure for the CLEC industry. Indeed, employing numbers reflected in the FCC IR Report, even with generous adjustments in favor of the ILEC position, produces a CLEC revenue figure that is about half that derived by USTA. The question, then, is which basis is more reliable for estimating market share: the USTA amalgamation of reports and industry estimates or the Commission’s own IR Report. The answer is clear: The FCC IR Report is more reliable because “[v]irtually all providers of telecommunications service are currently required to file the Form 499-A.” 1999 FCC IR Report, p. 1. *See also* 1998 FCC IR Report, p. 1 (“The data contained in the universal service filings cover 99% of the industry revenue.”). In addition, the FCC IR Report, unlike the *2001 CLEC Report*, profiles wholesale and end-user derived revenues by various classes of telecommunications carriers (the most important of which are ILEC, CLEC and IXC) and by specific types of revenues (most importantly local private line and special access).
12. Had the USTA Report used the more consistent and reliable FCC data, rather than picking data sources that served to bias its figures, it would have generated considerably lower CLEC market shares. I provide the overview of my calculation below, which is based on the FCC’s IR Reports and uses internally consistent data.

13. I begin with the estimate of local private line and special access share from the 1998 and 1999 IR Reports (issued 9/22/99 and 9/25/00 for 1998 and 1999, respectively). In the case of Table 5 for 1999 (the Wholesale Revenue Report), the key figures are found on lines 305 (local private line and special access) and 313 (long distance private line). Data for the 1999 figures comes from FCC Form 499-A. Statistics for 1998 are available for the same categories; however, the source form is different: local private line and special access revenue is from line 24 and long distance private line revenue is from line 31 of FCC Form 457. Note that both these classes of revenues are subdivided by intrastate and interstate for both years/forms. For 1999, international is a third category; however, in the case of the lines of interest here, international revenues are generally 0 or negligible, so they are ignored for the analysis.
14. Table 6 provides similar numbers but for revenues derived from end users. Local private line and special access revenues are found on line 406 and long distance private line is on line 415 for the 1999 report (also sourced from Form 499-A). The equivalent figures for 1998 are found on line 35 (local private line and special access) and line 45 (long distance private line) from Form 457.
15. The calculation of the revenue share is rather straightforward, as one need only combine the lines of wholesale and retail local private line and special access revenues for the CLECs and ILECs, respectively, and compare the two results. The CLEC totals were \$1.083B and \$1.785B for 1998 and 1999, respectively. The equivalent figures for the ILECs are \$9.196B and \$11.040B for 1998 and 1999, respectively. The share figures resulting from

the data are 11% ($\$1.083/(\$1.083 + \$9.196)$) for 1998 and 14% ($\$1.785/(\$1.785 + \$11.040)$) for 1999.³

16. Arguably, MCI/WorldCom and AT&T fall within the category of “Toll Carrier” and, as a result, any self-supplied special access may not be included in the CLEC figure. To account for this possibility, an adjustment was made to the non-ILEC revenues that should produce a conservative share estimate from the ILEC perspective (*i.e.*, the ILEC share is lowered by the adjustment). This adjustment is based upon local fiber miles for WorldCom and AT&T as reflected in the Credit Suisse/First Boston Report on RCN dated 12/14/00. In that report, TCG (AT&T) and MFS and Brooks (MCI/WorldCom) represented 37% and 32% for 4Q98 and 4Q99 of the total industry local fiber miles, respectively. This figure was used to estimate the value of self-supply for the toll carriers. To do this, the “AT&T and WorldCom” to “CLEC” ratio was calculated for each period. For 1998, the ratio was 0.58 ($0.37/(1 - 0.37)$) and for 1999 it was 0.48 ($0.32/(1 - 0.32)$). These ratios were applied to the CLEC special access and local private line revenues to determine how much might be attributable to self-supply by AT&T and WorldCom. As a result, a figure equal to 58% of the 1998 CLEC revenue was added ($0.58 * \$1.083B = \$0.627B$) for toll carrier self-supply in 1998. For 1999, an amount equal to 48% of the 1999 CLEC revenue ($0.48 * \$1.785B = \$0.856B$) was added for self-supply.

17. In this regard, my calculation is favorable to the ILECs. AT&T reports substantial revenues (both wholesale and retail) for its local operations under the CLEC category. It also reports retail long distance service revenues under the Toll Carrier category. Although it cannot be

³ As discussed above, the USTA black box methodology yields a 1999 figure of 33% (or 34.5%) depending on whether stale or current NPRG data are used.

confirmed from public sources, it is likely that WorldCom takes a similar approach. Nevertheless, self-supplied access would not be encompassed in the figures and, hence, the need for an adjustment. My adjustment is conservative because it assumes that WorldCom and AT&T generate the same dollar per local fiber miles as did the industry in aggregate. But because at least some AT&T revenues derived from wholesale service are in the numerator (and probably WorldCom revenues as well) and no AT&T (or WorldCom) local miles are in the denominator, the estimation likely overstates the value of self-supply. Hence the CLEC share estimate is likely overstated.

18. In addition, the Toll Carrier figures for local private line and special access were added to the non-ILEC total. These amounted to \$0.120B in 1998 and \$0.070B in 1999. When the Toll Carrier self-provision and local private line and special access revenues are added to the CLEC figures, the non-ILEC revenues become \$1.829B and \$2.711B for 1998 and 1999, respectively. The ILEC figures remain unchanged, so the industry figure is simply the sum of the previously identified ILEC figures and the immediately preceding non-ILEC figures (\$11.025B for 1998 and \$13.751B for 1999). Thus the adjusted non-ILEC shares are 17% for 1998 and 20% for 1999. The latter figure is far below the USTA estimate of 33% (or 34.5%) for 1999.
19. This preceding discrepancy can only be the result of two possible errors: either (a) my analysis used an incorrect and substantially higher ILEC revenue figure (so as to increase the industry number in comparison to the CLEC) or (b) USTA employed a number that inflates the non-ILEC number in comparison to the industry. In fact, for 1999, USTA employs an ILEC revenue figure of \$11.6B while my analysis employs a figure of \$12.1B – a difference of only 4.4%. In contrast, USTA employs a CLEC revenue figure of \$5.7B

(although to be consistent, it should have used NPRG's current estimate of \$6.1B), while the adjusted FCC IR Report data show that non-ILECs account for only \$2.7B in revenues – a nearly two-fold difference. The most reasonable basis to explain this difference is that the NPRG data upon which the USTA calculation is based include substantial revenues from the long distance private line category – a market that the ILECs may not participate in and for which there is substantial double counting of revenues, *i.e.*, ILEC wholesale revenues are included as a cost for Toll Carrier services and reflected in their end user revenues.⁴

20. Next, I generated estimates of 2000 revenues. Although it is difficult to deduce what USTA actually did, it appears that it relied upon an NPRG estimate of 2000 CLEC revenues and an estimate for the ILEC revenues based on a growth assumption from prior year statistics. Because no FCC IR Report exists for 2000, I also needed to make a projection of 2000 revenues. This was done by simply adding the same amount of revenue for each category when moving from 1999 to 2000 as was added when moving from 1998 to 1999.

⁴ As a matter of fact, if the 1999 IR Report values for the state portion of long distance private lines for CLECs and Toll Carriers (\$0.588B for resold and \$1.822B retail) are added to the local Private Line and the adjusted estimate for CLEC special access revenues and local private line of \$2.711B, a total of \$5.091B results – a number generally consistent with the NPRG original figure of \$5.7B for the CLECs. However, this simply demonstrates that the USTA Report incorrectly used the NPRG figure. By using the NPRG figure, the USTA Report includes long distance private line revenues for the CLECs, but not the ILECs. Even if the USTA Report asserted that it included such revenues for the ILECs it would have included revenues from a market (*i.e.*, intrastate, interLATA private line) in which, with few exceptions, the ILECs may not currently compete, would have a 0% market share and thereby would inflate the CLEC share. When I calculated the CLEC share I excluded the state long distance private line revenues from both the CLEC and the ILEC figures.

The result is that the non-ILEC category share expands by 2.1 share points to 21.8% – again vastly lower than the USTA figure for 2000, which was 36%.⁵

21. It is important to keep in mind that the market shares I estimate are likely overstated. The revenues reported to the FCC include resale revenues – *i.e.*, access services sold by one party that are subsequently sold as part of a retail offering and included in the other party's retail revenues. For example, assume the ILECs had a monopoly in the special access market of \$100 in size, and the CLECs used the special access to provide retail private line service that were sold for \$200 to end users in a market from which the ILECs were barred. If these two situations were combined, it would appear that that CLECs (as an industry) had a 67% ($\$200/(\$200+\$100)$) market share while the ILEC had a 33% share. Thus, when revenues from submarkets from which the ILECs are barred are included in the share calculation, the computational methodology will always serve to understate the market share of the dominant provider of special access – in this case the ILECs. It is clear that end user revenues for long distance private lines are irrelevant for current purposes, because the focus for “impairment” purposes is solely on local *facilities*. Indeed, high resale revenues are powerful evidence that ILEC facilities are essential to competitive carriers.

III. THE USTA REPORT GROSSLY OVERSTATES THE GROWTH OF CLEC LOCAL FIBER

22. The USTA Report states that CLEC-owned fiber grew from 160,000 route miles in 1999 to 218,000 route miles by the end of the 3rd quarter of 2000. USTA Report at 5. Even if these

⁵ The reasonableness of my projection is confirmed by AT&T's Form 499A for 2000, which AT&T has just completed. I compared the figure reflected by AT&T for its CLEC operation to the total I estimated for the CLEC category. The proportion for 2000 was not substantially different than the same proportion calculated based on equivalent 1999 figures.

figures are correct – and there is substantial doubt that they are – they are irrelevant to this inquiry, because, as I explain below, CLECs can only use installed *local* fiber facilities to substitute for ILEC UNEs in the provision of local or special access services. Critically, the relevant data show that most of the growth in fiber deployment has been in long haul, not local, fiber facilities.

23. The USTA Report is careful to never expressly claim that these figures actually represent *local* fiber facilities. However, it fails to point out that all fiber facilities are not the same, and that “long haul” fiber facilities are used for the purpose evident from their name. They are *not* substitutes for the ILEC *local* facilities that competing carriers must use to provide local and special access services.
24. Table 5 of NPRG’s *2001 CLEC Report*, the data upon which the USTA Report purport to rely, does not claim to report only local figures, and in fact the data are not so limited.⁶ Nor does the USTA Report identify which carriers are believed to provide specific amounts of fiber facilities, or the type of such facilities (local vs. long haul). Thus, either the USTA Report is slipshod, in that it failed to investigate the meaning of the NPRG figures or to independently validate which facilities are actually available as potential substitutes for ILEC UNEs, or the report deliberately seeks to mislead through omission of critical details. In any event, the report’s conclusions are clearly wrong.
25. Even a cursory review of the NPRG study upon which the USTA Report relies makes clear that it purports to represent *both* local and long haul fiber of non-ILEC providers. The

⁶ In the alternative, if claims were made that the figures reflect solely local fiber, then the NPRG data itself would have to be deemed of suspect value for the purpose for which it is used.

latter, as its name implies, is generally used for IP and data traffic, long distance toll and private line services and burgeoning wireless networks.⁷ These uses are entirely independent of the facilities used to provide local or special access competition. Moreover, in most instances, these facilities are used to serve markets that the major ILECs are currently foreclosed from serving. Thus, the fact that long haul fiber route miles are growing demonstrates the obvious fact that there is robust interLATA competition. Critically, however, that fact is simply irrelevant to the issue here – whether CLECs are impaired if they do not have access to ILEC loop and transport UNEs to connect their offices to ILEC local serving offices (“LSOs”) or to provide connectivity necessary to serve individual customer premises.⁸

26. A review of the source materials for the USTA Report and the underlying NPRG study refutes the ILECs’ own conclusions. For example:

- *Winstar*: Table 5 of NPRG’s *2001 CLEC Report* states that Winstar (which is now in bankruptcy) had installed the largest amount of fiber route miles as of 2000. According to the Winstar website,⁹ Winstar will have a 16,000 mile long haul fiber network and will have an 8735 mile *intracity* fiber network. NPRG, however, simply reports 22,000 fiber route miles. Winstar also reports in its March 10, 2000 10K that it has 16,000 route miles of nationwide fiber and 6000 delivered or committed route miles of *intracity* fiber. This confirms that the NPRG figure of 22,000 route miles is a combination of both long haul and local facilities and that the current (potentially) usable route miles of fiber available to

⁷ It is also important to understand the difference between the terms “route miles” and “fiber miles” which the USTA Report sometimes uses interchangeably. As an example, if one fiber cable contain ten fibers and the cable is one mile long, it could be counted as one route mile or 10 fiber miles. See *Newton’s Telecom Dictionary, 16th edition* (2000) at 732.

⁸ The declaration of Mr. Anthony Fea and Mr. William Taggart (¶¶ 25-27) explains why long haul fiber and its possible proximity to an LSO is an unreliable indicator of CLECs’ ability to obtain alternatively supplied transport or loop and transport combinations.

⁹ See http://www.winstar.com/about/pr_factsheets.asp.

competitors for local/special access purposes are less than 30% of the reported total.

- *Adelphia*: Adelphia is the number two company on NPRG's Table 5, which shows the company with 17,120 fiber route miles for 2000. The Adelphia website contains a April 2, 2001 press release that provides a summary of non-financial statistical information as of December 31, 2000.¹⁰ The figures show 8,976 local route miles and 7,879 long haul miles. Again, NPRG reports (and USTA uses) this combined amount, but only about half the reported amount is actually "local."
- *McLeod USA*: McLeod is the number 3 fiber provider on NPRG Table 5 and is shown as having 16,944 fiber route miles. McLeod's website contains a presentation providing 1Q01 guidance to the financial community, in which it provides a slide ("One Functional Network") that states that only 25% of the company's fiber is *intracity*.¹¹ Moreover, in its most recent Annual Report, McLeod states: "in 1999, we added more than 2,900 route miles of fiber optics . . ."¹² This is a far cry from the 6,908 mile growth reported by NPRG and relied upon by USTA.
- *Level 3 Communications*: Level 3 is the number 6 provider on NPRG Table 5, which shows the company with 13,000 fiber route miles in 2000 of which 10,000 were added that year. The company's website, however, shows that the company had 15,486 fiber route miles constructed, 14,700 fiber route miles pulled, and only 10,021 fiber route miles lit.¹³ The NPRG 13,000 mile figure is thus overstated by 30% and clearly (from the network map) the network is a coast-to-coast intercity network. In fact, the company states: "The Level 3 U.S. Network will consist of approximately 16,000 *intercity* miles, connecting over 150 cities, including 56 markets in which Level 3 will offer service."¹⁴ Thus, it appears that Level 3's network is entirely long distance and the 10,000 miles it added in 2000 is not reflective of the availability or growth of local fiber.¹⁵

¹⁰ See <http://prnewswire.com/cgi-bin/stories.pl?ACCT=105&STORY=/www/story/04-02-2001/0001459780>.

¹¹ See <http://www.mcleodusa.com/html/ir/presentations.php3>

¹² See <http://www.mcleodusa.com/html/ir/99annualreport/growingopportunities/growingopportunities.php3>.

¹³ See <http://www.level3.com/us/info/network/networkmap>.

¹⁴ *Id.*

¹⁵ NPRG also overstates the growth of Level 3's network. Level 3's 1999 10K shows that its network network had 9334 route miles of intercity fiber with 6200 miles under construction. Level 3's 2000 10K showed that the company completed construction of 15486 route miles of

(continued . . .)

- *Electric Lightwave, Inc.*: NPRG lists Electric Lightwave as having 5,921 route miles of fiber, including 1,869 miles of growth in 2000. The Electric Lightwave website makes clear that most of this fiber is not local fiber. The website confirms that Electric Lightwave has 5,921 route miles of fiber, but a February 15, 2000 press release stated that its recent addition of 1,200 intercity route miles brought its total intercity network to about 2,200 miles.¹⁶ This in turn implies that only 3,721 route miles are local. This is supported by the company's statement in the same press release that it will ultimately have 6,350 route miles of fiber of which 3,200 route miles will be intercity. Thus, the company has in the range of 3,200 to 3,700 local route miles of fiber. Accordingly, less than 60% of NPRG's Table 5 figure is local and at least 2/3rds of the recent growth (1200/1869) was in long haul facilities.
- *WorldCom*: WorldCom's March 3, 2001 10K405 shows that WorldCom has 10,153 local *and* international route miles of fiber. NPRG reports 10,000 fiber miles in Table 5. Thus, it is clear that NPRG is including international fiber in its table.

27. Simply accounting for the differentiation between long-haul fiber and local fiber route miles for this handful of companies reduces the CLEC route mile deployment numbers that USTA cites by over 20%.

28. In addition, the NPRG report (and, hence, the USTA Report), apparently double counts fiber route miles. For example, ITC Delta is reported as owning 9,640 fiber route miles. However, its 10-K reports that it only owns 5,940 route miles. *See* ITC DeltaCom 2000 10K. The remainder is fiber that it manages for other companies – and may be reported for those companies as well. *Id.* Likewise, RCN is listed as a major fiber owner, with 7,308 route miles, but much of that fiber is leased from other carriers. According to RCN's web site, its northeastern long haul fiber was leased from NEON and RCN's fiber backbone is

(... continued)

intercity facilities. Table 5 shows only 3000 miles in 1999 and 13000 in 2000. Thus 1999 is understated by 6000 miles, thereby overstating growth, and all the miles are inter-city.

¹⁶ *See* <http://www.electricleightwave.com/media/releases/FEB15.00.shtml>.

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¹⁶ *See* <http://www.electricleightwave.com/media/releases/FEB15.00.shtml>.

provided by Level 3.¹⁷ Moreover, Qwest provides RCN's mid-Atlantic long haul transport.¹⁸

29. Similarly, Caprock is listed by NPRG as having 5,500 route miles of fiber. However, its website states that 4,000 miles of its fiber is or will be jointly built with AT&T, Enron and 360networks.¹⁹ Moreover, Caprock's March 30, 2000 10K makes clear that Caprock's network is primarily long haul: "At year-end 1999 our inter-city long haul fiber network consisted primarily of 96 fiber strands covering 3,000 route miles which we expected to expand to approximately 7,000 route miles by year-end 2000."
30. There is also a potential double count of Adelphia's fiber. The Adelphia 10K for 2000 states "The NOCC supports all of the Company's networks including management of 3,173 building connections, 33 switches or remote switching modules and 8,975 network route miles as of December 31, 2000." Adelphia, however, is listed in Table 5 of the NPRG report as having 17,120 fiber route miles. Most of the difference is probably attributable to the fact that Adelphia holds Irrevocable Rights of Use for long haul fiber deployed by *other* companies – Allegheny Communications Connect: 600 route miles; Williams Communications: 4,543 route miles; and Level 3: 3,100 route miles. Thus, 8,243 route miles attributed to Adelphia is actually owned by other carriers.
31. Also, neither the USTA Report or NPRG attempts to exclude the massive amounts of fiber that cable companies, such as RCN, Cox, and Comcast, are deploying to upgrade their

¹⁷ See http://www.rcn.com/site_search/index.html.

¹⁸ *Id.*

¹⁹ See http://www.caprock.com/downloads/CapRock_AR_1999b.pdf.

systems. These facilities, because they generally connect cable nodes to cable head ends, cannot be used to provide special access services to businesses.

32. The USTA Report also fails to consider that several of the carriers profiled in NPRG's Table 5 do not provide dedicated access/transport services to competitors. Thus, the amount of fiber that such carriers have deployed is simply irrelevant. For example, the same NPRG report from which USTA sources its CLEC route mile numbers specifically indicates that several of these CLECs *are not generating any revenue* from dedicated access/transport services. *2001 CLEC Report*, Chapter 9 ("CLEC Company Profiles"). These include Alltel, RCN, Intermedia Communications, CTC Communications, MP Telecom, and Ionex Telecommunications. It would thus appear that these carriers are not acting as wholesalers and do not represent viable alternatives to the incumbents' facilities. These carriers alone represent 13% of the 218,445 total CLEC route miles of fiber reported in NPRG's Table 5.
33. The USTA Report also seeks to demonstrate its claims of ubiquity of alternative suppliers by referring to several carriers whose presence and/or networks in particular markets have yet to be established. For example, Table 6 (at page 17) of the USTA Report lists Fiberworks as one of the wholesale local fiber suppliers that CLECs can turn to as an alternative to ILEC facilities. Yet Table 6 of the USTA Report itself shows that 13 of the 15 cities on the Fiberworks network are merely planned and not currently operational. The USTA Report's reliance upon "planned" facility builds is a troubling aspect found throughout Section II.A.2 of the report's analysis (at 16-25). Reliance on yet to be built networks is particularly inappropriate because, as discussed in the next paragraph, the CLEC industry is in perilous financial condition. The current CLEC capital crunch will

likely curtail many carriers' expansion plans, as they look to maximize return on sunk investments before expanding into new markets. Moreover, given today's market conditions, relying upon CLEC network expansion *plans* as evidence as of the availability of alternative supply is misleading at best.

34. Finally, the USTA Report ignores the market reality that many of its "poster children" are dying. For example, e.spire has filed for bankruptcy. Winstar, which reportedly owns the most fiber route miles in the United States, filed for bankruptcy less than two weeks ago. Caprock was on the verge of bankruptcy before being purchased by McLeod. More broadly, "[i]nvestors [have] los[t] confidence in the fundamentals of the CLEC business model,"²⁰ and "there has been 'carnage' among CLEC stocks."²¹ As a result, the "[c]apital markets are 'basically closed' to CLECs."²²

IV. THE NUMBER OF CLEC COLLOCATIONS IS NOT A RELIABLE INDICATOR OF CLECS' ABILITY TO SELF-SUPPLY OR FIND ALTERNATIVE SUPPLIERS FOR EITHER LOOPS OR TRANSPORT.

35. The ILECs make a great deal in their filings about the number of LSOs in which CLECs have collocated. However, they have largely rendered that statistic irrelevant because of the anticompetitive restrictions that they typically seek to impose on collocating CLECs. First,

²⁰ M. Farrell, *ICG Tanks, Depressing Other CLECs*, Multichannel News (Oct. 2, 2000).

²¹ J. Mulqueen, *ICG Hit Hard by Revenue Shortfall, Resignations*, Interactive Week (Oct. 8, 2000). *See also id.* ("Another piece of the crumbling new carrier industry has plummeted to the ground").

²² *Wall Street Has More Bad News For CLECs*, Communications Daily (Feb. 22, 2001) (2001 WL 5052608) (reporting that Morgan Stanley Dean Witter analyst Todd Scott stated that "[c]apital markets are 'basically closed' to CLECs" and "predicted that telecom IPOs would be 'limited or nonexistent in 2001.'"); J. Higgins, *Now It's Underbuilding*, Broadcasting & Cable, Feb. 19, 2001 (2001 WL 8168354) (reporting that there is a "virtual shutdown of the capital markets for startup telecommunications companies").

the ILECs have opposed the right of transport-only providers to collocate in their central offices. *See, e.g.*, Comments of SBC Communications Inc., *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, at 17-22 (Oct. 12, 2000). Second, they have opposed any obligation to provide or permit CLEC-to-CLEC cross-connect in collocation areas. *See, e.g., id.* at 22-26. The result of these restrictions is that CLECs are precluded from comparably efficient opportunities to use competitive facilities, because even if such facilities were otherwise available, they cannot be accessed in the ILEC's central office. That is, the loops would terminate in one CLEC's collocation and the alternative interoffice facilities would terminate in another collocation within the same office, but there would be no means to connect the two. Moreover, ILEC arguments about the availability of collocation hotels ignore the CLECs' problems in accessing such locations. Before a CLEC using unbundled loops could access such a location it would need to build a facility from its collocation to the collocation hotel. This is a solution that is no solution at all. If construction were so straightforward, the CLEC would build to its own network rather than interjecting an additional potential point of failure. As a result, CLECs generally have only two options when it comes to obtaining loop and transport facilities: they can either build their own facilities or lease facilities from the ILEC.

36. In their accompanying declaration, Messrs. Fea and Taggart explain in detail the difficulties CLECs face in building their own loop and transport facilities. The point I wish to emphasize here is that although collocation is a necessary condition for a CLEC to build its own facilities, it is not sufficient. Special access requires the use of point-to-point circuits. Thus, in order to provide its own facilities, a CLEC (1) must have access to *both*

end points to enable it to prepare for placement of its transmission equipment and (2) must be able to place facilities between those end points in an economic and timely manner. Merely counting the offices that have multiple collocations does not prove anything other than the fact that more than one CLEC has obtained collocation in an office. It does not demonstrate that *any* CLEC has the ability to construct a facility to the points it needs or that it has the necessary access at the other end of the facility so that it can use that facility to provide service. Indeed, NorthPoint, whose collocation and DSL assets AT&T is in the process of acquiring, relied almost exclusively on the ILECs to provide “last mile” facilities to reach customers and to provide connectivity between NorthPoint’s collocated equipment and its data nodes. NorthPoint generally used its collocation space to interface its DSLAMs with ILEC-provided loops and ILEC-provided transport.

37. In this regard, a simple count of collocations ignores the reality that a substantial number of collocations (and many in the same offices) are utilized by DSL-only providers – many of which have failed, or are in jeopardy of failing. These DSL providers do not have the equipment in place they need to self-provide high-capacity loops or transport. Thus, the nearly 5000 LSO collocations of DSL providers such as Covad, Mpower, Network Access Solutions, NorthPoint and RhythmsNet are essentially irrelevant to a determination of whether high-capacity loops and transport can be obtained outside the incumbent LECs’ networks.
38. And even the collocations of non-DSL providers cannot be viewed as implicit evidence that CLECs are providing their own inter-office transport facilities. “Smart-build,” or switch based CLECs often lease nearly 100% of their systems and facilities. Such CLECs typically install a switching platform in a central office and then lease backbone and local

loop transport. AT&T's own experience shows that a substantial number of its collocations utilize ILEC inter-office transport facilities. Fea-Taggart Dec. ¶ 7.²³

V. THE USTA REPORT MISREPRESENTS THE CLECS' ABILITY TO ACCESS COMMERCIAL BUILDINGS

39. The USTA Report also claims that CLECs have penetrated 25% of "commercial buildings." USTA Report at 11. There is no basis for this claim. In fact, CLECs have penetrated, at most, 5.7% of commercial buildings. And even this figure is overstated, because CLECs typically do not have access to the entire building, but only particular customers or floors. Fea-Taggart Dec. ¶¶ 16, 30.
40. The USTA Report starts with the NPRG "building penetrated" number. NPRG reports in Table 10 of its *2001 CLEC Report* that CLECs have penetrated (*i.e.*, built facilities to) 1,150,000 buildings. The USTA Report then subtracts from that figure the buildings penetrated by RCN (843,000) and Knology (143,000), which serve primarily residential customers, to generate a total of 175,000 office buildings served. USTA Report at 11 n.49. It then compares this figure to the 705,000 "office building" figure shown in Table 1227 of the U.S. Department of Commerce's abstract to arrive at a 25% penetration rate.
41. The computation is riddled with several fundamental methodological errors.
42. *First*, USTA gets the denominator wrong. USTA says that there are 705,000 commercial buildings in the United States, but, in fact, that number reflects only 15% of the commercial buildings that USTA's own source recognizes. More specifically, the U.S. Department of

²³ AT&T will generally only self-provision (*i.e.*, build) the transport facilities between its collocation sites at ILEC LSOs and the AT&T POP when traffic levels from that collocation reach certain thresholds. When such thresholds are reached, AT&T then has an economic incentive to replace those leased facilities with its own. *See* Fea-Taggart Dec. ¶¶ 5, 7.

Commerce table cited by the USTA Report (at 11 n.50) shows the following “commercial building” counts (in thousands):

Education:	309
Food Sales:	137
Food Services:	285
Healthcare:	105
Lodging:	158
Mercantile/Svcs:	1,289
Offices:	705
Public Assembly:	269
Warehouse:	580
Total:	<u>4,579</u>

43. Incredibly (and without explanation), the USTA Report shrinks the base by 85% before calculating the CLECs’ asserted building penetration. Although one could argue that many (but not all) Public Assembly, Warehouse and Food Sales buildings might not be communications intensive, and that a substantial portion of the Education buildings might not be a prime market for special access, there is no basis for eliminating the entirety of those categories as well as all of the other categories of commercial buildings such as lodging, healthcare, and mercantile buildings. Thus, even excluding Public Assembly, Warehouse, Food Sale, and Education buildings in their entirety²⁴ still means that there are in fact 3,095,000 commercial buildings in the United States, more than four times the

²⁴ This is, of course, an extremely conservative adjustment. For example, according to recent data available from the National Center for Education Statistics, 95% of public schools in the U.S. were connected to the Internet by 1999 – 63% of these connected using dedicated lines (including T1 and T3 lines); 23% utilized cable modems, wireless connections and ISDN lines; and 14% used dial-up connections. S. Susan, *Bandwidth Constraints Begin to Worry Schools*, New York Times (Online Edition) (Apr. 11, 2001) (available at <http://www.nytimes.com/2001/04/11/technology/11EDUCATION.html>). As such, education buildings (which account for 309,000 commercial buildings) are prime candidates for special-access services and should be included in the base.

number USTA uses. Accepting, at face value, the USTA Report's number of 175,000 CLECS buildings "on-net," the CLECs have penetrated only 5.7% of buildings.

44. But even that number of on-net buildings is of suspect value for purposes of this proceeding. Merely subtracting the NPRG buildings penetrated number for carriers that are largely cable service providers grossly overstates the actual number of buildings penetrated, because in many cases multiple CLECs serve the same building. In other words, NPRG simply assumed that only one competitor serves each building and that the competitor can serve all customers in the building. AT&T's experience confirms that in a significant percentage of high volume building locations in which AT&T operates there is at least one other CLEC/CAP present.
45. Furthermore, when AT&T employs an alternative carrier to obtain building access, AT&T generally requires that the supplying carrier actually own the facilities. As a result of the inquiries necessary to implement this requirement, AT&T has found that some carriers use facilities of other suppliers – including the ILEC – to establish building access. Thus, there is reason to believe that publicly reported figures of "on-net" building overstate the actual number of individual buildings served by competitors, because they either employ ILEC loop facilities or double-count facilities provided by others.
46. Critically, the USTA Report also failed to validate the reasonableness of the figures reflected in Table 11 of the *NPRG 2001 CLEC Report*. Had it made such an effort, it would have found many counts represent buildings *passed* or buildings that are accessed through the use of a third party's facilities. Such buildings cannot be counted as "on-net" for the purposes here, because they either double-count existing on-net locations or are not

on-net at all. Moreover, bankruptcy makes many of these companies unreliable suppliers.

For example:

- *Adelphia*: Adelphia is shown in Table 11 of NPRG's 2001 CLEC Report as serving 26,851 buildings. Adelphia's 10K for 2000, however, states "The NOCC supports all of the Company's networks including management of 3,173 building connections"
- *Winstar*: Winstar is shown in Table 11 with 8,000 buildings on-net for 1999 growing to 11,400 in 2000. The company's March 10, 2000 10K however, states that Winstar has "access rights to connect more that 8,000 buildings." Having access right and having the building actually on-net are, of course, two entirely different things. Moreover, Winstar's recent bankruptcy filing makes it an unreliable potential supplier.
- *Intermedia*: Intermedia is listed in Table 11 with 5,247 buildings on-net in 2000. However, Intermedia's April 2, 2001 10K states that Intermedia is "the largest provider of building centric telecommunications services in the United States with in-building distribution networks in 788 multi-tenant class A commercial office buildings . . . in major metropolitan areas, and access agreements in place with over 3,500 smaller, multi-tenant buildings nationwide. (Emphasis added) Thus, it appears NPRG simplistically assumed that Intermedia was actually serving all these locations rather than simply having agreements in place. Furthermore, the company was acquired by WorldCom and it is not clear if and to what extent the building access number is already reflected in the WorldCom figures, or whether such facilities would be available to others.
- *e.spire*: e.spire is shown in Table 11 as having 4,149 buildings in 1999 and 4,155 in 2000 (a growth of only 6 buildings in a year). Although a generally accurate estimate, the company has now filed for bankruptcy and it is not clear it will continue as a going concern.
- *WorldCom*: WorldCom is shown in Table 11 with 40,000 building served in 2000 but the WorldCom's recent 10K405 (dated March 30, 2001) states that it had 48,691 on-net buildings in 1999 and 61,674 in 2000, but each of these are *global* figures. There is simply no way to know how many domestic buildings WorldCom actually serves.

47. Finally, being "in" a building is not the same as being able to serve the *entire* building. As explained in the declaration of Messrs. Fea and Taggart (¶¶ 16, 30), for many buildings CLECs have only access to specific customers or to particular floors in the building. In

contrast, ILECs generally have facilities in place that allow them to serve the entire building.

VI. CONCLUSION

48. In sum, the USTA Report is unsubstantiated and any conclusions drawn from it must be rejected out of hand. Even a cursory analysis of the report makes clear that it is based on faulty data and is riddled with methodological errors. Moreover, even if the USTA Report were accepted at face value, it shows that there has been no material change in the market conditions upon which the Commission previously relied in finding that CLECs are impaired without access to loops and dedicated transport – regardless of the capacity of the facility, regardless whether or not the facilities were combined, and regardless of the service provided using those facilities.

VERIFICATION

I, C. Michael Pfau, declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2001.



C. Michael Pfau