



October 10, 2002

*EX-PARTE*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, D.C. 20554

**Re: CC Docket Nos. 01-338, 96-98, 98-147**

Dear Ms. Dortch:

The purpose of this letter is to provide additional information pertaining to the true cost of purchasing unbundled inter-office (“IOF”) dark fiber. This information demonstrates that the true “price” competitors pay for unbundled IOF dark fiber is far above any reasonable measure of forward-looking cost. Moreover, the true costs incurred to purchase unbundled interoffice dark fiber are high enough to ensure that any competitive carrier with a reasonable prospect of achieving economies of scale similar to those of an incumbent LEC over a particular route between incumbent LEC wire centers would construct its own fiber trunks. The fact that so little such construction has in fact occurred and that those firms that have engaged in such construction are generally insolvent demonstrates that there is little prospect for competitors to achieve economies of scale possessed by incumbent LECs over wire center-to-wire center transport routes.

In *United States Telecom Ass’n v. FCC*, the D.C. Circuit significantly overstated the purported costs in terms of consumer welfare of unbundling because it assumed that competitors only pay what it characterized as relatively low TELRIC-based prices.<sup>1</sup> The D.C. Circuit’s analysis would be incorrect even if the only costs incurred by purchasers of unbundled dark fiber IOF transport were TELRIC-based prices. As the Supreme Court held in *Verizon Communications, Inc. v. FCC*,<sup>2</sup> the Commission’s TELRIC methodology “includes several features of inefficiency” that eliminate the concern (expressed by the D.C. Circuit) that TELRIC undermines investment and innovation by either competitors or incumbent LECs.<sup>3</sup> But the Supreme Court also suggested that an important reason why unbundling will not significantly undermine investment and

<sup>1</sup> 290 F.3d 415, 424-425 (D.C. Cir. 2002).

<sup>2</sup> 122 S.Ct. 1646 (2002).

<sup>3</sup> *See id.* at 1669-70 (discussing the use of existing wire center locations in setting TELRIC rates, time lags built into the ratemaking process, and the fact that innovations introduced by competitors, but not incumbents, are not subject to unbundling).

innovation is that any competitor will want to achieve “independence from an incumbent’s management and maintenance of network elements.”<sup>4</sup> This is unquestionably the case with unbundled IOF dark fiber. As explained below, there are numerous and obvious inefficiencies built into the manner in which incumbents, especially Verizon, provision, manage, and maintain unbundled IOF dark fiber. These inefficiencies significantly increase the true cost of obtaining unbundled dark fiber IOF transport. Moreover, these costs are in addition to the other costs (such as those associated with purchasing, maintaining, and equipping collocation arrangements) that a competitor must incur in order to ensure that it can connect its network to the incumbent LEC’s dark fiber.

Conversent has experienced at least four major sources of inefficiency in Verizon’s provisioning, management, and maintenance of unbundled IOF dark fiber. *First*, CLECs need to obtain unbundled IOF dark fiber on a point-to-point basis, but in the Verizon states in which Conversent provides service, CLECs have no way of determining where Verizon dark fiber IOF transport is available. This lack of critical information has essentially required Conversent to play a game of “go fish” with Verizon. If Conversent does not guess correctly where the “fish” is located, it must go back to the deck, draw another card, and guess again. This approach results in increased costs in the form of delay and the allocation of resources to determining the location of dark fiber. It would be much more efficient for both Conversent and Verizon, if Conversent were permitted to review maps of Verizon’s network and the availability of dark fiber. But Verizon is not required to provide such maps.<sup>5</sup>

*Second*, in the Verizon states in which Conversent provides service, CLECs are generally required to order collocation and dark fiber IOF sequentially. That is, before a CLEC may order IOF dark fiber, not only must it have ordered the collocation arrangements that it seeks to connect but such collocation arrangements must have already been provisioned and turned over to the CLEC. Accordingly, a CLEC cannot even begin to order dark fiber until the typical 85-day interval for provisioning collocation arrangements has expired. This requirement results in unnecessary delay because the sometimes lengthy process for ordering dark fiber occurs after, and not during, the collocation provisioning process. Moreover, because Verizon actually starts billing CLECs for DC power associated with its collocation arrangements at the time that the collocation arrangement is turned over to the CLEC, instead of the time that CLEC actually

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<sup>4</sup> *Id.* at 1670.

<sup>5</sup> At the risk of stating the obvious, Verizon’s refusal to provide this basic information demonstrates that the wholesale market for dark fiber IOF is not competitive. A vendor in a competitive market would not offer dark fiber IOF for sale, but refuse to tell potential customers where it is routed.

begins draining DC power,<sup>6</sup> Verizon's requirement that competitors order dark fiber and collocation sequentially substantially increases the real costs of obtaining dark fiber IOF transport.

*Third*, Verizon is not required to provide CLECs with unbundled dark fiber that meets Verizon's own internal standard for transmission quality (or any standard, for that matter). In contrast, third party vendors (to the extent they exist) agree to provide fiber that meets minimum transmission standards. For example, one of Conversent's long-haul vendors commits to provide fiber with an average bi-directional loss that does not exceed 0.22 to 0.25 dB/KM at a wavelength of 1,550 nm. Verizon guarantees no standard. Worse, the actual average bi-directional loss for unbundled IOF dark fiber provided by Verizon to Conversent is in excess of 1 dB/KM, which is approximately four times worse than other vendors. This again results in further degradation (*i.e.*, increased cost) of the unbundled element.

*Fourth*, in some states, such as New York, Verizon is not required 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. To illustrate, in circumstances where Conversent has ordered unbundled IOF dark fiber from central office A to central office B but, unbeknownst to Conversent, such fiber runs through intermediate central office C (where Conversent is not collocated) Verizon has indicated that no dark fiber is available. The effect of this limitation, of course, is to decrease the availability of unbundled IOF dark fiber to Conversent. This in turn forces Conversent to purchase interoffice lit fiber. Purchasing lit fiber increases Conversent's costs because it is more expensive, it is more difficult for Conversent to integrate into its network, and it introduces more possible points of technical failure in Conversent's network than would be the case if dark fiber were available.<sup>7</sup>

As these examples demonstrate, in the states in which Conversent operates, the "incumbent's management and maintenance of network elements" results in very significant inefficiencies imposed on purchasers of unbundled IOF dark fiber. These inefficiencies impose costs that CLECs would not incur if they self-provisioned interoffice dark fiber transport or were able to purchase dark fiber from third-party wholesalers. It is clear, therefore, that the true cost of obtaining unbundled dark fiber IOF transport is far higher than the "low end of what [the

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<sup>6</sup> Conversent does not oppose Verizon's practice of billing for DC Power once the collocation arrangements are turned over. Rather, Conversent explains that Verizon's refusal to permit Conversent to order dark fiber IOF and collocation simultaneously increases Conversent's costs.

<sup>7</sup> Again, it bears emphasis that a vendor in a competitive wholesale market would respond that dark fiber is available in circumstances in which it runs through an intermediate central office in which a prospective purchaser is not collocated.

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Commission] may lawfully set,” as the D.C. Circuit assumed.<sup>8</sup> It is remarkable, however, that, at least in the markets in which Conversent operates, third-party alternative providers exist currently on only one out of every eight point-to-point routes on which Conversent needs interoffice transport,<sup>9</sup> that even the few third-party providers have been unable to remain solvent, and that competitors like Conversent have found it to be completely impractical to self-deploy interoffice transport. The logical inference is that dark fiber IOF transport is the kind of network element that, even under analysis proffered in *United States Telecom Ass’n v. FCC*, must be subject to mandatory incumbent LEC unbundling.

Sincerely,

/s/  
Scott Sawyer

Vice President-Regulatory Affairs

Conversent Communications, LLC

cc: Michelle Carey  
Jeremy Miller  
Robert Tanner  
Tom Navin  
Shanti Gupta  
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<sup>8</sup> *United States Telecom Ass’n v. FCC*, 290 F.3d at 424 n.2.

<sup>9</sup> *See Ex Parte* Letter to Marlene H. Dortch, FCC, from Christi Shewman, Counsel to Conversent Communications LLC, Attachment at 4-5 (filed Sept. 24, 2002) (redacted version).