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

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
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

REPLY COMMENTS OF THE COALITION OF COMPETITIVE FIBER PROVIDERS

Bruce Frankiewich
Vice President of Legal and Regulatory Affairs
American Fiber Systems, Inc.
100 Meridian Centre - Suite 250
Rochester, NY 14618
Telephone: 716-340-5400

Patrick J. Donovan
Ulises R. Pin
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: 202-424-7500
Facsimile: 202-424-7645

Lisa Lutz
Corporate Counsel
City Signal Communications
5 Great Valley Parkway
Suite 108
Malvern, PA 19355
Telephone: 484-527-0140 ext. 201

Charles Stockdale
Vice President and Corporate Counsel
Fibertech Networks, LLC
140 Allens Creek Road
Rochester, NY 14618
Telephone: 716-697-5100

July 17, 2001

TABLE OF CONTENTS

SUMMARY i

I. THE COALITION PETITION FOR DECLARATORY RULING 3

II. LIMITATIONS ON CFPs ABILITY TO TERMINATE FIBER AT ILEC CENTRAL OFFICES REDUCES AND/OR ELIMINATES COMPETITIVE ALTERNATIVES TO ILEC INTEROFFICE TRANSPORT 4

A. Competitive Transport Must Reach the Central Office To Be a Substitute for ILEC Transport 4

B. ILECs Impose A Host of Restrictions on Competitive Transport Providers 4

III. ILECS MAY NOT CLAIM THAT THE MARKET FOR INTEROFFICE TRANPORT IS COMPETITIVE WHILE DENYING TRANSPORT COMPETITORS REASONABLE ACCESS TO THE CENTRAL OFFICE 7

IV. NONDISCRIMINATORY ACCESS TO THE CENTRAL OFFICE OR VAULT BY CFPs MUST BE A PRECONDITION OF ANY "TRIGGER" FOR REDUCING ILEC OBLIGATIONS TO PROVIDE UNBUNDLED ACCESS TO INTEROFFICE TRANSPORT 8

V. CONCLUSION 10

SUMMARY

On March 15, 2001, the Coalition of Competitive Fiber Providers filed a Petition for Declaratory Ruling requesting that the Commission determine that competitive fiber providers may, pursuant to Section 224(f)(1) of the Act, access ILEC duct and conduit leading to, and in, ILEC central offices for the purpose of providing competitive transport services to CLECs collocated there. As explained in the Petition and in a letter from the Coalition filed May 1, 2001, ILECs impose a host of unreasonable terms and conditions on access to ILEC duct and conduit leading to, and in, ILEC central offices that violates the mandate of Section 224(f)(1) that ILECs provide nondiscriminatory access to "any" ILEC duct and conduit. For all the reasons stated in the Petition, the Commission should promptly make the determinations therein requested and grant the petition.

As part of the instant proceeding, the Commission should determine that ILECs may not consistently claim that there is an adequately functioning competitive market for interoffice transport justifying removal of the obligation that they provide unbundled access to interoffice transport while systematically discriminating against competitive fiber providers in provision of access to ILEC central offices and associated duct and conduit such as vaults. Accordingly, in this proceeding, in addition to other appropriate preconditions, the Commission should not in any respect reduce ILEC unbundling obligations for interoffice transport until ILECs provide nondiscriminatory access to central offices and associated duct and conduit as described in the Coalition's Petition and May 1, 2002 letter.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

REPLY COMMENTS OF THE
COALITION OF COMPETITIVE FIBER PROVIDERS

The Coalition of Competitive Fiber Providers ("the Coalition") submits these reply comments in the above-captioned proceeding[1] concerning the Commission's triennial review of rules and policies regarding unbundled network elements ("UNEs") that incumbent Local Exchange Carriers ("ILECs") are required to provide to requesting carriers pursuant to Sections 251(c)(3) and 251(d)(2) of the Communications Act of 1934, as amended.[2] For purposes of these reply comments, the Coalition is comprised of American Fiber Systems, Inc., City Signal Communications, Inc., and Fibertech Networks, LLC. Coalition members provide

---

[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"*).

[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).

competitive fiber-based transport services and dark fiber to competitive local exchange carriers ("CLECs") collocated in ILEC central offices.

American Fiber Systems, Inc. is based in Rochester, New York. It offers CLECs, ISPs and other customers high-capacity dark fiber networks and fiber-based telecommunications services in metropolitan areas of second and third-tier cities in 41 states, such Kansas City, Kansas and Missouri, Nashville, Tennessee, Cleveland, Ohio, Minneapolis/St. Paul, Minnesota, and Salt Lake City, Utah. American Fiber Systems, Inc. is certificated in eighteen states.

City Signal Communications, Inc., based in Malvern, Pennsylvania, is constructing extensive dark fiber metropolitan area networks in a number of mid-sized cities in the Mid-Atlantic and Mid-Western regions of the United States. The company currently has networks in Richmond, Virginia, Norfolk, Virginia and throughout the state of Delaware. The Cleveland, Ohio, Columbus, Ohio and Philadelphia, Pennsylvania networks are currently under construction. By the end of 2002, City Signal Communications, Inc. plans to have networks operational in 6 primary markets.

Fiber Technologies, LLC, headquartered in Rochester, New York, is in the process of deploying fiber networks throughout the New England and mid-Atlantic regions. Fiber Technologies, LLC has commenced service in Albany, Syracuse, Buffalo, and Rochester, New York, Indianapolis, Indiana, Hartford, Connecticut, and Pittsburgh, Pennsylvania and plans to expand its service to additional cities in Massachusetts, Rhode Island, Connecticut, Ohio, and other states.

I. THE COALITION PETITION FOR DECLARATORY RULING

On March 15, 2001, the Coalition filed a petition for a declaratory ruling ("Petition") requesting that the Commission determine that competitive fiber providers may, pursuant to Sections 251(b)(4) and 224(f)(1) of the Communications Act of 1934 (the "Act"), access ILEC duct and conduit leading to, and in, ILEC central offices for the purpose of extending fiber to CLECs collocated in ILEC central offices.[3] The Coalition explained that Section 224(f)(1) requires ILECs to provide nondiscriminatory access to "any" ILEC duct and conduit, and that, therefore, pursuant to that statutory provision, competitive fiber providers ("CFPs") and other telecommunications carriers may access ILEC duct and conduit leading to, and in, central offices for the purpose of providing service to CLECs collocated there. In a letter dated May 1, 2002, the Coalition provided additional information concerning issues raised in the Petition and requested that the Commission determine that a telecommunications carrier may, pursuant to Section 224(f)(1), terminate multi-strand optical fiber cabling in a fiber distribution frame ("FDF") in the vault associated with the central office, receive fiber at its FDF in the vault from CLECs' collocations spaces, and perform fusion splicing at the FDF in the vault.

---

[3] *In the Matter of 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, CC Docket No. 01-77, filed May 15, 2001.

II. LIMITATIONS ON CFPs ABILITY TO TERMINATE FIBER AT ILEC CENTRAL OFFICES REDUCES AND/OR ELIMINATES COMPETITIVE ALTERNATIVES TO ILEC INTEROFFICE TRANSPORT

A. Competitive Transport Must Reach the Central Office To Be a Substitute for ILEC Transport

CLECs obtain unbundled interoffice transport between specific central offices. CLEC collocation space in at least one of the central offices is usually the terminating point for one end of the interoffice transport. A competitive alternative that only extends nearby the central office, but not into the associated vault, is not a practical or economic substitute for ILEC interoffice transport because of the extra expense, including construction expense, as well as the additional time involved in obtaining separate connections outside of the vault and because of the potential for the ILECs to claim that inadequate conduit space exists to permit all requesting CLECs to reach a CFP located in the street, outside of the vault. For these reasons, competitive transport services are not adequate substitutes for ILEC interoffice transport unless the competitive transport providers can obtain access to the ILEC central office and extend facilities to the CLECs collocated there.

B. ILECs Impose A Host of Restrictions on Competitive Transport Providers

As explained in the Coalition's May 1, 2002 letter, ILECs impose a number of unreasonable restrictions and/or prohibitions on CFPs' ability to provide competitive transport services to CLECs collocated in ILEC central offices. Thus, other than Verizon, pursuant to its Competitive Alternate Transport Terminal tariff, ILECs do not permit carriers to terminate multi-strand fiber cabling at an FDF in the central office or vault. SBC and BellSouth permit CFPs and other carriers to install an FDF, if at all, no closer to the central office than in a connection point further from the central office than "manhole zero." In many cases, the CFP must create this

connection point itself by creating its own manhole or rebuilding and expanding an ILEC manhole. Upon request of a collocated CLEC, the ILEC will pull individual fiber strands, for a charge, from the CFP's connection point into the CLECs' collocation space, but only if it determines that the conduit capacity exists connecting the CFP to the central office. In this connection, when an ILEC determines that entrance ducts are exhausted, the ILEC will frequently designate an entirely different route into the central office, which, in turn, may require the CFP to abandon its previously constructed or augmented manhole. This frequently requires the CFP to go through a completely new engineering, permitting, and construction process to build a new, or augment an existing, manhole. This additional expense would not be necessary if CFPs were permitted to access the vault associated with the central office. In addition, ILECs' limitation on terminating multi-strand fiber cabling in an FDF only in a connection point at some distance from the central office materially and seriously discriminates against CFPs because it delays up to several months the time within which CFPs can provide service, and substantially increases costs to CFPs and their customers, if it permits such service at all. ILECs charge the CFP or CLEC each time they pull a fiber strand into the central office. For an optical cable with 432 fiber strands, this could amount to nearly $1 million in unnecessary charges for utilization of all the strands in such a cable.[4] In contrast, ILECs extend their own fiber cabling directly into the central office or vault for connection to the ILEC FDF. ILECs are able thereby to achieve the efficiencies and substantial cost savings of one pull into the central office per cable, thus gaining a significant cost advantage in providing loop and transport services, in comparison to other facilities-based carriers. These additional charges for multiple pulls into the central office,

---

[4] Verizon under its CATT tariff permits CFPs to attach 432 strand fiber cabling at the FDF in the central office. Verizon FCC Tariff No. 1 Section 19.10.1(B).

as well as the significant time delays involved and the risk of inadequate conduit space, are totally unnecessary and discourage facilities-based competition.

ILEC requirements for multiple pulls also impede facilities-based competition by causing premature and unnecessary exhaustion of conduit and duct, thereby establishing the ultimate obstacle to competitive transport: the inability of CLECs to reach a competitive transport provider. As noted in detail in the Petition, the ILEC central office remains one of the quintessential "bottleneck" facilities that CLECs, and in turn CFPs, must access in order to realistically be able to provide competitive services. Unless and until CFPs obtain real nondiscriminatory access to run fiber and place distribution frames in the ILECs central offices or vaults, there can be no broadly available alternative to unbundled access to ILEC interoffice transport. As noted in the Petition, access to the ILEC central office or vault remains virtually "off limits" to CFPs, thereby restricting significant availability of alternative transport facilities for competitive carriers.

Also, it seems clear why Bell Operating Companies ("BOCs") discriminate against CFPs – they want to protect their own interoffice transport services from competition and preserve their inflated charges for those services, thereby burdening CLECs and helping to maintain ILECs' monopoly position.

As explained by the Coalition in its Petition and letter, ILECs, in using their own duct and conduit to extend fiber to an FDF in the central office or vault while denying CFPs the same opportunity, violate the Section 224 mandate that ILECs provide "nondiscriminatory access" to "any" ILEC duct and conduit.

III. ILECS MAY NOT CLAIM THAT THE MARKET FOR INTEROFFICE TRANPORT IS COMPETITIVE WHILE DENYING TRANSPORT COMPETITORS REASONABLE ACCESS TO THE CENTRAL OFFICE

In the *NPRM*, the Commission seeks comment as to whether it should retain interoffice transmission facilities (*i.e.*, dedicated or shared transport) as a UNE, or whether there were any alternative less burdensome options to achieve the goals of the Act. [5] In response, all of the BOCs contend that interoffice transport should be removed from the list of UNEs because there is an allegedly fully competitive market for interoffice transport that provides CLECs numerous competitive alternatives.[6]

In fact, there is not a fully competitive market for interoffice transport. The Coalition agrees with the comments of ALTS and others submitted in this proceeding showing that there is not a fully competitive market for interoffice transport.[7] The Coalition agrees that the BOC "Fact" Report grossly overstates the amount of competitive fiber available to CLECs for provision of competitive interoffice transport.[8] Moreover, it is the experience of Coalition members that CLECs too rarely have competitive alternatives to ILEC interoffice transport.

One key factor - in addition to numerous other factors such as ILEC delays in issuance of pole and conduit licenses, and unreasonably high make ready charges for access to such facilities, to name only a few – for lack of competitive alternatives for interoffice transport is that BOCs thwart competitive access to the central office. Simply stated, as described above, BOCs engage in systematic unlawful discrimination against CFPs in failing to provide them the same

---

5 NPRM at ¶ 61.

6 *See* BOC *2002 UNE Fact Report.*

7 Comments of ALTS, *et al.*, CC Docket No. 01-338, filed April 5, 2002, pp. 58-70.

8 *Id.*

access to ILEC duct and conduit leading to, and in, ILEC central offices, including the ability to terminate multi-strand fiber cabling in an FDF in the central office or the vault associated with the central office, that is comparable to what the BOC provides to itself. This flatly violates Section 224 of the Act.

The Coalition submits that BOCs' policy and practice of frustrating CFP access to CLECs collocated in the central office contradicts BOCs' contentions in this proceeding that there is a fully competitive market for interoffice transport. For this reason alone, the Commission should give little weight in this proceeding to BOCs' contentions about competitive alternatives for interoffice transport.

IV. NONDISCRIMINATORY ACCESS TO THE CENTRAL OFFICE OR VAULT BY CFPs MUST BE A PRECONDITION OF ANY "TRIGGER" FOR REDUCING ILEC OBLIGATIONS TO PROVIDE UNBUNDLED ACCESS TO INTEROFFICE TRANSPORT

As stated, the Coalition does not believe that there is any basis at this time for limiting BOCs obligations to provide unbundled access to interoffice transport based on the view that there is a fully competitive, or even adequately functioning, market for interoffice transport. CLECs do not as yet have sufficient competitive choices so that they would not be impaired without access to UNE interoffice transport.

Nonetheless, it is possible that the Commission could seek in this proceeding to identify circumstances in which CLECs are not impaired without unbundled access to interoffice transport. Because ILECs' current practice of discriminatory central office access limits the ability of competitive transport providers to provide alternatives to ILEC unbundled interoffice transport service, the Commission should establish as a precondition to limiting ILEC unbundling obligations, in addition to other appropriate conditions, that they must provide

nondiscriminatory access to ILEC central offices along the lines described in the Coalition's petition, or at least along the lines of Verizon's CATT tariff. As discussed, as long as BOCs are permitted to impose discriminatory terms and conditions on CFPs that impose millions of dollars of extra costs and impose undue delays in providing service, there is no basis for concluding that there is an adequately functioning competitive market for interoffice transport that affords CLECs realistic and practical alternatives to ILEC unbundled transport. For all the reasons stated in the Coalition's Petition and May 1, 2002 letter, the Commission should promptly grant the relief requested therein separate from any action in the instant proceeding. Further, as part of the instant proceeding, in addition to other appropriate preconditions, the Commission should determine that, at a minimum, ILECs must continue to provide unbundled access to interoffice transport until such time as they provide competitive transport providers nondiscriminatory access to the central office as described in the Coalition's Petition and letter. Specifically, the Commission should require ILECs to permit CFPs to terminate multi-strand optical fiber cabling in a fiber distribution frame in the central office or associated vault, extend fiber cabling between the CLECs' collocation space and the FDF, and perform fusion splicing at the FDF as described in the Coalition's May 1, 2002 letter.[9]

Again, while there are numerous other impediments to competitive provision of interoffice transport, CLEC's ability to reach competitive transport facilities as described herein should be a feature of any "trigger" for limiting ILEC obligations to provide unbundled access to interoffice transport.

---

[9] The Commission should make clear as part of these requirements that where it is more appropriate to perform fusion splicing in CLEC collocation space that the CFP, at the request of collocated CLECs, may do so at that location or other appropriate location in the central office.

V. CONCLUSION

The Coalition requests that the Commission adopt the recommendations herein.

Respectfully submitted,

Patrick J. Donovan
Ulises R. Pin
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: 202-424-7500
Facsimile: 202-424-7645
Counsel for the Coalition of Competitive Fiber Providers

Bruce Frankiewich
Vice President of Legal and Regulatory Affairs
American Fiber Systems, Inc.
100 Meridian Centre - Suite 250
Rochester, NY 14618
Telephone: 716-340-5400

Charles Stockdale
Vice President and Corporate Counsel
Fibertech Networks, LLC
140 Allens Creek Road
Rochester, NY 14618
Telephone: 716-697-5100

Lisa Lutz
Corporate Counsel
City Signal Communications
5 Great Valley Parkway
Suite 108
Malvern, PA 19355
Telephone: 484-527-0140 ext. 201

July 17, 2001