

SWIDLER BERLIN SHEREFF FRIEDMAN LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FAX (202) 424-7643
WWW.SWIDLAW.COM

RECEIVED

JUL 17 2002

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
(212) 973-0111 FAX (212) 891-9598

July 17, 2002

ORIGINAL

VIA HAND DELIVERY

Janice Myles
Policy and Planning Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

REDACTED - FOR PUBLIC INSPECTION

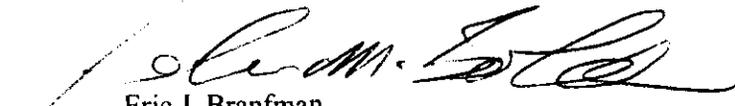
Re: *Diskette Copy of Comments in CC Docket Nos. 01-338, 96-98, and 98-147; Comments of El Paso Networks, LLC and CTC Communications Corp.*

Dear Ms. Myles:

Enclosed please find a disk that includes an electronic file of the Reply Comments jointly filed by El Paso Networks, LLC and CTC Communications Corp. (collectively, "Dark Fiber Commenters") in CC Docket Nos. 01-338, 96-98, and 98-147 on July 17, 2002. The Comments are in Microsoft Word format and submitted in read-only mode.

Please do not hesitate to contact us if you have any questions concerning this matter.

Very truly yours,



Eric J. Branfman
Joshua M. Bobeck
Edward W. Kirsch

Counsel for El Paso Networks, LLC and
CTC Communications Corp.

No. of Pages: 2
List Attached: 

Enclosure

cc: Qualex International (diskette)

SEARCHED
SERIALIZED
INDEXED
FILED

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

ORIGINAL
~~RECEIVED~~

JUL 17 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)	

**REPLY COMMENTS OF
EL PASO NETWORKS, LLC, AND
CTC COMMUNICATIONS CORP.
(COLLECTIVELY "DARK FIBER COMMENTERS")**

Pamela Hintz
Vice President of Legal and
Regulatory Affairs
CTC Communications Corp.
360 Second Ave.
Waltham, MA 02451
781-466-1242 (Telephone)
781-466-1306 (Facsimile)

Eric J. Branfman
Edward W. Kirsch
Joshua M. Bobeck
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Stephen W. Crawford
General Counsel
Pantios Manias
El Paso Networks, LLC
1001 Louisiana Street
Houston, TX 77002
(713) 420-5896 (Telephone)
(713) 420-4488 (Facsimile)

July 17, 2002

TABLE OF CONTENTS

I. INTRODUCTION..... 2

II. CONSISTENT WITH ITS CONCLUSION IN THE *UNE REMAND ORDER* THE COMMISSION SHOULD DETERMINE THAT CLECS ARE IMPAIRED IN THEIR ABILITY TO PROVIDE SERVICES ABSENT ACCESS TO UNBUNDLED DARK FIBER LOOPS AND TRANSPORT 4

 A. Unbundled Dark Fiber Loops And Transport Are A Necessary Tool For Facilitating Increased Competition And Investment In Competitive Network Facilities..... 4

 B. The Availability of UNEs Promotes CLEC Deployment of Advanced Networks And Does Not Significantly Reduce ILEC Incentives To Invest In Facilities 11

 C. The ILECs’ UNE Fact Report Is Highly Inaccurate And Over Estimates the Availability of Alternatives to ILEC Unbundled Fiber Facilities..... 16

III. SECTION 251(D)(2) IMPAIR STANDARD ANALYSIS FOR DARK FIBER LOOPS AND TRANSPORT 23

 A. CLECs Are Presumptively Materially Impaired In Their Ability to Provide Services Without Access to Unbundled Dark Fiber Loops..... 23

 1. Dark Fiber Loops Are Tantamount To An Essential Facility..... 23

 2. CLECs Continue to Be Impaired In Regard to Dark Fiber Loops..... 24

 3. Alternative Sources of Dark Fiber Loops Are Rarely Available, Let Alone Ubiquitously Available 26

 4. Dark Fiber Loops From Providers Other Than the ILEC Are Not Available At the Overwhelming Majority of Commercial Office Buildings..... 30

 5. Self-Provisioning Fiber Loops Is Not Economically Viable For Most Customer Locations..... 33

 B. CLECs Are Presumptively Materially Impaired In Their Ability to Provide Services Without Access to Unbundled Dark Fiber Transport 36

 1. The RBOCs Grossly Overstate the Availability of Alternative Fiber Transport..... 36

 2. Usually It Is Not Economically Viable or Practical For CLECs to Self-Provision Dark Fiber Transport Facilities On a Scale Sufficient To Support Their Business Plans 40

IV. THE FCC SHOULD CLARIFY ITS RULES REGARDING DARK FIBER IN ORDER TO PREVENT ILECS FROM EVADING THEIR OBLIGATION TO PROVIDE UNBUNDLED DARK FIBER..... 46

 A. ILECs Must Provide Unbundled Access to Unspliced and Unterminated Fiber on a Nondiscriminatory Basis..... 48

 1. Unspliced and Unterminated fiber is Installed Fiber and is Connected to the ILEC network 50

 2. Un-spliced and Un-terminated Fiber is Easily Called into Service 53

 3. Splicing Does Not Involve Construction 56

 4. Fiber Splicing Does Not Pose any Undue Risk to the ILEC Network or its Users 62

 B. ILECs Must Provide Nondiscriminatory Access to Dark Fiber Information and Network Neutral Provisioning of Unbundled Network Elements 67

 1. The Commission’s Loop Qualification rules governing nondiscriminatory access to underlying information regarding ILEC facilities should apply to dark fiber and other UNEs
67

 2. ILECs Should Be Required to Provide Network Neutral UNE Provisioning 74

V. CONCLUSION 78

**DOCUMENT AVAILABLE
IN THE LEAD
DOCKET/RULEMAKING**

SEE DOCKET NO. 01-338 FOR THE DOCUMENT.