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December 20, 2002 ***EX PARTE***

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

On December 20, 2002, Scott Sawyer of Conversent Communications and I met with Bill Maher, Chief, Wireline Competition Bureau and Scott Bergmann. During the meeting, we discussed Conversent's network and its need for unbundled network elements, especially dark fiber transport. The attached presentation was distributed at the meeting and comprised the basis for the Conversent presentation.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), a copy of this letter is being filed electronically for inclusion in the public record of each of the above-referenced proceedings.

Sincerely,

/s/
Thomas Jones
Counsel to Conversent Communications

Enclosure

cc: Bill Maher
Scott Bergmann

TALKING POINTS OF ROBERT J. SHANAHAN
PRESIDENT & CEO
CONVERSENT COMMUNICATIONS, LLC

I. DESCRIPTION OF CONVERSENT COMMUNICATIONS, LLC

- 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 23,000 customers and over 160,000 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 end-users in 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. The ILECs do not actively offer these services.

II. 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 purchases long-haul fiber from third party vendors, such as NEON and NEES, but at this time these third party vendors do not usually offer a substitute for unbundled IOF dark fiber.

- Third party vendors presently do not have fiber available in the locations where Conversent needs it - - between ILEC central offices.

  - In Massachusetts, access to interoffice dark fiber from third party vendors is only available for 12 of Conversent's 81 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.* This demonstrates that ILECs have economies of scale that CLECs such as Conversent do not have.

- 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.

- The obstacles that stand in the way of self-provisioning are staggering. These obstacles include the cost, delay and uncertainty associated with obtaining permits, performing excavation work, and securing necessary access to rights of way, pole attachments and conduit space. These costs are variable and impossible to predict.

    - 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.

    - As noted above, the per mile construction cost of deploying dark fiber increases by approximately ten times where the carrier can not obtain access to conduit.

    - The charges and delays associated with obtaining access to public rights of way also vary significantly from municipality to municipality and according to the time of year.

III. 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 <u>any</u> 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.