

# WILLKIE FARR & GALLAGHER

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***EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

On Friday, November 1, 2002, Scott Sawyer and David A. Graham of Conversent Communications, LLC and I met with Commissioner Kevin Martin and Dan Gonzalez to discuss the need for unbundled dark fiber interoffice transport and high-capacity loops. The attached presentation was distributed at the meeting and comprised the basis for the Conversent Communications presentation.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), one electronic copy of this notice and the attached presentation is being filed in each of the above-referenced proceedings.

Sincerely,

/s/

Thomas Jones

Attachment

cc: Commissioner Kevin Martin  
Dan Gonzalez

**CONVERSENT COMMUNICATIONS, LLC  
TALKING POINTS IN FCC TRIENNIAL REVIEW PROCEEDING**

**I. DESCRIPTION OF CONVERSENT COMMUNICATIONS, LLC**

- Conversent Communications, LLC (“Conversent”) is headquartered in Marlborough, Massachusetts and has CLEC subsidiaries in Massachusetts, Rhode Island, New Hampshire, Maine, New York, Connecticut and New Jersey.
  
- Conversent provides local and long distance voice and broadband services to small and medium sized business customers in small cities and suburbs.
  
- The average Conversent customer has approximately 7 lines and many Conversent customers have only a single business line.
  
- Although it has been providing service only since the fall of 1999, Conversent currently has over 20,000 customers and over 140,000 access lines in its 7-state footprint.
  
- Conversent is currently EBITDA positive and anticipates that it will be free cash flow positive during the second quarter of 2003.
  
- Conversent has found that it can efficiently provide voice and broadband services to small businesses in small cities and in suburban areas by relying on its own switch and collocated transmission equipment and by leasing collocation space, unbundled loops and unbundled interoffice dark fiber transport from the ILEC.
  
- The availability of unbundled IOF dark fiber enables Conversent to reach small cities and suburbs throughout its 7-state region. Prior to the availability of unbundled IOF dark fiber, it was not economical for facilities-based CLECs to reach customers in these areas.
  
- In addition to providing voice services, 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.

## **II. CONVERSENT INCURS SIGNIFICANT COSTS TO OBTAIN UNES THAT THE D.C. CIRCUIT COURT FAILED TO CONSIDER**

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

➤ Collocation is generally a prerequisite for purchasing 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.

➤ Conversent has already paid Verizon and SNET over \$11.5M in charges for collocation arrangements.

➤ In addition to paying the ILECs for collocation, Conversent has incurred substantial costs in purchasing and installing the transmission equipment that it deploys in its collocation arrangements. To date, Conversent has spent over \$30M in capital costs for purchasing such equipment.

➤ Conversent has also spent several millions of dollars to develop and operate office support systems in connection with unbundled network elements. This includes the capital and operating costs for preordering, 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 be able to bill its own customers.

### **B. The True Costs of Unbundled IOF Dark Fiber are Well Above TELRIC**

➤ There are inefficiencies associated with Verizon's provisioning and management of unbundled IOF dark fiber that cause the TELRIC rate to be substantially understated.

➤ CLECs are required to order unbundled IOF dark fiber on a point-to-point basis but have no way of identifying where unbundled IOF dark fiber is located. This is because Verizon does not provide maps that show how unbundled IOF dark fiber is routed across wire centers. This lack of information increases Conversent's costs, delays its entry, and reduces its revenue.

➤ CLECs must order collocation and unbundled IOF dark fiber sequentially. If CLECs could order collocation arrangements and IOF dark fiber simultaneously, their costs would be reduced, their entry into the local exchange would be sooner, and their revenues would be increased.

➤ Verizon provides unbundled dark fiber on an "as is" basis. Moreover, IOF dark fiber that Verizon has provided to Conversent often does not meet Verizon's own internal service quality standards for fiber transmission facilities. This has caused Conversent to incur additional costs to improve the transmission quality of such fiber.

➤ In some states, such as New York, Verizon is not required to provide CLECs with access to dark fiber that is routed through intermediate central offices. This has required Conversent to collocate in additional central offices, thereby causing substantial delay and increased costs.

**C. Verizon Increases the Cost of UNEs to Conversent Through the Exercise of Market Power**

**1. Verizon's Inaccurate Bills Increase Conversent's Costs**

➤ The bills for UNEs that Verizon has submitted to Conversent have contained staggering overcharges. As a result, Conversent has been required to incur over \$1M to date to hire an entire department just to review ILEC bills for accuracy, to file billing disputes, and to escalate such disputes.

**2. Verizon's Rejection of DS-1 and UNE Loops For "No Facilities" Increases Conversent's Costs and Decreases its Revenue**

➤ Verizon has frustrated Conversent's efforts to obtain access to DS-1 UNE loops. This is because approximately 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. For example, of Conversent's pending orders in July of 2002, Verizon rejected 37.2% of Conversent's DS-1 UNE loop orders in Massachusetts; 46.4% of its orders in Rhode Island and New York and 67.3% of its orders in New Jersey.

- The most common reasons for the rejection of DS-1 UNE loop orders is that Verizon would have to install a new repeater case; additional central office shelf space or a repeater; Conersent does not believe that these activities constitute the construction of new facilities. Rather, they constitute routine modifications and conditioning to Verizon's existing network.
  
- For those DS-1 UNE loop orders that are rejected, Conersent must order the same facility as a special access circuit. This causes substantial delay (on average, approximately 34 days) in providing service to Conersent's customers. It also increases Conersent'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 Conersent's already substantial costs for collocation would not permit Conersent to compete in the provision of broadband services in the second and third tier markets in which it operates.
  
- Therefore, Conersent must convert special access circuits to UNEs as quickly as possible. After a three month period, Verizon permits Conersent to convert a special access circuit to DS-1 UNE loop.
  
- Unfortunately, Verizon has repeatedly and consistently overbilled Conersent by continuing to charge Conersent at special access rates after the conversion of special access circuits to UNEs.
  
- Verizon's continuous efforts to eliminate or limit Conersent's access to unbundled dark fiber and high capacity loops destabilizes Conersent's operations, creates uncertainty about its business plan, and makes it difficult to obtain access to capital.

### **III. CONVERSENT WOULD BE IMPAIRED WITHOUT UNBUNDLED DARK FIBER**

#### **A. Procuring Interoffice Fiber From Third Party Vendors Does Not Constitute a Reasonable Substitute for Unbundled IOF Dark Fiber.**

- Conversent does purchase long-haul fiber from third party vendors, such as NEON, NEES and C2C, but at this point in time these third party vendors do not usually offer a substitute for unbundled IOF dark fiber.
  
- At this stage of the market, third party vendors do not have fiber available in the locations where Conversent needs it - - between ILEC central offices.
  - In Eastern Massachusetts access to interoffice dark fiber from third party vendors is only available for 12 of Conversent's 75 interoffice spans.
  
  - In Rhode Island, access to interoffice dark fiber from third party vendors is only available for 4 of Conversent's 11 interoffice spans.
  
  - In New Hampshire, access to interoffice dark fiber from third party vendors is only available for 2 of Conversent's 8 interoffice spans.
  
  - In Maine, access to interoffice dark fiber from third party vendors is not available for any of Conversent's 4 interoffice spans.
  
  - In New York, access to interoffice dark fiber from third party vendors is only available for 2 of Conversent's 18 interoffice spans.

- In New Jersey, access to interoffice dark fiber from third party vendors is not present for any of Conversent's 18 interoffice spans.
- In Connecticut, access to interoffice dark fiber from third party vendors will soon be available in 5 of Conversent's 32 interoffice spans.
- As demonstrated above, a single office test does not demonstrate whether CLECs are impaired because IOF dark fiber (by its terms) is needed between two ILEC central offices.
- To be a valid substitute, dark fiber from third party vendors must connect ILEC central offices where CLECs are collocated.

**B. Self-Provisioning Does Not Constitute a Reasonable Substitute for Unbundled IOF Dark Fiber**

- Self-provisioning of interoffice dark fiber is prohibitively expensive. If Conversent were required to replicate its 609 route mile SONET ring in Eastern Massachusetts by installing its own fiber in Verizon conduit, it would cost Conversent approximately \$30M.
- If conduit were not available, the cost to replicate Conversent's Eastern Massachusetts network alone would amount to approximately \$81M.
- It is not economic for Conversent to self-provision interoffice dark fiber because typically it only needs *4 fibers* for each interoffice transport span. *By contrast, when Verizon installs IOF, it typically installs anywhere from 96 to 144 fibers.*
- Conversent simply does not have the access to capital at a price that makes it possible to self-provision its network in Eastern Massachusetts, efficiently.
- Self-provisioning of interoffice dark fiber is prohibitively time consuming. In 1999,

Conversent attempted to self-provision fiber between Conversent's switch in Worcester, Massachusetts to Verizon's switch in the same city, a distance of 11,000 feet. It took Conversent 6 months just to gain access to Verizon's conduit space and another 5 months to pull the cable from Conversent's switch to Verizon's switch.

**C. A CLEC Requesting IOF Dark Fiber for a Specific Interoffice Span is Not Impaired if There are Four Alternative Dark Fiber Vendors Present For Such Interoffice Span**

- An ILEC should be permitted to remove IOF dark fiber as a UNE for a separate interoffice span if it can demonstrate the presence of four alternative vendors of IOF dark fiber for that interoffice span. A lesser number would result in inefficient pricing and would distort requesting carriers' investment decisions..
  
- The states should be given the responsibility of determining whether, based on criteria established by the FCC, a competitive dark fiber transport vendor qualifies as a substitute provider. To be a valid substitute provider, an alternative vendor must, at the very least, (1) actually offer (or be reasonably expected to offer in response to an ILEC price increase) dark fiber transport at wholesale; (2) not either be in bankruptcy or be reasonably likely to enter bankruptcy in the foreseeable future (a vendor's insolvency significantly increases the risk, and therefore the true cost, of its offerings and eliminates them as a viable substitute); (3) serve the relevant geographic market (the point-to-point routes served by the ILEC's dark fiber and where the requesting carrier demands dark fiber transport); and (4) offer dark fiber transmission that is reasonably accessible to a requesting carrier (i.e., the provider must have collocated facilities on both ends of the relevant route and, where the provider's facilities must be connected with the ILEC's, all necessary preconditions for efficient interconnection must be available on just, reasonable, and nondiscriminatory terms and conditions).

#### **IV. CONVERSENT WOULD BE IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY LOOPS**

- Conversent's customers prefer SDSL service and integrated DS-1 service over Verizon's less expensive ADSL and cable modem services because SDSL/integrated DS-1 services offer greater bandwidth upstream and greater reliability.
  - Verizon's ADSL service provides bandwidth downstream (access to internet) but not upstream.
  - Cable modem service is generally provided over a shared network; it does not deliver reliable bandwidth needed by many businesses.
  - For a doctor's office or graphics firm (two representative examples), that must send videos, images, large files or video conferencing from its office to other locations, a higher bandwidth upstream and more reliable bandwidth is critical.
  - Cable modem and ADSL services are generally priced considerably lower than SDSL and integrated DS-1 service.
  
- There is not significant intermodal competition in the provision of services that are substitutes for SDSL and integrated DS-1 services.

- Most of the competition that Conversent faces for broadband comes from other facilities-based CLECs that are dependent upon the ILEC for access to unbundled loops.
  
- Conversent has faced little, if any, competition for broadband from cable companies in its 7-state region.
  
- Conversent has not faced any competition from fixed wireless broadband providers.
  
- High-capacity loops are classic bottleneck facilities.
  
- If unbundled dark fiber and unbundled loops were no longer available to be used in connection with broadband services, most of Conversent’s customers would no longer be able to obtain SDSL service and integrated DS-1 service from any source.
  
- This is because, in most geographic markets, neither Verizon nor the cable companies have products that compete directly with Conversent’s SDSL and integrated DS-1 services.