

July 24, 2003

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

EX PARTE

Re: CC Docket No. 02-33

Dear Ms. Dortch:

The undersigned hereby submit for inclusion in the above-referenced *Wireline Classification* proceeding the attached paper, entitled “The Appropriate Regulation Of Transmission Underlying ILEC Broadband Internet Access.” The paper explains why the FCC’s proposal in the *Wireline Classification NPRM*¹ to reclassify the transmission underlying incumbent LEC broadband Internet access violates the requirements of the Communications Act by (1) abdicating FCC responsibility to ensure that both broadband and narrowband services are provided on just, reasonable and not unjustly discriminatory terms and conditions; (2) impermissibly evading the forbearance standards of Section 10 of the Act, including the prohibition on forbearing from Section 251(c) unbundling requirements; and (3) failing to apply core social and national security-related requirements to broadband (such as those applicable to universal service, CPNI, access to the disabled, slamming, and CALEA).

The paper further demonstrates that the Commission would be powerless to apply any of these requirements to broadband transmission inputs classified as Title I services, since (among other reasons) the Supreme Court’s holding *FCC v. Midwest Video Corp.* precludes such an approach. Finally, the paper explains that the continued application of Title II to incumbent LEC broadband transmission inputs is not inconsistent with the conclusions reached in the *Cable Modem Order*. It should be noted, however, that the paper takes no position as to the merits of the *Cable Modem Order*. It addresses that order solely for the purpose of analyzing whether the conclusions reached therein, assuming the FCC does not alter them sometime in the future,

¹ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002).

compel the FCC to classify the transmission inputs used in incumbent LEC broadband Internet access as Title I services.

This letter and the attached paper will be filed electronically in the above-referenced docket in accordance with the requirements of Section 1.1206(b)(1) of the Commission's rules.

Sincerely,

/s/

Kevin Joseph, Sr. Vice President
Allegiance Telecom, Inc.

/s/

Scott Sawyer, Vice President
Conversent Communications LLC

/s/

Kelsi Reeves, Vice President
Time Warner Telecom

(enclosure)

cc: Chris Libertelli
Dan Gonzalez
Matt Brill
Jessica Rosenworcel
Jordan Goldstein
Scott Bergmann
Bill Maher
Jeff Carlisle
Michelle Carey
Brent Olson
Cathy Carpino
Terry Natoli
Michael Carrowitz
Bill Kehoe
Darryl Cooper
Carol Matthey
Kyle Dixon
Jonathan Cody
John Rogovin
Simon Wilkie
Dr. Robert Pepper