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January 24, 2003

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:

On January 23, 2003, Scott Sawyer and Dave Graham of Conversent Communications, LLC (“Conversent”) and I met with Simon Wilkie, Robert Pepper and Don Stockdale of the Office of Plans and Policy and Dan Shiman of the Wireline Competition Bureau to discuss the availability of dark fiber unbundled interoffice transport. During the meeting, we reiterated the arguments set forth in Conversent’s letter filed in this proceeding on January 10, 2003 in support of the proposition that, as a threshold matter, retaining dark fiber as an unbundled network element is consistent with sound public policy.¹

We also argued that the appropriate impairment standard for dark fiber interoffice transport is to eliminate unbundling of those facilities only on point-to-point routes on which an appropriate number of non-ILEC wholesale suppliers of dark fiber are present. In this regard, we argued that there is no basis for adopting a “contestability” element as part of the interoffice transport test. This part of the test would apparently require that competitors be deemed unimpaired in the absence of interoffice dark fiber transport in a region (e.g., a metropolitan area) in which some number of competitive transport providers have collocated in a certain percentage of ILEC central offices. Such a test would be based on an incorrect definition of the relevant geographic market (a region instead of a point-to-point route). There is simply no basis for concluding that deployment of transport along one point-to-point route means that deployment is efficient on another point-to-point route in the same general geographic area. The costs of construction and the revenue opportunities associated with each individual point-to-point route vary too significantly to support such an approach. In any event, many of the firms that built interoffice transport in the past have gone into bankruptcy, indicating that their entry was inefficient. It is also important to emphasize that the use of a larger geographic market for a

¹ See Letter from Scott Sawyer, Vice President, Regulatory, Conversent Communications, LLC to Marlene H. Dortch, filed in CC Docket Nos. 01-338, 96-98, and 98-147 (Jan. 10, 2003).

contestability test is inconsistent with the point-to-point geographic market used in a test that considers the number of non-ILEC suppliers along a particular point-to-point route. Inclusion of both of these approaches in a single impairment test for interoffice transport would therefore be incoherent.

Furthermore, any faithful application of the theory of contestability would yield the conclusion that the transport market along a particular point-to-point route cannot be deemed contestable where no non-ILEC sources of supply have been deployed on the route. This is because, to be contestable, a market must be characterized by easy and speedy entry and exit and by few sunk costs associated with entry.² Yet this is clearly not the case with regard to transport, a market characterized by high entry barriers and slow entry. Thus, a true application of “contestability” theory would necessarily yield the conclusion that the market for transport cannot be deemed contestable in the absence of sufficient actual entry along a particular point-to-point route.

Finally, during the meeting, we also discussed several other aspects of the application of the impairment standard to dark fiber interoffice transport. As explained in Conversent’s letter filed in the above-referenced proceedings on December 5, 2002, we stated that Conversent must incur costs substantially in excess of TELRIC to obtain interoffice dark fiber transport.³ We also explained that ILECs possess a substantial advantage in constructing fiber. For example, Conversent and Verizon built redundant fiber connections between Conversent’s switch in Worcester, MA and the nearest Verizon central office (a distance of just 11,000 feet). It took Conversent 11 months to deploy fiber facilities along this route, but it took Verizon only one month to deploy fiber facilities along exactly the same route. This difference was caused by a variety of factors, the most important of which was that it took Conversent six months to obtain access to underground conduit. Verizon apparently faced no such delay. In order to illustrate the economies of scale possessed by the ILECs, we explained that Verizon generally deploys between 96 and 144 fiber strands between central offices, whereas Conversent uses only four strands between the same central offices on its network. Finally, we explained that Conversent seeks to purchase access to dark fiber (either from the ILEC or a non-ILEC source) wherever possible as a long-term contract arrangement. For example, Conversent recently agreed to a ten year contract with Fibertech to obtain access to interoffice transport along five interoffice routes in Connecticut where Fibertech has constructed interoffice fiber.

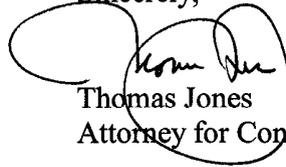
² See Elizabeth E. Bailey and William J. Baumol, “Deregulation and the Theory of Contestable Markets,” 1 Yale J. on Reg. 111, 113 (Spring 1984) (“A market is perfectly contestable if firms can enter it and then, if they choose, exit without losing any of their investment. If this condition is satisfied, no prices set by the incumbents that offer profits to entrants can long endure. Thus, freedom of entry and exit are the key requirements of contestability.”).

³ See Letter from Scott Sawyer, Vice President, Regulatory, Conversent Communications, LLC to Marlene H. Dortch, filed in CC Docket Nos. 01-338, 96-98, and 98-147 (Dec. 5, 2002).

Marlene H. Dortch
January 24, 2003
Page 3

Pursuant to Section 1.206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), a copy of this letter is being filed electronically for inclusion in the public record in each of the above-referenced proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Jones", is written over a circular stamp or seal. The signature is cursive and somewhat stylized.

Thomas Jones
Attorney for Conversent Communications, LLC

cc: Simon Wilkie
Robert Pepper
Don Stockdale
Dan Shiman