

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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 CONVERSENT COMMUNICATIONS, LLC

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REPLY COMMENTS OF CONVERSENT COMMUNICATIONS, LLC

Conversent Communications, LLC (“Conversent” or the “Company”), through its attorneys, hereby files these reply comments in the above-captioned proceedings. Conversent's initial comments focused on the importance of keeping dark fiber, especially dark fiber interoffice transport (“unbundled IOF dark fiber”), as an unbundled network element (“UNE”) that must be available on a nationwide basis. In these reply comments, Conversent focuses primarily upon (i) supplementing the factual record to demonstrate that the D.C. Circuit in *USTA v. FCC*¹ relied on incorrect factual data pertaining to the costs CLECs incur in connection with leasing UNEs and (ii) rebutting the position taken by some incumbent local exchange carriers (“ILECs”) that loops used to provide broadband services should no longer be unbundled and offered at TELRIC rates.

¹ *United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

I. INTRODUCTION

Conversent currently provides local and long distance voice services and data services to small and medium sized business customers in second and third tier urban and suburban markets in the Verizon North service area as well as in New Jersey. The average Conversent customer has approximately seven lines, and many Conversent customers have only a single business line.

Conversent has found that it can efficiently provide voice and data services to these customers by relying on its own switches and collocated transmission equipment and by leasing unbundled local loops (including 2-wire analogue, xDSL, DS-1, DS-3 and dark fiber loops) and unbundled IOF dark fiber from the ILEC. Although Conversent has only been in business since the fall of 1999, by June 30, 2002, it had already accumulated over 130,000 access lines. Conversent is currently EBITDA positive and anticipates that it will be free cash flow positive in the first quarter of 2003.

The primary concern regarding Conversent's business plan is not whether it can compete with the ILECs - - under existing unbundling rules, it can. Rather, the primary threat to Conversent's viability is the complete lack of regulatory certainty. Verizon, in particular, having obtained Section 271 authority in most states, is now re-doubling its efforts to increase CLEC costs, decrease CLEC revenues and limit CLEC access to UNEs. At the same time, Verizon is actively seeking to obtain retail pricing flexibility from state commissions on the grounds that the local exchange markets are fully competitive. The FCC can and must help by vigorously appealing the *USTA v. FCC* decision and by retaining its existing unbundling rules.

II. THE D.C. CIRCUIT MISSTATED THE FACTS CONCERNING THE COSTS OF UNBUNDLING.

The Supreme Court in *Verizon v. FCC*² rejected the ILECs' claim that pricing UNEs at TELRIC rates simulates but does not produce facilities-based competition. In so holding, it noted that:

We, of course, have no idea whether a different forward looking pricing scheme would have generated even greater competitive investment than the \$55 billion that the entrants claim, but it suffices to say that a regulatory scheme that can boast such a substantial competitive capital spending over a 4 year period is not easily described as an unreasonable way to promote competitive investment in facilities.³

The ILECs made the very same arguments in *USTA v. FCC* that the Supreme Court rejected in *Verizon*, that is, that mandatory unbundling at Commission-mandated prices reduces the incentives for innovation and investment in facilities. However, instead of deferring to the FCC's regulatory scheme and noting the substantial investments that CLECs have made in connection with UNE entry as the Supreme Court did, the D.C. Circuit criticized the FCC's analysis that both CLECs and ILECs have built facilities since passage of the 1996 Act. Rather, the D.C. Circuit stated that "a specified level tells us little or nothing about incentive effects. The question is how such investment compares with what would have occurred in the absence of the prospect of unbundling."⁴ Moreover, the D.C. Circuit in *USTA v. FCC* stated that "[e]ach unbundling of an element imposes costs of its own, spreading the disincentive to invest in innovation."⁵ Not only is the D.C. Circuit's analysis inconsistent with that of the Supreme Court in *Verizon*, but the D.C. Circuit underestimates the additional costs that CLECs incur when they rely on UNEs.

² *Verizon Communications v. FCC*, 122 S.Ct. 1646 (2001).

³ *Id.* at 1675-76 (footnote omitted).

⁴ *USTA v. FCC*, 290 F.3d at 425.

⁵ *Id.* at 427.

A. Conversent has Spent Millions of Dollars in Order to Obtain Access to Unbundled Loops and Unbundled Dark Fiber.

CLECs like Conversent must incur many very significant costs to obtain UNEs that the D.C. Circuit's opinion failed to consider. First, collocation is generally a prerequisite for purchasing both unbundled loops and unbundled IOF dark fiber. Conversent has collocated in over 125 ILEC central offices in order to be able to purchase unbundled loops and unbundled IOF dark fiber.⁶ Conversent has paid Verizon and Southern New England Telephone ("SNET") over \$11.5 million in collocation charges.⁷

In addition to paying these collocation charges to Verizon and SNET, Conversent has also incurred substantial costs in purchasing and installing the transmission equipment that it deploys in its collocation arrangements so that it can serve end-user customers. To date, the capital costs that Conversent has incurred for purchasing such transmission equipment alone amount to over \$35 million.⁸

Conversent has also spent several million dollars to develop and operate operational support systems ("OSS") in connection with unbundled network elements. This includes the capital and operating costs for pre-ordering, ordering, maintenance and repair, and billing associated with UNEs.⁹ This does not even factor in the several million dollars that Conversent has invested in OSS in order to bill its own retail customers.

B. Verizon Increases the Cost of UNEs Through the Exercise of Market Power.

In addition to the costs described above, Verizon has used its market power to increase Conversent's costs related to UNEs in other ways. First, the bills for UNEs that Verizon has

⁶ As with its voice services, Conversent provides broadband services by leasing unbundled loops and unbundled IOF dark fiber from the ILEC.

⁷ See Declaration of Robert J. Shanahan on behalf of Conversent Communications, LLC ¶ 10 ("Shanahan Decl.") (Attached as Exhibit 1).

⁸ See *id.*

⁹ See *id.* ¶ 11.

submitted to Conversent have contained staggering overcharges. As a result, Conversent has been required to incur over \$1 million to date to hire an entire department just to review ILEC bills for accuracy, to file billing disputes, and to escalate such disputes. For example, the bills that Verizon has submitted have repeatedly and continuously contained overcharges for unbundled loops and collocation charges. Cumulatively, these overcharges have amounted to millions of dollars.¹⁰

Second, even under the FCC's existing unbundling rules, Verizon has frustrated Conversent's efforts to obtain access to DS-1 UNE loops. This is because about a year ago, Verizon began rejecting a large number of Conversent's DS-1 UNE loop orders on the grounds that "no facilities are available." Recently, Verizon rejected 37.2% of Conversent's DS-1 UNE loop orders in Massachusetts, 46.4% of its orders in Rhode Island, 46.4% of its orders in New York, and 67.3% of its orders in New Jersey.¹¹

The most common reason that Verizon rejects Conversent's DS-1 UNE loop orders is that Verizon would have to install a new repeater case. Conversent does not believe that having to install a new repeater case is a sufficient reason to reject an order for a DS-1 UNE loop. Rather, the FCC should enforce its existing unbundling rules and require Verizon to make the modification to its facilities that are necessary to fulfill a CLEC's requests for such a UNE.¹²

For those DS-1 UNE loop orders that are rejected, Conversent must order the same facility as a special access circuit. This causes substantial delay (on average, about 34 days) in providing service to Conversent's customers.¹³ It also increases Conversent's costs because the rates for special access circuits are far higher than for UNE loops. Indeed, having to pay special

¹⁰ See *id.* ¶ 12.

¹¹ See *id.* ¶ 24.

¹² See *id.* ¶ 25.

¹³ See Shanahan Decl. ¶ 26.

access rates for DS-1 loops on top of Conversent's already substantial costs for collocation would not permit Conversent to compete in the provision of broadband services.¹⁴

Accordingly, Conversent must convert special access circuits to UNEs as quickly as possible. After a three month period, Verizon permits Conversent to convert a special access circuit to a DS-1 UNE loop. This conversion is purely a billing change. There is no disconnection of the special access circuit and no new installation of the DS-1 UNE loop.

Unfortunately, Verizon has repeatedly and consistently over-billed Conversent by continuing to charge Conversent at special access rates after the conversion of special access circuits to UNEs. As a result of billing errors such as these, and as noted above, Conversent has been forced to hire additional employees, at considerable expense, to review and dispute Verizon wholesale bills.¹⁵

Third, Verizon has undertaken a number of actions to delay, degrade, and most recently to destabilize the ability of CLECs to use unbundled dark fiber.¹⁶ With respect to delay, Verizon has done very little to help CLECs order unbundled IOF dark fiber. For example, Verizon has required CLECs to order unbundled IOF dark fiber on a point-to-point basis, but has generally refused to assist them in identifying where such IOF dark fiber is routed.¹⁷ Relatedly, in most states, unless ordered to do so, Verizon has refused to provide CLECs with access to dark fiber that runs through intermediate central offices, even though it does so for CLECs that order lit fiber. The effect of this limitation, of course, is to decrease the availability of dark fiber to Conversent and, correspondingly, to delay its ability to serve customers in a given market.¹⁸

¹⁴ See *id.*

¹⁵ See *id.* ¶¶ 27-28.

¹⁶ See Declaration of David A. Graham on Behalf of Conversent Communications, LLC, ¶ 32 ("Graham Decl.") (attached as Exhibit 1 to the Comments of Conversent Communications, LLC in this proceeding).

¹⁷ *Id.*

¹⁸ See *id.* ¶ 33.

With respect to the degradation of Conversent's service, Verizon has refused to comply with any transmission quality standard for dark fiber provided to Conversent, even its own internal standard. In contrast, SNET and third party vendors (in the few areas in which they operate) agree to ensure that the dark fiber they provide to wholesale customers meets specified minimum transmission standards.¹⁹

The ILECs' continuous efforts to eliminate or limit their dark fiber unbundling obligation destabilize Conversent's operations and create uncertainty about its business plan. At the very time that Conversent is attempting to rely on the FCC's *UNE Remand Order* to expand its customer base in its core footprint and to expand its operation in three new states, Verizon and the other ILECs are trying to remove dark fiber from their unbundling obligations.

The fact of the matter is, if Conversent were not forced to purchase unbundled IOF dark fiber from the ILECs, it would not do so. If there were a competitive market for dark fiber interoffice transport, Conversent would be much better served by procuring it from a vendor that wanted its business, instead of from a competitor who wants to put it out of business.

What the D.C. Circuit did not understand was that neither procuring interoffice fiber from third party vendors nor installing it through self-provisioning constitutes a reasonable substitute for unbundled IOF dark fiber. Although Conversent does in fact purchase long-haul fiber from third party vendors, at this point in time these third party vendors do not offer a readily available, interchangeable, ubiquitous substitute for unbundled IOF dark fiber. The major problem with third party vendors is that they do not offer dark or lit fiber on anything close to a ubiquitous basis. More specifically, conversent's experience is that at this stage of the market, *such vendors*

¹⁹ See *id.* ¶ 34.

*do not have fiber ubiquitously available in the locations where Conversent needs it - between ILEC central offices.*²⁰

With respect to self-provisioning, Conversent can and does procure and self-deploy dark fiber for use in its network in certain limited circumstances. However, the process is time-consuming and expensive. In its initial comments in this docket, Conversent demonstrated that if it were required to replicate its 609 route mile SONET rings in eastern Massachusetts by installing its own fiber in Verizon conduit, it would cost Conversent approximately \$30 million.²¹ Of course, this assumes that Verizon conduit is available. If it were not, and Conversent were required to replicate these rings by installing its own conduit and fiber, it would cost Conversent approximately \$81 million.²² It is important to understand that these costs are solely for Conversent's Massachusetts network. It has networks in six other states. There is no way that Conversent would be able to obtain capital to self-provision interoffice transport for its existing networks.

The point of all of this is that the cost of unbundling is not the “disincentive to invest” as hypothesized in *USTA v. FCC*. Market entrants are paying ILECs millions of dollars above and beyond TELRIC costs to obtain access to UNEs. Moreover, the ILECs have used their market power to increase the costs of market entrants by providing poor service and frustrating the ability of CLECs to use UNEs. Accordingly, the cost benefit analysis to be used in connection with UNEs should err on the side of their availability.

Finally, it is important to understand that Conversent relied on the FCC's existing unbundling rules in order to implement its entry strategy in each of the seven states in which it is currently doing business. It is patently unfair for the ILECs to seek to remove unbundled loops

²⁰ *Id.* ¶ 25.

²¹ *See id.* ¶ 29.

²² *See* Graham Decl. ¶ 30.

and IOF dark fiber as UNEs after Conversent and other CLECs have invested millions of dollars in order to be able to obtain them. It would also be extremely bad public policy for the FCC to change course in midstream and rule that ILECs no longer have an obligation to provide such unbundled loops and unbundled IOF dark fiber after Conversent has relied on the FCC's rules to enter seven markets and to serve over 20,000 customers and 130,000 access lines.

III. UNBUNDLED LOOPS USED IN THE PROVISION OF SDSL AND INTEGRATED ACCESS SERVICE SHOULD BE CONSIDERED A SEPARATE PRODUCT MARKET FOR PURPOSES OF THE IMPAIRMENT ANALYSIS.

Conversent uses unbundled loops and unbundled IOF dark fiber to provide two kinds of service: SDSL service and DS-1 service including an integrated DS-1 service that can be used for voice-grade and data transmissions over the same DS-1 pipe. The primary demand for Conversent's SDSL service comes from customers with 2 to 8 business lines with relatively sophisticated data needs. These customers prefer SDSL service over the ADSL service that is typically offered by the ILEC because SDSL offers greater bandwidth "upstream." This is because a customer that purchases ADSL may get 384 kbps "downstream" but only 128 kbps upstream. For a doctor's office or a graphics firm (two representative examples) that must send videos, images, large files, or video conferencing from its office to other companies or customers, a higher bandwidth upstream is critical. CLECs, such as Conversent, are filling a need for small businesses that need upstream bandwidth, but may not need all the channels and bandwidth that come with a DS-1 level service.

Conversent's integrated DS-1 service is demanded primarily by customers with 8 to 22 basic business lines that also need broadband internet access. One of the reasons integrated DS-1 service is so popular is that customers can pay for as few as 8 voice channels and 4 data channels at the outset and add channels as business grows.

When Conversent began providing integrated DS-1 service, Verizon did not offer an analogous product. But the Conversent service has been so popular that Verizon was forced to begin offering its own competitive integrated DS-1 service called “FlexGrow.”²³

High-speed cable modem service is not available as a competitive alternative for small and medium sized business customers in most of Conversent's service territory.²⁴ In Conversent's experience, cable modem service is offered primarily, if not exclusively, to residential customers.²⁵ In the limited number of small cities and suburbs where the applicable cable company has begun to offer cable modem service to business customers, the geographic scope of that offering is frequently limited and is significantly smaller than the broadband service area offered by Conversent or other non-cable broadband carriers. Moreover, the cable companies offer no product that combines voice and data services over the same facility, such as Conversent's integrated DS-1 service.²⁶

Even in those geographic areas where cable companies have updated their outside plant and are actively marketing cable modem service to small and medium sized businesses, Conversent's experience is that most business customers with broadband requirements find cable modem service to be inadequate.²⁷ Unlike Conversent's SDSL and DS-1 level services, which are provided over dedicated facilities, cable modem service is delivered over facilities that are shared among multiple customers. In addition, the bandwidth reserved for cable modem service is fixed. As a result, multiple customers share a fixed amount of bandwidth. As the number of cable modem subscribers in a given geographic area increases, individual subscribers tend to experience a reduction in the amount of bandwidth that is available for high-speed internet

²³ See Shanahan Decl. ¶ 19.

²⁴ See *id.* ¶ 21.

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.* ¶ 22.

access. The fact that cable modem service is provided over a shared network architecture also creates potential security problems. Conversent's experience is that business customers that require bandwidth for business grade applications prefer dedicated broadband access and are willing to pay more for it.²⁸

It is because of these limitations that Conversent's customers do not appear to view cable modem service as a substitute for Conversent's broadband services. Rather, cable modem service is more analogous to the ILECs' ADSL service. Those services cannot be viewed as substitutes for the SDSL/integrated access service provided by Conversent. For purposes of the unbundling analysis, SDSL/integrated access and the UNEs needed to provide them must be viewed as a separate "product" market from cable modem and ADSL.

IV. PROVIDERS OF SDSL AND INTEGRATED ACCESS SERVICES WOULD BE IMPAIRED IN THE ABSENCE OF ILEC UNBUNDLED LOOPS.

Most of the competition that Conversent faces for broadband services comes from other facilities-based CLECs that, like Conversent, rely on the ILECs for unbundled loops to provide such broadband services.²⁹ There are no non-ILEC alternatives for such loops. Nor would it be efficient for Conversent to self-deploy such loops.

Thus, if the FCC were to change course and rule that the ILECs are no longer required to unbundle loops used to provide broadband services, Conversent would no longer be able to provide SDSL or its integrated DS-1 service to small businesses in its seven state service area. Moreover, if ILECs were not required to sell loops at TELRIC-based regulated prices, it is extremely unlikely that Conversent would be able to purchase access to ILEC loops at prices that would permit Conversent to provide competitive broadband service.

²⁸ *See id.*

²⁹ *See Shanahan Decl.* ¶ 30.

Such a decision would be extremely detrimental to small and medium sized businesses in Conversent's seven state service area. In most instances, customers that currently subscribe to Conversent's SDSL service would be forced to return to Verizon and subscribe to either its ADSL service (which does not support the applications that these customers currently have) or its retail DS-1 offering (which may not be economical). If the customer happens to be in a building that is currently connected to the cable company's network, it may be able to subscribe to cable modem service. However, as described above, this service is not adequate for most business customers with requirements for business grade broadband applications.

V. CONCLUSION

For the above reasons, Conversent urges the FCC to resist ILEC efforts to retrench from their unbundling obligations, especially with regard to unbundled loops that are used for data services and unbundled IOF dark fiber.

Respectfully submitted:

/s/

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Date: July 17, 2002

Exhibit 1

**DECLARATION OF ROBERT J. SHANAHAN ON BEHALF OF
CONVERSENT COMMUNICATIONS, LLC**

Robert J. Shanahan, being duly sworn, deposes and states as follows:

I. INTRODUCTION

1. My name is Robert J. Shanahan. I am the President and Chief Executive Officer of Conversent Communications, LLC ("Conversent" or the "Company"), formerly known as New England Voice and Data, LLC.
2. I have over 18 years of experience in management, sales, operations, finance and regulatory matters pertaining to telecommunications, including local exchange, long distance, wireless by-pass, and competitive access.
3. I co-founded Conversent in 1998. Prior to that time, I served as Regional Vice President of Brooks Fiber Communications ("WorldCom") for 4 years, successfully developing a 9 city, 6-state region. I was also an original member of the Brooks Fiber Communications Senior Management Team.
4. Conversent provides local and long distance voice and broadband services to small and medium sized business customers in small cities and suburbs in the Verizon North service territory, Connecticut and New Jersey. The average Conversent customer has approximately 7 lines and many Conversent customers have only a single business line.
5. Conversent has found that it can efficiently provide voice and broadband services to small businesses in small cities and suburban areas by relying on its own switches and collocated transmission equipment and by leasing collocation space, unbundled loops (including 2-wire analog loops, xDSL loops, DS-1 loops, DS-3 loops and dark fiber loops), and unbundled interoffice dark fiber ("unbundled IOF dark fiber) transport from the ILEC.
6. Although Conversent has been providing service only since the fall of 1999, it currently has over 130,000 access lines. Conversent is currently EBITDA positive and will be free cash flow positive in the first quarter of 2003.

II. CONVERSENT HAS SPENT MILLIONS OF DOLLARS IN ORDER TO OBTAIN ACCESS TO UNBUNDLED NETWORK ELEMENTS FROM VERIZON AND SNET

7. Collocation is generally a prerequisite for purchasing both unbundled loops and unbundled IOF dark fiber. Conversent has collocated in over 125 ILEC central offices in order to be able to purchase loops and unbundled IOF dark fiber.
8. As with its voice services, Conversent provides broadband services by leasing unbundled loops and unbundled IOF dark fiber from the ILEC.

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9. Conversent has already paid VZ and SNET over \$4.8 million in non-recurring charges and over \$6.7 million in recurring charges for collocation arrangements.
10. In addition to paying VZ and SNET over \$11.5 million in collocation charges, Conversent, of course, has incurred substantial costs in purchasing and installing the transmission equipment that it deploys in its collocation arrangements. To date, Conversent has spent over \$35 million in capital costs for purchasing such equipment.
11. Conversent has also spent several millions of dollars to develop and operate office support systems ("OSS") in connection with unbundled network elements ("UNEs"). This includes the capital and operating costs for pre-ordering, ordering, maintenance repair and billing associated with UNEs. This does not count the several millions of dollars that Conversent has invested in OSS in order to bill its own customers.
12. Because the bills for UNEs that have been submitted to Conversent have contained staggering overcharges, Conversent has been required to hire an entire department just to review ILEC bills for accuracy, to file billing disputes, and to escalate such disputes. For example, the bills that VZ has submitted have repeatedly and continuously contained overcharges for unbundled loops and collocation charges. Cumulatively, these overcharges have amounted to millions of dollars. Conversent estimates the annual cost of operating this department to be \$570,000.

III. CONVERSENT PROVIDES BROADBAND SERVICES TO SMALL AND MEDIUM SIZED BUSINESSES IN SMALL CITIES AND SUBURBS BY LEASING UNE LOOPS FROM THE ILEC

13. Conversent typically serves end-users by bundling traditional local and long distance voice services with broadband services. Verizon ("VZ") has adopted a similar strategy in the states where it has obtained 271 authority.
14. Conversent's broadband offerings to small and medium sized business customers include SDSL service, a higher bandwidth DS-1 service, and an integrated DS-1 service that can be used for voice-grade and data transmissions over the same DS-1 pipe.
15. If the FCC were to change course and rule that ILECs are no longer required to unbundle loops used to provide broadband services, Conversent would no longer be able to provide SDSL or integrated DS-1 service to small and medium sized businesses in small cities and suburbs. It would simply not be economical for Conversent to build loops to serve these customers. Moreover, if ILECs were not required to sell loops at TELRIC-based regulated prices, it is extremely unlikely that Conversent would be able to purchase access to ILEC loops at prices that would permit Conversent to provide competitive broadband service.

DECLARATION OF ROBERT J. SHANAHAN ON BEHALF OF
CONVERSENT COMMUNICATIONS, LLC

A. Small and Medium Sized Businesses Customers
Want Conversent's SDSL and DS-1 Services

16. Conversent uses unbundled loops and unbundled IOF dark fiber to provide two kinds of broadband service: SDSL and DS-1 service, including integrated DS-1 service. The primary demand for Conversent's SDSL service comes from customers with 2 to 8 business lines. These customers prefer SDSL service over the ADSL service that is typically offered by the ILEC because it offers greater bandwidth "upstream." This is because a customer that purchases ADSL may get 384 kbps "downstream" but only 128 kbps upstream. For a doctor's office or a graphics firm (two representative examples) that must send videos, images, large files, or video conferencing from its office to other companies or customers, a higher bandwidth upstream is critical. CLECs, such as Conversent, are filling a critical need for small businesses that need upstream bandwidth, but may not need all the channels and bandwidth that come with a DS-1 level service.
17. It is important to note that Conversent's SDSL service is up to 300 percent more expensive than VZ's ADSL service. The fact that Conversent customers are willing to pay 3 times more for this service highlights the fact that SDSL service is in a different product market than ADSL service.
18. Conversent's integrated DS-1 service is demanded primarily by customers with 8 to 22 basic business lines that also need broadband internet access. One of the reasons integrated DS-1 service is so popular among these customers is that the customers can pay for as few as 8 voice channels and 4 data channels at the outset and add channels as the customers' businesses grow.
19. When Conversent began providing integrated DS-1 service, Verizon did not offer an analogous product. But the Conversent service has been so popular that Verizon was forced to begin offering its own competitive integrated DS-1 service called "FlexGrow." FlexGrow was introduced in several states earlier this year.
20. It is important to note that Conversent's integrated DS-1 service is about 300 percent to 400 percent more expensive than its SDSL service. This highlights the fact that DS-1 level broadband service is in a product market that is distinct from SDSL service.
21. High-speed cable modem service is not available as a competitive alternative for small and medium sized business customers for high speed internet access in most of Conversent's service territory. In Conversent's experience, cable modem service is offered primarily, if not exclusively, to residential customers. In the limited number of small cities and suburbs where the applicable cable company has begun to offer cable modem service to business customers, the geographic scope of that offering is frequently limited and is significantly smaller than the broadband service area offered by Conversent or other non-cable broadband carriers. Moreover, the cable companies offer no product

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that combines voice and data services over the same facility, such as Conversent's integrated DS-1 service.

22. Even in those geographic areas where cable companies have updated their outside plant and are actively marketing cable modem service to small and medium sized businesses, Conversent's experience is that most business customers with broadband requirements find cable modem service to be inadequate. Unlike Conversent's SDSL and DS-1 level services, which are provided over dedicated facilities, cable modem service is delivered over facilities that are shared among multiple customers. In addition, the bandwidth reserved for cable modem service is fixed. As a result, multiple customers share a fixed amount of bandwidth. As the number of cable modem subscribers in a given geographic area increases, individual subscribers tend to experience a reduction in the amount of bandwidth that is available for high-speed internet access. Conversent's experience is that business customers that require bandwidth for business grade applications prefer dedicated broadband access and are willing to pay more for it.
23. It is because of these limitations that Conversent's customers do not appear to view cable modem service as a substitute for Conversent's broadband services. Rather, cable modem service is more analogous to the ILEC's ADSL service. In short, the vast majority of small and medium sized business customers in Conversent's service territory have only wire-line options for business grade broadband service.

B. VZ has Frustrated Conversent's Ability to Provide Broadband

24. Even under the FCC's existing unbundling rules it has been increasingly difficult to obtain access to DS-1 UNE loops. This is because about a year ago, VZ began rejecting a large number of Conversent's DS-1 UNE loop orders on the grounds that "no facilities are available." Recently, VZ rejected 37.2% of Conversent's DS-1 UNE loop orders in Massachusetts, 46.4% of its orders in Rhode Island, 46.4% of its orders in New York, and 67.3% of its orders in New Jersey.
25. Upon information and belief, the most common reason that VZ rejects Conversent's DS-1 UNE loop orders is because VZ would have to install a new repeater case. Conversent does not believe that having to install a new repeater case is a sufficient reason to reject an order for a DS-1 UNE loop. Rather, the FCC should enforce its unbundling rules and require VZ to make the modification to its facilities that are necessary to fulfill a CLEC's request for such a UNE.
26. For those DS-1 UNE loop orders that are rejected, Conversent must order the same facility as a special access circuit. This causes substantial delay (on average, about 34 days) in providing service to Conversent's customers. It also increases Conversent's costs because the rates for special access circuits are far higher than for UNE loops. Indeed, having to pay special access rates for DS-1 loops on top of Conversent's costs for

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collocation would not permit Converseant to compete in the provision of broadband services.

27. Accordingly, Converseant must convert special access circuits to UNEs as quickly as possible. After a three month period, VZ permits Converseant to convert a special access circuit to a DS-1 UNE loop. This conversion is purely a billing change. There is no disconnection of the special access circuit and no new installation of the DS-1 UNE loop.
28. Unfortunately, VZ has repeatedly and consistently over-billed Converseant by continuing to charge Converseant at special access rates after the conversion of special access circuits to UNEs. As a result of billing errors such as these, Converseant has been forced to hire additional employees, at considerable expense, to review and dispute VZ wholesale bills.
29. Importantly, SNET has not taken the same position regarding "no-facilities" as VZ and does not reject Converseant's orders for DS-1 UNE loops on the grounds that a new repeater case must be installed.

IV. IN MOST OF CONVERSEANT'S SEVEN STATE SERVICE TERRITORY, INTRAMODAL BROADBAND COMPETITION FOR SMALL AND MEDIUM SIZED BUSINESS CUSTOMERS IS DEVELOPING AND INTERMODAL COMPETITION IS VIRTUALLY NON-EXISTENT

30. As I will explain in the state by state analysis below, most of the competition that Converseant faces for broadband services comes from other facilities-based CLECs that, like Converseant, rely on the ILECs for unbundled loops to provide such broadband services.
31. The small to medium sized business market is a market segment that traditionally has been neglected by VZ and SNET. This may explain the fact that Converseant currently serves customers that were previously served by Northpoint, Vitts, Rythms and others. Rather than return to the ILEC, the customers want broadband service that only CLECs provide.
32. Except in certain limited geographic areas, Converseant has not faced substantial competition for broadband services from cable companies. The cable companies do not appear to have a broadband service that competes with Converseant's SDSL and integrated DS-1 services.
33. Converseant has not faced any competition from fixed wireless broadband service providers.

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A. MASSACHUSETTS

34. Conversent provides broadband services to small and medium sized businesses located primarily in small cities and suburbs in Massachusetts, including Woburn, Winchester, Burlington, Lynn, Peabody, Malden, Medford, Melrose, Boston, South Boston, Dorchester, Quincy, Braintree, Newton, Wellesley, Needham, Norwood, Plainville, Natick, Framingham, Newton, Worcester, Milford, Marlborough, Springfield, Holyoke, Amherst, Lowell, Lawrence, Billerica, Bedford, Lexington, Andover, North Andover, Waltham, Arlington, Brighton, Brookline, Brockton, Charlestown, Cambridge, Canton, Dedham, Fall River, Hyde Park, Lynn, Nahant, Everett, North Attleboro, New Bedford, Nobscott, North Framingham, Reading, Somerville, Taunton, Weymouth, Chicopee, North Hampton, Methuen, and North Chelmsford.
35. As of June 30, 2002, Conversent had approximately 2050 SDSL lines and 1720 DS-1 circuits in Massachusetts. Of its DS-1 circuits, about 320 were for voice only, 672 were for data only, and 725 were integrated DS-1s.
36. VZ offers several broadband services in Massachusetts such as Frame Relay, ATM and high-speed point-to-point connections. These services are primarily targeted at larger multi-location companies and are generally too expensive for most of the customers targeted by Conversent and include many features not needed even by companies that purchase integrated DS-1 service. Until very recently, the only VZ broadband offering available to small and medium sized businesses was ADSL. However, ADSL is primarily a residential service. VZ began providing FlexGrow earlier this year in Massachusetts.
37. In addition to VZ, Conversent competes with other CLECs, most notably ChoiceOne, to provide broadband to small and medium-sized businesses in Massachusetts. Like Conversent, ChoiceOne offers SDSL and DS-1 type services. Conversent also faces competition from COVAD and Qwest in the provision of SDSL service. However, COVAD has been retrenching in some markets and has either eliminated or grandfathered service in certain areas. All of these CLECs rely on unbundled loops from VZ to provide broadband.
38. Conversent has encountered *no competition* from cable companies in small cities and suburban areas in Massachusetts.
39. Conversent has encountered *no competition* from fixed wireless broadband providers in small cities and suburban areas in Massachusetts.
40. Although it is not its major geographic focus, Conversent does provide broadband services in Boston. AT&T Broadband sells cable modem service in Boston, but Conversent is not aware of any instance in which it has competed with AT&T Broadband

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for service to a small or medium-sized business customer in Boston. AT&T Broadband's cable modem service is marketed primarily, if not exclusively, to residential customers.

41. AT&T Broadband's cable modem service is simply not in the same product market as Conversent's SDSL service or its DS-1 level service.

B. RHODE ISLAND

42. Conversent provides broadband service to small and medium sized businesses in small cities and suburbs in Rhode Island, including Providence, East Providence, Pawtucket, Cranston, Warwick, West Warwick, East Greenwich, Newport, Middletown, Woonsocket, Cumberland and Lincoln.
43. As of June 30, 2002, Conversent had approximately 836 SDSL lines and 413 DS-1 circuits in Rhode Island. Of its DS-1 circuits, about 104 were for voice only, 131 were for data only, and 178 were integrated DS-1s.
44. As in Massachusetts, VZ offers several broadband services in Rhode Island such as Frame Relay, ATM and high-speed point-to-point connections that are primarily targeted at larger multi-location companies. The only VZ broadband offering currently available to small businesses in Rhode Island is ADSL. VZ has not introduced FlexGrow in Rhode Island.
45. In Rhode Island, ChoiceOne is Conversent's main competitor in the provision of broadband services to small and medium-sized business customers. Like Conversent, ChoiceOne markets SDSL and DS-1 type services and provisions these services over unbundled loops leased from VZ.
46. In the past, Conversent rarely, if ever, faced competition for broadband customers from cable companies in Rhode Island. Recently, Cox Communications began to market cable modem service to small and medium sized businesses. However, Conversent's experience is that our customers do not view Cox's cable modem service as a substitute for Conversent's SDSL service or its DS-1 level services. This is because Conversent's SDSL service is provided over dedicated facilities. Cox's cable modem service is provided over a shared network. Among other problems, this shared bandwidth architecture often causes cable modem service to lose signal strength during peak times and to pose security risks unacceptable to most small and medium sized business customers. Conversent's experience is that business customers that require bandwidth for business grade applications prefer dedicated broadband access and are willing to pay more for it.
47. Conversent faces *no competition* from fixed wireless broadband service providers in Rhode Island.
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C. NEW HAMPSHIRE

48. Conversent provides broadband services to small and medium-sized businesses in small cities and suburbs in New Hampshire, including Concord, Nashua, Salem, Manchester, Portsmouth, Dover, Exeter, and parts of Bedford and Hookset.
49. As of June 30, 2002, Conversent had approximately 500 SDSL lines and 365 DS-1 circuits in New Hampshire. Of its DS-1 circuits, about 43 were for voice only, 79 were for data only, and 242 were integrated DS-1s.
50. VZ offers several broadband services in New Hampshire such as Frame Relay, ATM and high-speed point-to-point connections. These services are primarily targeted at larger multi-location companies and are generally not viewed as small business services. Until very recently, the only VZ broadband service offering available to small businesses in New Hampshire has been ADSL. Earlier this year, VZ introduced "FlexGrow" in New Hampshire to compete with Conversent's integrated DS-1 service.
51. In New Hampshire, Conversent also faces competition from other CLECs in providing broadband to small business customers. Both ChoiceOne and BayRing Communications offer SDSL and DS-1 services. For SDSL services, Conversent also faces competition from COVAD. However, as elsewhere, COVAD has been retrenching in some markets and has either eliminated or grandfathered service in certain areas. All of these CLECs order unbundled loops from VZ to provide broadband services.
52. Conversent faces *no competition* for small business customers from AT&T Broadband in small cities and suburban areas in New Hampshire. AT&T Broadband's cable modem service is marketed primarily, if not exclusively, to residential customers.
53. Conversent faces *no competition* from fixed wireless broadband providers in New Hampshire.

D. MAINE

54. Conversent provides broadband to small and medium sized businesses in small cities and suburbs in Maine, including Portland, Westbrook, Falmouth and parts of South Portland.
55. As of June 30, 2002, Conversent had approximately 81 SDSL lines and 61 DS-1 circuits in Maine. Of its DS-1 circuits, about 17 were for voice only, 6 were for data only, and 38 were integrated DS-1s.
56. VZ offers several broadband services primarily targeted at larger multi-location companies in Maine such as Frame Relay, ATM services and high-speed point-to-point connections. Until very recently, the only VZ broadband offering available to small

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businesses in Maine has been ADSL. Earlier this year, VZ introduced "FlexGrow" in Maine to compete with Conversent's integrated DS-1 offering.

57. In addition to VZ, Conversent faces competition from other CLECs that provide broadband to small business customers. MidMaine Communications, Pine Tree Networks, and ChoiceOne offer SDSL service and DS-1 services. Conversent faces *no competition* from fixed wireless broadband providers in Maine.
58. Conversent faces some very narrowly targeted competition for broadband customers from Time Warner Cable, primarily in the City of Portland. Time Warner Cable offers a cable modem service called "Roadrunner."
59. Although Roadrunner is primarily a residential service (Roadrunner is typically bundled with cable TV and telephone service), Time Warner Cable is marketing it to small business customers in Portland. In Conversent's experience, most of the small business customers that are buying this service appear to be customers with 2 to 4 business lines that do not have a need for business applications such as sending videos or large files to other companies or customers.
60. It is Conversent's experience that most of its small and medium sized business customers do not see Roadrunner as a substitute for SDSL. This is because Conversent's SDSL service is provided over dedicated facilities. Roadrunner, like the cable modem service offered by other cable companies, is provided over a shared network. Among other problems, this shared bandwidth architecture often causes cable modem service to lose signal strength during peak times and to pose security risks unacceptable to most small and medium sized business customers.
61. Time Warner does not have a product that competes directly with Conversent's integrated DS-1 service. Accordingly, Conversent does not face any competition from Time Warner for customers that have 8 - 22 lines that also need dedicated, high-speed bandwidth for business grade applications.

E. CONNECTICUT

62. Conversent provides broadband service to small and medium sized businesses that are primarily located in small cities and suburbs in Connecticut, including, Avon, Bloomfield, Bridgeport, Bristol, East Hartford, Farmington, Greenwich, Hamden, Hartford, Manchester, Meriden, Middletown, Milford, New Britain, New Haven, Norwalk, Rocky Hill, Southington, Stamford, Stratford, Wallingford, West Hartford, West Haven, West Port, Wethersfield, Windsor and Windsor Locks.
63. As of June 30, 2002, Conversent had approximately 306 SDSL lines and 334 DS-1 circuits in Connecticut. Of its DS-1 circuits, about 76 were for voice only, 62 were for data only, and 197 were integrated DS-1s.

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64. For small and medium sized businesses, the Southern New England Telephone Company ("SNET") offers an SDSL service that is similar to Conversent's SDSL service. SNET also offers other broadband services such as Frame Relay and high-speed point-to-point connections. However, these services are primarily targeted at larger multi-location companies and are generally not viewed as appropriate for small and medium-sized businesses.
65. In addition to SNET, Conversent faces competition for small business customers from other CLECs in Connecticut, most notably, Choice One. As elsewhere, ChoiceOne markets SDSL and DS-1 to small businesses. For SDSL services, Conversent also faces competition from COVAD and DSL.NET. However, again, COVAD has been retrenching in some markets and has either eliminated or grandfathered service in certain areas. Conversent faces *no competition* from fixed wireless broadband providers in Connecticut.
66. Conversent faces limited competition from cable companies or their affiliates in discrete pockets of Connecticut. In Stamford and Norwalk, Cablevision Lightpath, an affiliate of Cablevision, offers two types of broadband services: "Lightpath.NET" and "Business Optimum Online." Lightpath.NET is a DS-1 service that competes with Conversent's integrated DS-1 service. However, Conversent believes that this service is provided over newly constructed fiber or over facilities leased from SNET; it is not provided over the cable network. Conversent also believes that Cablevision Lightpath is no longer building new fiber to connect and "light" buildings in Stamford and Norwalk and is not aggressively marketing its services to new customers in either of these locations. Business Optimum Online is delivered over the cable network. The customers that are buying Business Optimum Online appear to be tenants of buildings that are already connected to the cable company's network.
67. Cox Communications also provides broadband service in Connecticut. As in Rhode Island, Cox has been primarily focused on serving residential customers. However, it is now marketing its cable modem service to small business customers, particularly in Hartford and surrounding areas.
68. Conversent's experience is that its customers do not view Business Optimum Online or Cox's cable modem service as a substitute for Conversent's SDSL or integrated DS-1 service. This is because cable modem service makes a poor choice for most businesses. As described earlier, its shared bandwidth architecture often causes cable modem service to lose signal strength during peak times and to pose security risks that are unacceptable to small and medium sized business customers. Conversent believes that the small business customers that are subscribing to Business Optimum Online or Cox's cable modem service are already connected to the cable network and who do not have a need for the business grade applications that are available from Conversent's SDSL or DS-1 level services.

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F. NEW YORK

69. Conversent provides broadband service to small and medium-sized businesses in small cities and suburbs in Long Island¹ and Westchester County.²
70. As of June 30, 2002, Conversent had approximately 176 SDSL lines and 252 DS-1 circuits in New York. Of its DS-1 circuits, about 79 were for voice only, 43 were for data only, and 127 were integrated DS-1s.
71. In New York, VZ offers several broadband services primarily targeted at larger multi-location companies, such as Frame Relay, ATM and high-speed point-to-point connections. Until very recently, the only VZ broadband service offering currently available has been ADSL. Earlier this year, VZ introduced "FlexGrow" in New York to compete with Conversent's integrated DS-1 service.
72. In addition to VZ, Conversent faces competition for small business customers from other CLECs, most notably, Broadview Communications and ChoiceOne. Broadview and ChoiceOne sell SDSL and DS-1 services to small businesses. For SDSL services, specifically, Conversent also faces competition from COVAD and Qwest. However, COVAD has been retrenching in some markets and has either eliminated or grandfathered service in certain areas. Conversent faces *no competition* in the provision of broadband service in New York from fixed wireless providers.
73. Conversent faces some competition from cable companies or their affiliates in Long Island and pockets of Westchester County. As in parts of Connecticut, Cablevision Lightpath, an affiliate of Cablevision, offers two types of broadband services: "LIGHTPATH.NET" and Business Optimum Online. LIGHTPATH.NET is a DS-1 service that competes with Conversent's integrated DS-1 service. However, Conversent believes that this service is provided over newly constructed fiber or over facilities leased from VZ. Conversent also believes that Cablevision Lightpath is no longer building new fiber to connect and "light" buildings in Long Island or Westchester County. Business Optimum Online is delivered over the cable network. The customers that subscribe to Business Optimum Online are already connected to the cable company's network. For the reasons described earlier, Conversent's experience is that its customers do not view Business Optimum Online as a substitute for Conversent's SDSL or integrated DS-1 service.

¹ In Long Island, Conversent's service area includes Mineola, Carle Place, Garden City, Hempstead, Uniondale, West Hempstead, East Meadow, Westbury, Hicksville, Plainview, Syosset, Jericho, Huntington, Melville, Farmingdale, and Cold Spring Harbor.

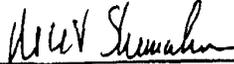
² In Westchester County, Conversent's service area includes White Plains, Hartsdale, Port Chester, Purchase, Valhalla, North White Plains, Tarrytown, Sleepy Hollow, Pleasantville, Mount Vernon, Larchmont, Mamaroneck and Harrison.

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G. NEW JERSEY

74. Conversent provides broadband service to small and medium-sized businesses in small cities and suburbs in New Jersey, including Hackensack, Sough Hackensack, Oradell, River Edge, New Milford, Paramus, Emerson, Passaic, Clifton, Wallington, Garfield, Lodi, Rochelle Park, Maywood, Saddlebrook, Rutherford, Carlstadt, Wood-Ridge, Lyndhurst, East Rutherford, Glen Rock, Midland Park, Wyckoff, Waldwick, Ho-Ho-Kus, Fairlawn, Elmwood Park, Union City, Weehawken, West New York, Guttenberg, North Bergen, Secaucus, Nutley, Paterson, and Bloomfield.
75. As of June 30, 2002, Conversent had approximately 64 SDSL lines and 208 DS-1 circuits in New Jersey. Of its DS-1 circuits, 54 were for voice only, 57 were for data only, and 97 were integrated DS-1s.
76. In New Jersey, VZ offers several broadband services primarily targeted at larger multi-location companies such as Frame Relay, ATM and high-speed point-to-point connections. The only VZ broadband service offering currently available to small businesses is ADSL. VZ has not introduced "FlexGrow" in New Jersey.
77. In addition to VZ, Conversent faces some competition for small business customers from other CLECs in New Jersey, most notably, Allegiance and Broadview. Both of these CLECs offer SDSL and DS-1 services to small businesses. For SDSL services, Conversent also faces competition from COVAD and Qwest. All of these CLECs rely on unbundled loops from VZ to provide broadband services.
78. Conversent rarely, if ever, faces competition from cable companies or their affiliates in small cities and suburban areas in New Jersey. Conversent has never faced competition from fixed wireless broadband providers in New Jersey.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2002.



Robert J. Shanahan