

February 5, 2003

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:

In a recent ex parte filed in the above-referenced proceeding,¹ Allegiance Telecom, Inc. (“Allegiance”) proposed an impairment test for unbundled interoffice lit and dark fiber transport. The purpose of this letter is to inform the Commission that Conversent Communications, LLC (“Conversent”) supports the adoption of the test proposed by Allegiance. Conversent is especially concerned that the Commission adopt an impairment test for unbundled interoffice dark fiber that is consistent with the Allegiance proposal.

The test proposed by Allegiance would apply to interoffice dark fiber as follows. A carrier requesting unbundled interoffice dark fiber along a particular point-to-point route would be deemed unimpaired if, subject to the qualifications described by Allegiance, a state commission finds that (1) two or more non-ILEC suppliers offer their own dark fiber on a wholesale basis on the point-to-point route on which the requesting carrier seeks unbundled dark fiber in the volumes demanded by the requesting carrier *or* (2) three or more non-ILECs (regardless of whether they make the fiber available at wholesale or use it solely as an input into their own retail offerings) have deployed their own fiber on the point-to-point route on which the requesting carrier seeks unbundled interoffice dark fiber. It is important to emphasize that, to qualify as a wholesaler of dark fiber for the purposes of the test, the non-ILEC supplier must offer dark fiber in sufficient quantities to serve the needs of the requesting carrier.

¹ See Letter from Thomas Jones, Counsel for Allegiance Telecom, Inc., to Marlene H. Dortch, filed in CC Docket Nos. 01-338; 96-98; 98-147 (Jan. 30 2003).

While this test is an appropriate measure of impairment for interoffice dark fiber transport, Conversent would like to reiterate the point made by Allegiance that competitors must have a reasonable transition period from the time unbundled dark fiber interoffice transport is deemed to have met the test described herein to the time it is actually taken off of the list of UNEs. The purpose of this rule is to allow requesting carriers that have relied on dark fiber as a UNE to transition onto non-ILEC sources of supply or to renegotiate the terms of access with the ILEC. Competitive carriers need at least six months for such a transition. Moreover, a state commission must be given the authority to extend this period if it finds that a requesting carrier is unable to complete the relevant transition within six months because of delays caused by the ILEC.

Finally, while there are a number ways in which this test could be implemented by the states, it would seem most appropriate for the Commission to direct the states to conduct reviews of the transport market every two years. This is more efficient and involves less instability than reliance on petitions from ILECs to initiate a review. The state commissions generally have broad powers to collect the information they would need to implement this test. If for some reason, however, a state commission were unable or unwilling to conduct the test, the FCC could stand in the shoes of the state commission and apply the test.

In accordance with the Commission's rules, an electronic version of this letter is being filed in the record of the above-referenced dockets.

Sincerely,

/s/

Thomas Jones
Counsel for Conversent Communications, LLC