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

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers | ) | CC Docket No. 01-338 |
| | ) | |
| Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |
| | ) | |
| | ) | CC Docket No. 98-147 |
| Deployment of Wireline Services Offering Advanced Telecommunications Capability | ) | |

**COMMENTS OF**
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**CTC COMMUNICATIONS CORP.,**
**AND CON EDISON COMMUNICATIONS, LLC**
**(COLLECTIVELY "DARK FIBER COMMENTERS")**

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**EL PASO NETWORKS, LLC,**
**CTC COMMUNICATIONS CORP., AND**
**CON EDISON COMMUNICATIONS, LLC**
**(COLLECTIVELY "DARK FIBER COMMENTERS")**

CTC Communications Corp. ("CTC"), Con Edison Communications, LLC (CEC"), and El Paso Networks, LLC ("EPN") (collectively the "Dark Fiber Commenters") submit these comments in response to the Federal Communications Commission's ("Commission") above-captioned notice of proposed rulemaking[1] ("NPRM") initiating a Triennial Review of the Commission's policies regarding the unbundled network elements ("UNEs") that incumbent

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[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-339, Notice of Proposed Rulemaking, FCC 01-361, at ¶ 61 (rel. Dec. 20, 2001) (*"Triennial UNE NPRM"*).

Local Exchange Carriers ("ILECs") are required to provide to requesting carriers pursuant to Sections 251(c)(3) and 251(d)(2) of the Telecommunications Act of 1996 ("1996 Act").[2]

## I. Summary

In its *UNE Remand Order*, the Commission modified the definitions of the dedicated transport and loop network elements to include dark fiber[3] and implicitly acknowledged that the newly established subloop network element includes dark fiber. The Commission concluded that requesting carriers were impaired without access to all available dedicated transport capacities (*e.g.*, DS1 to DS3, and OC3 to OC192), including such capacities that evolve over time and dark fiber.[4] Additionally, in its *UNE Remand Order*, the Commission determined that lack of access to unbundled loops would impair a competitive LEC's ("CLEC's") ability to provide the services it seeks to offer because, in light of the meager extent of the "nascent wholesale market" in loop fiber, "requiring carriers to self-provision loops would materially raise entry costs, delay broad-based entry, and limit the scope and quality of the competitor's offerings."[5]

In the three years since the Commission reached these conclusions, the challenges CLECs face, such as pervasive unavailability of alternative fiber network elements, high entry costs, operational barriers, and delays in obtaining dark fiber loop and transport network

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[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47U.S.C. §§ 251 *et seq.*; *see* 47 U.S.C. §§ 251(c)(3) and 251(d)(2).

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of* 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 15 FCC Rcd. 3696, at ¶ 196 (rel. Nov. 5, 1999) ("*UNE Remand Order*"), at ¶¶ 167, 174, and 325 ("We modify the definition of loop network element to included all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics.").

[4] *Triennial UNE NPRM*, at ¶ 61; *UNE Remand Order*, at ¶ 323 (We modify our rules "to clarify that [ILECs] must unbundled DS1 through OC192 dedicated transport offerings and such higher capacities as evolve over time.").

[5] *UNE Remand Order*, at ¶¶ 181, 197.

elements from non-ILEC sources and through self-provisioning, have not lessened significantly. In fact, the plethora of bankruptcies and liquidations that have occurred among the ranks of competitive providers and the pullback of other alternative providers from many markets has reduced the availability of alternatives to ILEC loop and transport network elements and has adversely impacted the cost, timeliness, ubiquity and operational issues associated with these alternatives.

Additionally, the Commission's prescient conclusion in the *UNE Remand Order* remains true today, *i.e.*, "because dark fiber provides high transmission capabilities at relatively low cost, unbundling dark fiber is essential for competition in the provision of advanced services."[6] In particular, unbundled dark fiber loops and transport enable CLECs to build out their networks to provide advanced[7] and other services in a gradual and economically efficient manner, rather than being forced to duplicate immediately all of the bottleneck facilities that ILECs have deployed during their century long tenure as monopolists. As the Commission observed, "[b]y supplementing their own facilities with unbundled fiber loops, a [CLEC] can offer advanced services ubiquitously and not limit its service offering to small areas of concentrated demand."[8] In fact, as demonstrated below, each of the Dark Fiber Commenters relies upon access to

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6 *UNE Remand Order*, at ¶ 196.

7 In its Third Report on advanced services, the Commission uses the terms "'advanced telecommunications capability' and 'advanced services' to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kbps." *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, FCC 02-33, at ¶¶ 7, 9 (rel. Feb. 6, 2002).

8 *UNE Remand Order*, at ¶ 197.

unbundled dark fiber loops and transport to supplement its own extensive investments in telecommunications facilities.

Moreover, as demonstrated in Section II below, the Dark Fiber Commenters and other requesting carriers are materially impaired in their ability to provide advanced services and other services without access to unbundled dark fiber loops, subloops, and transport and the associated operations support systems ("OSS") throughout their operating territories. Accordingly, the Commission should continue to mandate that ILECs provide unbundled access to loops, subloops and dedicated transport network elements including dark fiber and the associated OSS.

Additionally, the Commission seeks comments as to whether it should modify its dedicated transport and dark fiber "requirements or the existing definitions for these network elements."[9] Based upon their experience, the Dark Fiber Commenters believe strongly that the Commission should modify its definitions of dark fiber loops and transport to require ILECs to provide access to dark fiber at "any technically feasible point," as required by Section 251(c)(3) of the Act, including access at splice points. Finally, the Commission should adopt rules that establish reasonable terms and conditions for the provisioning of dark fiber loops, subloops and dedicated transport in order to preclude ILECs from continuing their efforts to evade their unbundled dark fiber obligations. More specifically, the Commission should establish rules regarding parity access to ILEC information regarding dark fiber, including information regarding the availability of dark fiber and the routes traversed by dark fiber; access to dark fiber at intermediate offices; access to unterminated dark fiber; splicing of dark fiber and other issues.

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[9] *Triennial UNE NPRM*, at ¶ 61.

In the absence of such rules, ILECs will invariably continue to claim they are providing access to dark fiber while in many cases denying the vast majority of CLEC dark fiber requests.

## II. CLECs Are Materially Impaired In Their Ability To Provide Advanced Services and Other Services Without Access to Dark Fiber UNEs Provided by ILECs

### A. CLECs Continue to Be Materially Impaired Without Access to UNE Loops Including Dark Fiber Loops

In its *UNE Remand Order*, the Commission modified the loop definition "to specify that the loop facility includes dark fiber."[10] Moreover, the Commission correctly concluded that the:

> record demonstrates that lack of access to unbundled loops [including dark fiber loops] impairs a carrier's ability to provide the services that it seeks to offer because requiring carriers to self-provision loops would materially raise entry costs, delay broad-based entry, and limit the scope and quality of the competitor's offerings. We conclude that neither self-provisioning loops or obtaining loops from third-party sources is an adequate alternative for loops that a carrier can obtain from [ILECs] under the Section 251(c) unbundling obligation.[11]

More specifically, the Commission determined that "the nascent wholesale market in fiber loop facilities is not yet extensive enough for us to conclude that competitors are not impaired without access to incumbent LEC's unbundled dark fiber loops."[12]

Three years later, alternatives to ILEC intracity fiber and fiber loop network elements are still not sufficiently available to facilitate widespread competition. Further, the Commission astutely concluded in its *UNE Remand Order* that "because dark fiber provides high transmission capabilities at relatively low cost, unbundling dark fiber is essential for competition in the

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[10] *UNE Remand Order*, at ¶ 174.

[11] *UNE Remand Order*, at ¶ 181, 196 ("We see no reason to distinguish dark fiber from our general unbundling analysis for loops.").

[12] *UNE Remand Order*, at ¶ 197.

provision of advanced services."[13] The Commission's conclusions remain equally true today. In particular, unbundled dark fiber loops and transport enable CLECs to build out their networks to provide advanced and other services in a gradual and economically efficient manner, rather than being forced to duplicate immediately all of the bottleneck facilities that ILECs have deployed during their century long tenure as monopolists. As the Commission observed, "[b]y supplementing their own facilities with unbundled fiber loops, a [CLEC] can offer advanced services ubiquitously and not limit its service offering to small areas of concentrated demand."[14] In fact, each of the Dark Fiber Commenters relies upon access to unbundled dark fiber loops and transport to supplement its own extensive investments in telecommunications facilities.

The Commission's analysis of the need for unbundling loops, including dark fiber loops, fully applies three years later. Considerations of availability, ubiquity, cost and timeliness continue to mandate unbundling of loops of all capacities and dark fiber loops.

In fact, there is still no viable competitive wholesale market for loops and dark fiber. The ILECs are, as a practical, economic and operational matter, the only game in town when it comes to loop and dark fiber facilities. While CLECs have made substantial investments in network infrastructure, $56 billion through 2001,[15] this has not translated into a large number of local loop facilities. CLECs have invested significantly in fiber facilities;[16] however, most of those facilities are long-haul, intercity facilities. The amount of local, intracity facilities constructed by

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13 *UNE Remand Order*, at ¶ 196.

14 *UNE Remand Order*, at ¶ 197.

15 *ALTS 2001 Local Competition Report*, at 20.

16 *ALTS 2001 Local Competition Report*, at 25.

CLECs probably numbers in the tens of thousands of miles and most of those are used as interoffice facilities rather than loops and dark fiber to customer premises.

In fact, each of the Dark Fiber Commenters has found that fiber facilities are often not available in its target markets. In short, the CLEC experience has confirmed what the Commission observed three years ago, *i.e.,* that facilities-based competition will not materialize overnight, and that UNE loops of all capacities and dark fiber loops continue to be vital to the rollout of CLEC services, including broadband services.

The high cost of duplicating "last mile" facilities to a broad population of end users suggests that a wholesale market for competitive loop facilities will not develop in the near future. In fact, this scenario is what Congress anticipated as well in creating the Act's unbundling requirement in the first instance. As Justice Breyer observed:

> [o]ne can understand the basic logic of "unbundling" by imagining that Congress required a sole incumbent railroad providing service between City A and City B to share certain basic facilities, say, bridges, rights-of-way, or tracks, in order to avoid wasteful duplication of those hard-to-duplicate resources while facilitating competition in the *remaining* aspects of A-to-B railroad service. Indeed, one might characterize the Act's basic purpose as seeking to bring about, without inordinate waste, greater local service competition . . . .[17]

Thus, Congress chose to permit new entrants to build facilities where this was economically feasible but envisioned that new entrants would rely on incumbent facilities where it would be economically infeasible or even wasteful to duplicate ILEC facilities.

Further, the downturn in the telecommunications industry and the closing of capital markets also suggests that a competitive market for loops, transport and dark fiber remains far in

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[17] *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 416-417 (1999) (Breyer, J., concurring in part/dissenting in part).

the future. The plethora of bankruptcies and liquidations that have occurred among the ranks of the competitive providers and the pullback of other alternative providers from many markets has reduced the availability of alternatives to ILEC loop and transport network elements and has adversely impacted the costs, timeliness, ubiquity, and operational issues associated with these alternatives. CLECs will not be able to convince investors to sink significant amounts of capital into duplicating ILEC fiber facilities, and directing limited capital resources to such a task would be wasteful and inefficient.[18]

The Commission correctly noted in its *UNE Remand Order* that building loop plant is prohibitively expensive and time-consuming.[19] The Commission's analysis remains accurate today. The Commission recognized the unacceptable risk involved in a CLEC building ubiquitous loop plant before the CLEC has established a substantial and secure customer base.[20] Since loop plant cannot be scaled to need or relocated, if a CLEC deploys loops and subsequently loses the customer, the CLEC would bear the full loss of customer investment.[21] These risk have not diminished in the intervening three years since the Commission reached these conclusions.

Furthermore, as the Commission observed in the *UNE Remand Order*, duplicating loop plant would require unnecessary and inconvenient digging up of streets once CLECs surmounted

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[18] On March 12, 2002, for example, WINfirst, Inc., which planned to provide interactive television, video-on-demand, telephone services, and high-speed Internet access over fiber-optic cable in major U.S. cities filed for Chapter 11 bankruptcy after failing to raise capital to continue to build the requisite fiber networks.

[19] *UNE Remand Order*, at ¶ 183.

[20] *Id.*

[21] *Id.*

the numerous rights-of-way obstacles that would accompany such deployment.[22] The whole process would take months, if not years, and the CLEC would lag far behind the timely manner in which ILECs can provide service to their customers.[23] In the experience of the Dark Fiber Commenters, this would render a CLEC's offering completely uncompetitive with the ILEC's offering. Accordingly, the Commission should reaffirm its conclusion that the "cost, risk, disruption, and delay of self-provisioning loop plant, would for many consumers, foreclose the benefits of competition."[24] In sum, instead of imposing a barrier to entry by requiring a large investment on the part of CLECs to build out a ubiquitous loop plant before they have developed the requisite customer base to spread the cost of such investment, the Commission should continue to permit CLECs to purchase UNE loops, including dark fiber loops, while they build facilities where it is efficient to do so.[25]

The Commission should also seize this opportunity to clarify its rules regarding access to dark fiber and loop UNEs, and to impose reasonable terms regarding dark fiber to prevent ILECs from evading their unbundling obligations. More specifically, as discussed in Section III below the Commission should clarify that under Section 251(c)(3) of the Act, ILECs are required to provide access to unbundled dark fiber at "any technically feasible" point, including splice points, as well as hard termination points. Further, the Commission should underscore that under its existing rules ILECs are required to provide parity access to preordering and ordering

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22 *Id.*

23 *UNE Remand Order*, at ¶ 186.

24 *UNE Remand Order*, at ¶ 186.

25 *UNE Remand Order*, at ¶ 183.

information regarding to dark fiber network elements, including information regarding the availability of dark fiber network elements and information regarding the route traversed by dark fiber network elements.

### B. The Commission Should Continue to Require Unbundling of Subloops Including Dark Fiber Subloops

In the *UNE Remand Order*, the Commission determined that lack of access to subloops materially impairs a CLEC's ability to compete.[26] The Commission concluded that the access to the subloop would serve as a vital catalyst that will allow competitors, over time, to deploy their own complementary subloop facilities and eventually deploy their own competitive loops. For instance, CLECs would be able to connect their own feeder facilities to the ILEC distribution plant to minimize CLEC reliance on ILEC facilities.[27] Further, access to the subloop was also determined to be crucial to the competitive provision of broadband services.[28]

The subloop is defined as the portion of the loop that can be accessed at terminals in the ILEC's outside plant.[29] In its unbundling analysis, the Commission reached the same conclusion that it did for loops, *i.e.*, that these elements are the most time consuming and expensive network element to duplicate on a pervasive scale, and the cost of self-provisioning subloops, including dark fiber, can be prohibitively expensive.[30]

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26 *UNE Remand Order* at ¶ 205.

27 *UNE Remand Order*, at ¶ 205.

28 *Id.*

29 *UNE Remand Order*, at ¶ 206.

30 *Id.* at ¶ 211.

ILECs sometimes deploy technology, such as integrated digital loop carrier systems, that they view as limiting their ability to provide unbundled access to the entire loop. Therefore, access to the subloop, including dark fiber subloops, facilitates the provisioning of service to customers that otherwise could not be served by the CLEC,[31] although it is not a substitute for end-to-end unbundled access over the loop from the central office to the customer's premise, which always must be available. The subloop is also necessary where the ILEC multiplexes traffic at a remote terminal. In those circumstances, a CLEC may need access to the loop before the traffic is multiplexed, and access to the subloop facilitates this access.[32] Access to the subloop is also vital in regard to the provisioning of xDSL service.[33] Access to the subloop provides the CLEC much needed flexibility in the deployment of its own network architecture.[34]

Access to the subloop, including dark fiber subloops, has become even more crucial since the Commission designated it a UNE. In fact, ILEC deployment of next-generation loop architectures such as SBC's Project Pronto, which uses in part a fiber element, has heightened the importance of the subloop. CLECs that need access to copper facilities to support their services need access to the loop at the remote terminal or feeder/distribution interface to migrate the traffic to a copper facility. If the CLEC does not have such access it will not be able to service the customer. Furthermore, access to the subloop remains crucial to those CLECs who self-provisioned parts of their network and only need access to discrete portions of the loop. The

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31 *Id.*

32 *Id.* at ¶ 217.

33 *UNE Remand Order*, at ¶ 218.

34 *Id.* at ¶ 215.

subloop, including dark fiber subloops, will serve a vital transitional offering to the competitive self-provisioning of loops.

Thus, the Commission should continue to require unbundled access to subloops, including dark fiber subloops, for all the same reasons that it must continue to provide unbundled access to loops, and also because of the catalytic role the subloop may play in the development of facilities-based competition. The Commission should also take this opportunity to expand the points at which CLECs may gain access to the subloop. Access should not be limited to accessible terminals, but should also extend to splice points.[35] A number of state commissions have made this determination, and since three years have passed since the Commission considered what is technically feasible in terms of access, the time is ripe for the Commission to revisit this issue. For instance, it is technically feasible and consistent with industry practice to lease dark fiber at splice points.[36] As discussed more fully in Section III below, several state commissions, including the Massachusetts Department of Telecommunications and Energy ("MA DTE"), and the commissions in Indiana, New Hampshire,[37] Rhode Island,[38] and the

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[35] In the *UNE Remand Order*, the Commission limited access to dark fiber subloops to access at accessible terminals, however, the Commission did not impose this limitation on dark fiber loops and transport. *UNE Remand Order*, at ¶ 206. Under existing law, ILECs are required to provide access to dark fiber loops and transport at "any technically feasible point." 47 U.S.C. § 251(c)(3).

[36] *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts*, Decision D.P.U./D.T.E. 96-83, 96-94-Phase 4-N, at 20 (Mass. DTE Dec. 13, 1999) ("We impose no collocation requirement . . . it is technically feasible and consistent with industry practice to lease dark fiber at splice points.") ("*Mass. DTE Phase 4N Order*").

[37] *Re: Deliberations in DT 01-206 Regarding Rates, Terms and Conditions for the UNE Remand Unbundled Network Elements*, Policy Letter, at 2 (N.H. PUC, March 1, 2002).

[38] *In re: Verizon-Rhode Island's TELRIC Studies – UNE Remand*, Docket No. 2681, Report and Order, at 19, 22-23 (Rhode Island PUC, Dec. 3, 2001) ("*RI Dark Fiber Order*") ("Verizon is required to splice dark fiber at any technically feasible point on a time and materials basis, so as to provision continuous dark fiber through one or more intermediate central offices without requiring the CLEC to be collocated at any such offices.").

District of Columbia,[39] have required that access to dark fiber be provided both at splice points and hard termination points. This Commission should adopt the "best practices" imposed by these commissions and should mandate the same type of access to other subloop fiber facilities.[40]

### C. Unbundled Access to High Capacity Loops, Including Dark Fiber, Should Continue

The Commission seeks comment on whether it should continue to require the unbundling of high capacity and dark fiber loops.[41] The Commission was prescient in the *UNE Remand Order* in determining the need for unbundled access to such facilities. Notwithstanding ILEC calls to eliminate the unbundling requirement for these facilities,[42] the need for the unbundling of these facilities has increased in the intervening three years. Three years ago, the Commission imposed these unbundling requirements in light of the promise and hope of the development of a competitive market for high-capacity facilities. The requirements were imposed as a means to the end of facilitating the development of such a market. Three years later, a combination of factors, including the downturn in the telecommunications industry, the closing of capital markets, and poor ILEC provisioning of such facilities, has precluded the development of such a market. In fact, CLECs are now perhaps more dependent on ILECs for the provisioning of these

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[39] *TAC 12 – Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Washington, DC, Inc.*, Order No. 12286, Order on Reconsideration, at ¶¶ 57, 62, 87 (DC PSC Jan. 4, 2002) ("*D.C. Dark Fiber Order*").

[40] *Mass. DTE Phase 4N Order*, at 20.

[41] *NPRM* at ¶¶ 52. A high-capacity facility is defined as a facility capable of supporting signals DS-1 or higher. *UNE Remand Order* at ¶ 184.

[42] Joint Petition of BellSouth, SBC and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport (CC Docket No. 96-98, Apr. 5, 2001).

vital facilities than they were in 1999. Thus, the Commission should at the very least maintain these unbundling requirements, and consider enhancing the obligations.

### 1. The UNE Remand Order

The Commission, in its *UNE Remand Order*, included dark fiber and high-capacity loops within the definition of the loop network element.[43] The Commission determined that dark fiber represented "unused loop capacity" and fell within the loop network element's "facilities, functions and capabilities."[44] The Commission found that high-capacity loops retain the essential characteristics of a loop, and that while these loops may support different services, the wire facility used for transmission of the traffic is indistinguishable from any other copper wire.[45]

Further, the Commission concluded that it was necessary to unbundle such high-capacity facilities because "building out any loop is expensive, regardless of capacity."[46] The Commission determined that because of the expense involved, "it would be extremely difficult for competitive LECs to overbuild the ubiquitous loop plant that the incumbents have built up over decades, even to serve businesses in urban districts."[47] The Commission concluded that the enormous sunk investment required would result in competition in patches, rather than the "seamless competitive service of a fully competitive market."[48] The Commission also noted that

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43 *UNE Remand Order*, at ¶¶ 174-177.

44 *Id.* at ¶ 174.

45 *UNE Remand Order*, at ¶ 176.

46 *Id.* at ¶ 184.

47 *UNE Remand Order*, at ¶ 185.

48 *Id.* at ¶ 185.

even if CLECs had the necessary financing to overbuild ILEC loops, there would be delays in deploying these loops fueled by lengthy rights-of-way disputes and unnecessary digging up of streets.[49] Thus, a CLEC could not deploy loops to bring services to its customers as quickly as the ILEC could.[50] The Commission also found that use of high-capacity facilities is vital to the provisioning of advanced services.[51] The Commission found that this same analysis applied to dark fiber, and further determined that "the nascent wholesale market in fiber loop facilities is not yet extensive enough for us to conclude that competitors are not impaired without access to incumbent LECs' unbundled dark fiber loops."[52]

The record developed in response to the RBOCs' petition seeking elimination of unbundling requirements for high-capacity loops and transport demonstrated unequivocally the need for the Commission to continue requiring the unbundling of these loops.[53] In fact, more than 30 sets of comments were submitted in the proceeding and all but one opposed the RBOC petition to remove high capacity loops and transport from the list of nationally available UNEs.[54] The evidence was uncontroverted, and remains uncontroverted, that considerations of

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49 *Id.* at ¶ 186.

50 *Id.*

51 *Id.* at ¶ 187.

52 *Id.* at ¶ 197.

53 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, CC Dockets No. 96-98 and 01-_ , Joint Petition (April 5, 2001) ("*ILEC Joint High-Cap Petition*").

54 *Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, CC Docket No. 96-98, Joint Reply Comments of Allegiance Telecom, Inc. and Focal Communications Corporation at 1 (June 25, 2001).

availability, ubiquity, cost and timeliness all demonstrate that the Commission should continue to mandate unbundled access to high-capacity loops including dark fiber loops.

### 2. Availability and Ubiquity

All indications are that the availability and ubiquity of competitive high capacity facilities has not increased significantly, if at all, since 1999. For instance, the RBOCs' own evidence suggests that there has been no real change in the CLECs' special access market share since the *UNE Remand Order* was issued.[55] The ILECs have also conceded that their special access service rates contain significant monopoly profits.[56] In fact, if competitive high capacity facilities were truly available one would expect to see competitive inroads in the special access markets, and lower prices, but that clearly does not appear to be the case. CLECs have only a 15% share of special access and private line services, have penetrated only a small fraction of commercial office buildings, and have only deployed modest amounts of local fiber.[57] Independent observers note that CLEC fiber only connects to about 3% to 5% of the nation's commercial office buildings, or about 30,000 buildings.[58] Most of these buildings are carrier hotels, ISP POPs, and very large office buildings where there is demand for several DS-3s or OC-n circuits.[59] Thus service to these buildings is not an indication of the general availability of

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[55] *Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, CC Docket No. 96-98, *AT&T High Cap Comments*, Exhibit 1 at p. 7.

[56] *Id.*

[57] *Id.* at 13.

[58] *Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, CC Docket No. 96-98, *WorldCom High Cap Comments* at 7; *Sprint High Cap Comments* at 3.

[59] *Id.* at 9.

high-capacity facilities.[60] These buildings represent only a small percentage of total demand for high-capacity circuits.[61] CLECs, at most, have only a few tens of thousands of local fiber route miles.[62]

The record in Docket No. 96-98 is replete with evidence from CLECs that despite major investments in their networks, they have been unable to self-provision high capacity loops.[63] The building of a network is a very arduous and time-consuming process. CLECs, despite multibillion dollar investment, in their networks have been able only to extend their fiber to a small percentage of high-capacity customer locations.[64]

Even CLECs with extensive local networks such as WorldCom rely on ILECs for the vast majority of their DS-1 and DS-3 circuits.[65] Moreover, despite a strong desire to obtain facilities from providers other than the ILEC, the ILEC still remains the sole option for CLECs for high-capacity loops and transport. Focal, for example, which has a policy mandating the use of competitive facilities where available, has found that it usually has no alternative but to purchase from the ILEC.[66]

In their Petition, the RBOCs did not purport to measure the number of high capacity local loop facilities CLECs either build or lease from third-party alternative providers. Rather, they

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60 *Id.* at 10.

61 *Id.* at 8.

62 *Id.* at 3.

63 *AT&T High Cap Comments*, Exhibit 1 at 10.

64 *WorldCom High Cap Comments* at 9.

65 *WorldCom High Cap Comments* at 8.

66 *Allegiance/Focal High Cap Comments* at 8.

cite to 218,000 alternative local fiber miles without distinguishing between long-haul, local transport, and local loop miles or planned versus operational fiber; 635 alternative local fiber networks in the top 150 Metropolitan Statistical Areas ("MSAs") (again without distinguishing between transport networks and local loops); and CLEC service to 25% of the nation's commercial buildings.[67] As unequivocally demonstrated in comments in response to the Petition, however, the RBOC statistics are not reliable.[68]

Since the Commission is incorporating in this docket the record in response to the RBOC petition,[69] the Dark Fiber Commenters will not go into detail as to the shortcomings of the RBOC data; these shortcomings have already been extensively documented. It is clear, however, that the RBOCs significantly overstated the amount of competitive fiber available that could serve as an alternative to RBOC loop and transport facilities. For instance, the RBOCs did not distinguish between long-haul, inter-city fiber, and local, intra-city fiber.[70] Only intracity fiber facilities can serve as a potential substitute for BOC UNE high capacity loop facilities and dark fiber facilities, and in regard to those facilities, CLECs would still remain materially impaired without access to those UNEs.

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67 Petition at 3-4.

68 *See*, CC Docket No. 96-98, Joint Comments of Allegiance Telecom, Inc. and Focal Communications Corporation at 18-24 (June 11, 2001) ("*Allegiance/Focal High Cap Comments*"); Joint Comments of Broadslate Networks, Inc., Network Plus, Inc., RCN Telecom, Services, Inc., and Telergy, Inc. at 9-15 (June 11, 2001) ("*Broadslate/Network Plus/RCN/Telergy High Cap Comments*"); Opposition of AT&T Corp. to Joint Petition at 8-9 (June 11, 2001) ("*AT&T High Cap Comments*"); WorldCom Comments at 7-9 (June 11, 2001) ("*WorldCom High Cap Comments*"); Covad Communications Company's Opposition to Joint Petition at 8 (June 11, 2001); Comments of Sprint Corporation at 3-4 (June 11, 2001) ("*Sprint High Cap Comments*").

69 *Triennial UNE NPRM*, at ¶ 12.

70 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 10.

The availability of wholesale local fiber is limited. For instance, many of the wholesale networks that the USTA Report (cited in the RBOC Petition) proffered as alternatives were at the time planned but not yet deployed and those that are operational cover between two and 26 cities, depending on the provider.[71] Thus, for many CLECs, these wholesale providers do not have fiber in the markets where the CLEC seeks to provide service.[72] For example, it is CTC's experience that especially in 2nd and 3rd tier markets, such as the Berkshires, Cape Cod, Vermont, and portions of Pennsylvania, Maryland, and New York, alternatives to ILEC dark fiber are generally nonexistent, or only exist only with significant construction delays.[73] In short, most of the alternative fiber touted by USTA is only "theoretically available," not "actually available" to competitors. Of the nine wholesale providers "profiled" by USTA, three are planning or building networks but do not have them up and running.[74] Furthermore, two of the "wholesalers" USTA cites as providers of alternative facilities – Yipes and Telseon – even according to USTA do not construct any network facilities – they assemble them from other carriers.[75] In addition, many of these providers may also rely on ILEC facilities to complete their networks.[76] For example, Yipes apparently utilizes ILEC dark fiber. Moreover, several members of the Coalition of Fiber Providers cited by the RBOCs' as hard evidence of the

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71 *See* USTA Report at 17-20. MFN is operational in 11 cities, Fiberworks in two, Yipes and Telseon in 20, Telergy in four, and NEON in 26.

72 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 11-12.

73 Exhibit-14, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, CTC Declaration of Russell B. Oliver supporting Hicap Comments, at 2.

74 *See* USTA Report at 17-20.

75 USTA Report at 18-19.

76 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 12.

availability of local fiber networks are in the process of being liquidated, have terminated domestic operations, or have drastically scaled back their business plans.[77] For many CLECs, the ILEC is the only source of the high-capacity loop facilities in most of the markets in which they operate.[78] Thus, a "vibrant wholesale market" simply does not exist for high capacity loops.

According to FCC statistics, at the end of 1999, ILECs had 790,145 DS1 fiber terminations at customer premises and 247,066 fiber terminations at speeds of DS3 or higher.[79] The total number of high capacity loops are likely much higher, as these statistics do not include the fiber terminations ILECs added since then or copper terminations used for DS1 and above facilities. If high-capacity loops are removed from the UNE list, CLECs would be denied unbundled access to at least 1,037,211 ILEC loops and, unless alternative last mile facilities were available, the customers served by them.[80] The evidence is unequivocal that denying unbundled access to these loops would leave CLECs with insufficient alternative means of providing these facilities either through self-provisioning or through wholesale providers.

### 3. Cost and Timeliness

Even if a central office or customer location may generate sufficient traffic such that self-provisioning may be considered, as the Commission noted there are multiple other factors that impair the ability of CLECs to self-provision high capacity loops. Foremost amongst these

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[77] Telergy, Inc. is in Chapter 7 liquidation. Yipes has filed for Chapter 11 bankruptcy. Global Metro Networks has terminated domestic operations. El Paso Global Networks has cancelled its $5 Billion nationwide plan to focus on Texas. Finally, MFN has recently indicated that it may file for bankruptcy.

[78] *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 10; *AT&T High Cap Comments*, Exh. 1 at 12; *Covad High Cap Comments* at 12; *Allegiance/Focal High Cap Comments* at 6.

[79] Infrastructure of the Local Operating Companies, Table 2.1 (October 2000) ("Infrastructure Report").

[80] *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 17.

factors is the high cost of self-provisioning, particularly if there is a significant distance between the customer's premises and the central office. In addition, there are numerous time consuming and expensive hurdles that must be surmounted even before construction can begin such as resolving rights-of-way and building access issues.[81]

Building fiber to the customer premises is still the most capital intensive means of installing local broadband capacity. The *City Light Investor's Guide* estimates that fiber deployment costs $100,000 to $300,000 per mile for placing fiber underground, $50,000 per mile for placing fiber on poles, and $10,000 to $60,000 per mile for placing fiber in pipelines.[82] These figures are in most instances far greater than the $46,680 per mile cost the FCC cited in the *UNE Remand Order*.[83] The cost of adding a building to a CLEC network generally averages $250,000 and the cost increases significantly if the building is more than a mile from the CLEC's existing network.[84] Sprint was quoted a rate of over $1 million per mile by an alternative access provider to construct fiber loops in metropolitan areas.[85]

The closing of capital markets to CLECs has exacerbated cost concerns. Many of the CLECs that fueled the late-1990s fiber construction boom are now in financial distress, have declared bankruptcy, or have been liquidated. Those CLECs that have survived are finding it

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81 *AT&T High Cap Comments*, Exh. 1 at 12.

82 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 19.

83 *UNE Remand Order* at ¶ 184, n.343.

84 *WorldCom High Cap Comments* at 10. WorldCom notes that it would only add buildings more than a mile from its network as part of the construction of a new fiber ring, which is a multi-million dollar project. *Id.* at 11. If the customer demand in a building is a DS-3 or less, WorldCom would not even consider adding the building to its network because leasing the facilities as a UNE leads to a much lower per-unit cost. For instance, the cost of an unbundled DS-1 is usually between $60 and $100 per month. *Id.*

85 *Sprint Comments* at 4.

harder to get financing to continue deployment of their networks. As WorldCom observes, "there is no prospect that CLECs will have sufficient capital to undertake network construction at the pace of the late 1990s, much less reduce their reliance on ILEC high-capacity loops and transport to a significant degree."[86] The financial downturn has reduced the availability of alternative sources of access and made it more difficult for CLECs to self-provision facilities.[87] If there were a thriving alternative wholesale market for high-capacity facilities, capital markets would be "pouring in billions of dollars to fund construction of competitive networks, and the prices of special access services would be plummeting."[88] Unfortunately, just the opposite is occurring.

Moreover, construction costs are only one of the many types of costs providers must consider when determining whether to deploy their own fiber. In addition to construction costs, a CLEC must consider the permitting and rights-of-way fees it must pay to local jurisdictions, and the costs of installing or accessing intra-building wiring.[89] Further, deploying local loop plant still may embroil CLECs in lengthy franchising or rights-of-way disputes resulting in material delays of greater than six months to one year.[90] Meanwhile, ILECs already have

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86 *WorldCom High Cap Comments* at 3.

87 *Sprint High Cap Comments* at 5.

88 *AT&T High Cap Comments,* Exh. 1 at 29.

89 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 19.

90 *Id.; WorldCom High Cap Comments* at 13.

municipal rights-of-way in place.[91] ILECs, because they own ubiquitous networks, can provision new special access circuits within 20 days.[92]

Thus, the costs of deploying high capacity and dark fiber loops and the time it takes CLECs to deploy them have not changed significantly since the *UNE Remand Order*, and the closing of capital markets has made the task even more difficult. Even if the CLEC obtains the necessary financing, costs ranging between $10,000 and $300,000, and beyond, per mile and rights-of-way and building access negotiation delays of six to twelve months or more still materially impair a CLEC's ability to deploy high capacity and dark fiber local loops. Additionally, as the Commission correctly concluded in the *First Local Competition Order*, as a result of the continued availability of ILEC unbundled network elements at their economic cost, including unbundled dark fiber and high capacity loops and transport, "consumers will be able to reap the benefits of the incumbent LEC's economies of scale and scope, as well as the benefits of competition."[93]

### D. The Commission Must Continue to Mandate Access to Dedicated Interoffice Transmission Facilities

In the *UNE Remand Order*, the Commission determined that requesting carriers are impaired without access to unbundled dedicated and shared transport facilities.[94] While the Commission did find the existence of competitive transport facilities on certain point-to-point routes, it found that self-provisioned transport, or transport from non-ILEC sources, is not

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91 *Sprint High Cap Comments* at 5.

92 *WorldCom High Cap Comments* at 13.

93 *First Local Competition Order*, at ¶ 679.

94 *UNE Remand Order*, at ¶ 321.

sufficiently available as a practical, economic, and operational manner to warrant exclusion of interoffice transport from an ILEC's unbundling obligations at the time.[95] Alternative forms of interoffice transport are still not sufficiently available as a practical, economic or operational manner. Therefore, the Commission should still require ILECs to offer unbundled access to their interoffice transmission facilities nationwide.

### 1. The Commission Should Continue to Require ILECs To Unbundle High-Capacity Dedicated Transport Facilities

Dedicated transport is defined as "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provides telecommunications between wire centers owned by ILECs or requesting telecommunications carriers, or between switches owned by ILECs or requesting telecommunications carriers."[96] In its *UNE Remand Order*, the Commission reaffirmed its determination made in its *Local Competition Order* that dedicated transport includes "all technically feasible capacity-related services" such as DS-1, DS-3, and OC-3 to OC-192.[97] The Commission clarified that the ILEC's unbundling obligations would extend beyond OC-192 services, and include such higher capacities as evolve and are deployed over time.[98] The Commission also expanded the definition of dedicated transport to include dark fiber.[99] Despite large amount of "data" submitted by ILECs as to the purported availability of competitive fiber, the Commission found that the record actually supported the proposition that

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95 *UNE Remand Order*, at ¶ 321.

96 *Id.* at ¶ 322.

97 *UNE Remand Order*, at ¶ 323.

98 *UNE Remand Order*, at ¶ 323.

99 *UNE Remand Order*, at ¶ 323.

competitive fiber was not sufficiently available.[100] The Commission found that competitive fiber, where available, was not available on a ubiquitous basis. Thus, CLECs, without access to unbundled dedicated transport, would be required to rely on a patchwork of alternative network facilities to cobble together their networks, where such facilities exist, or construct their own facilities.[101] The Commission observed that even though some alternative fiber facilities did exist, there were few, if any, alternative facilities outside the ILECs' networks that connect all or most of an ILECs' central offices and IXC points of presence within a MSA.[102] The Commission concluded that CLECs required dedicated transport facilities that are more extensive than those that are being currently deployed along the point-to-point routes.[103]

(a) Availability and Ubiquity

In examining the availability of fiber for transport, it is important to distinguish local fiber from long-haul fiber. When the RBOCs presented evidence that co-mingled local and long-haul fiber deployments in 1999, the Commission categorically rejected that data as insufficient for determining the availability of alternative local transport.[104] The Commission noted "that the 'fiber frenzy' and 'bandwidth markets' cited by the incumbent LECs *are largely limited to portions of inter-city, long-haul networks that do not ubiquitously reach the interoffice segments of the incumbent LEC's network.*"[105] Because long-haul fiber facilities are not substitutes for

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100 *Id.* at ¶ 338.

101 *UNE Remand Order*, at ¶ 341.

102 *Id.* at ¶ 343.

103 *Id.* at ¶ 346.

104 *UNE Remand Order*, at ¶ 349-51.

105 *Id.* at 350 (emphasis added).

local transport facilities, the Commission must continue to focus on the amount of fiber actually available as alternatives to ILEC interoffice facilities.

There still is a lack of alternative transport facilities. Alternative transport is available to less than 15% of RBOC wire centers.[106] As WorldCom notes, "many wire centers with CLEC transport have only a single CLEC alternative, can be reached using CLEC transport only by using less efficient routing, or can be reached using CLEC transport only if the requesting carrier incurs the additional cost of coordinating multiple vendors."[107]

The Commission has established as the vital consideration in determining the viability of alternative transport facilities whether those facilities provide connectivity throughout the ILEC network. In the *UNE Remand Order*, although the Commission acknowledged CLEC deployment of "interoffice transport facilities along selected point-to-point routes, primarily in dense market areas," it found that "competitive transport facilities that currently exist do not interconnect *all* of an incumbent LEC's central offices," thus *per se* failing the ubiquity requirement of the impairment test.[108] Competitive transport facilities are not currently present on a ubiquitous basis; it would require a monumental construction effort in order to replicate the ILEC interoffice network. AT&T notes that it utilizes special access circuits to 11,500 central offices, with each central office generally connected to two AT&T points of presence. AT&T observes that requiring it to obtain facilities to service these 21,000 central office-POP routes

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106 *WorldCom Comments* at 15.

107 *Id.*

108 *Id.* (emphasis added).

from non-ILEC suppliers would be impossible.[109] AT&T also demonstrated that it would be economically infeasible to build facilities in each of these locations, and, therefore it must rely on the use of ILEC facilities to access the central offices.[110] WorldCom notes that it provides DS-1 and DS-3 circuits in 6800 RBOC wire centers, and it must rely mainly on ILEC transport.[111] For WorldCom to extend its network to an additional ILEC central office it costs at least $1 million, and costs much more if the ILEC central office is far from the WorldCom's existing network.[112] Such an investment is generally cost-prohibitive unless the route is short and the traffic density is high.[113] In short, ILEC facilities continue to provide the only ubiquitously available and efficient means of transport for CLECs.

ILEC pricing and provisioning of special access services is strong evidence of the lack of alternatives to CLECs for high-capacity facilities. CLECs pay exorbitant special access rates, running sometimes over 100% to 200% over the UNE transport rates and endure protracted provisioning delays for such facilities because they have no alternative.[114] If there were sufficient alternative transport facilities available, then prices in the ILEC special access market would be closer to incremental costs and the UNE rate for dedicated transport.

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109 *AT&T High Cap Comment,s* at 11.

110 *Id.*

111 *WorldCom Comments,* at 16.

112 *Id.* at 20.

113 *Id.* at 21.

114 *Id.* at 17.

ILEC control over bottleneck last mile facilities makes reliance on ILEC transport a necessity. As of December 2000, ILECs still controlled 189,512,000 access lines.[115] Of the 16,397,000 access lines "provided" to end users by CLECs, at least 64.9% are effectively controlled by the ILECs because CLECs acquire those lines through resale or local loops purchased from the ILECs.[116] In order to obtain access to those loops, CLECs must collocate at the ILEC central offices where the loops terminate. In order to connect those loops to their switches, CLECs must build or purchase interoffice transport to connect their collocation arrangements to their switches. Without the availability of alternative interoffice transport to *each* ILEC central office where CLECs provide service using unbundled local loops, CLECs will have no practical access to these loops, and thus will be unable to provide service to the vast majority of telephone customers in the United States.[117]

Denying CLECs unbundled access to dedicated transport will also preclude use of enhanced extended loops ("EELs"). EELs permit CLECs to reduce their costs of collocation by minimizing the number of central offices at which they must collocate to have access to loops. Without the availability of any dedicated interoffice transport, CLECs will no longer be able to use EELs to reach customers served by ILEC central offices in which traffic density may not justify the cost of collocation. The Commission should continue to require ILECs to provide unbundled access to EELs in order to enable CLECs to deploy their networks in a cost-efficient

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115 Local Telephone Competition, Table 4.

116 Local Telephone Competition, Table 3. Although this table shows that CLECs provide service to 35% of their end users over their own local loop facilities, the FCC questioned whether this data was accurate. *See* Local Telephone Competition at 1, n.2.

117 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 25.

manner as they develop a critical mass of customers to justify a smart build of their own facilities.

The fact that RBOCs have increased the number of collocation arrangements they provide to CLECs is of no significance. Numerous collocation arrangements are worthless if CLECs cannot obtain the transport necessary to connect their collocation arrangements to their switches. Even then, evidence of at least one CLEC wire center collocation that relies on a third party transport provider – deemed relevant for evaluating whether ILECs should receive pricing flexibility for certain interstate access services based on the existence of competition for those services reflected by the collocated facilities – is irrelevant to the impairment analysis required under the local competition provisions of the Act.[118] The RBOCs have alleged that 183 of 320 MSAs have at least one fiber-based collocator.[119] Aside from the fact that the RBOCs do not answer the more relevant inquiry which is whether the RBOC permits that fiber-based collocator to interconnect with other collocated CLECs, their statistic utterly fails to show that alternative transport is ubiquitously available. Even if one agreed that the majority of CLECs purchase unbundled local loops from only 25% of ILEC central offices, the existence of a single "fiber-based collocator" in those central offices does nothing to show the availability of alternatives in the remaining ILEC central offices. For some CLECs, the ILEC is the only source of these loop and transport facilities in the majority of the markets in which they operate.[120] Further, even in the rare instances where CLECs have access to another collocated CLEC's spare fiber, it often

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118 *UNE Remand Order*, at ¶¶ 131-32.

119 *ILEC Joint High-Cap Petition*, at 4-5.

120 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 26.

takes the ILEC months to make the connection necessary for the CLEC to use such alternative fiber.[121]

Additionally, the FCC also previously rejected the significance of USTA evidence regarding the deployment of competitive fiber networks "nearby" incumbent LEC wire centers:

> We note that the incumbents do not explain what is meant by fiber that is "nearby." Nor do incumbents explain how having fiber "nearby" reflects the availability of ubiquitous transport alternatives.[122]

Furthermore, as evidenced by the Petition filed by the Coalition of Competitive Fiber Providers, ILECs often refuse alternative fiber providers' requests to bring their fiber into ILEC central offices. As the Coalition's Petition states:

> Coalition members need to access ILEC central offices for the purpose of providing service to CLECs collocated there. However, ILECs, with the exception of Verizon in former Bell Atlantic territory, do not permit competitive fiber providers to do so. ILECs in the *Collocation Remand Proceeding* contend that competitive fiber providers have no right to collocate in ILEC central offices under Section 251(c)(6) because they do not interconnect with the ILEC or access the UNEs of the ILEC. ILECs do not permit CLECs generally, or competitive fiber providers in particular, to access poles, duct, conduit, or rights-of-way leading to, and in, ILEC central offices pursuant to Sections 251(b)(4) or 224(f)(1).[123]

The RBOC refusal of third party supplier access to their central offices further undercuts their proposition that dedicated transport alternatives are ubiquitously available at this time.

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121 *Id.*

122 *UNE Remand Order, at* ¶ 342.

123 *Application of Sections 251(b)(4) and 224(f)(1) of the Communications Act of 1934, as Amended, to Central Office Facilities of Incumbent Local Exchange Carriers*, Petition for Declaratory Ruling by Coalition of Competitive Fiber Providers, CC Docket 01-77 (filed March 15, 2001).

(b) Cost and Timeliness

The Dark Fiber Commenters have already discussed the high cost of extending CLEC networks to additional ILEC central offices. The time to provide service may also be longer for interoffice transport because the longer metro backbones necessary to connect metro to suburban markets are more likely to cross multiple permitting jurisdictions than shorter local loops, potentially increasing the time necessary to deploy alternative transport facilities. The costs of deploying interoffice transport and the time it takes to deploy such transport have not diminished since the FCC adopted the *UNE Remand Order*.[124]

As shown above, dedicated transport still meets the Commission's impair test as articulated in the *UNE Remand Order*. Alternatives to ILEC unbundled dedicated transport are not actually available on a ubiquitous basis. Furthermore, both the cost of deploying dedicated transport and the time it takes to deploy would materially impair a CLEC's ability to provide service to end users.[125] If neither unbundled transport nor alternative transport were available, a CLEC would be forced to purchase tariffed special access service from ILECs which would, on average, increase the CLEC's cost by a factor of five.[126] The Commission should therefore keep dedicated transport on the UNE list.

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124 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 28.

125 *Broadslate/Network Plus/RCN/Telergy High Cap Comments* at 28.

126 *Id.*