

# WILLKIE FARR & GALLAGHER

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February 6, 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:

On February 5, 2003, Scott Sawyer of Conversent Communications, LLC (“Conversent”) and I discussed the availability of dark fiber unbundled interoffice transport with Commissioner Jonathan Adelstein and Sarah Whitesell, legal advisor to Commissioner Adelstein. During our meeting, we explained that there is no basis for the Commission to include in the impairment test for dark fiber interoffice transport a provision that allows a state to eliminate unbundling on point-to-point route A (which does not otherwise meet the relevant standard for elimination as a UNE) solely because it may share some characteristics with point-to-point route B (which does meet the relevant standard for elimination as a UNE).

In accordance with the Commission's rules, 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 for Conversent Communications, LLC

cc: Commissioner Jonathan Adelstein  
Sarah Whitesell