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July 30, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Re: Automatic Rate Increases in Potential Interim Rules for High Capacity Loops
and Transport; CC Docket Nos. 01-338, 96-98, and 98-147*

Dear Chairman Powell:

Meritage Private Equity Funds would like to reinforce the views expressed by Centennial Ventures, Columbia Capital, Kohlberg Kravis Roberts & Co., M/C Venture Partners, and Madison Dearborn Partners, LLC in their July 22nd letter requesting that the FCC make clear that facilities-based competitive carriers will continue to receive cost-based access to discrete components of the incumbent networks while the FCC considers final rules. Like the aforementioned investors, we have made substantial investments in the telecommunications sector. Our portfolio companies include Xspedius Communications and NuVox Communications, both of which are competitive local exchange carriers ("CLECs") that serve numerous markets throughout the United States over a mix of their own network facilities and loop/transport facilities leased from incumbent local exchange carriers ("ILECs") as unbundled network elements ("UNEs"). We are writing today specifically to reiterate the concern expressed by our colleagues regarding a critical aspect of potential interim UNE rules under consideration by the Commission-- the automatic rate increases for DS1 loops and EELs pending adoption of permanent rules.

Like the other equity investors who have weighed in on this critical issue, we have made substantial investments in firms that use their own facilities to serve business customers wherever it is feasible to do so. We have invested in competitive wireline telecommunications infrastructure in reliance on the FCC's steady and consistent interpretation of the Telecom Act over the past eight years, which you also have articulated. The FCC has consistently recognized that it is unreasonable to expect new entrants to replicate the incumbent network in all respects, and that competitors must have cost-based access to those parts of the network that are difficult to replicate, such as DS-1 loops and EELs.



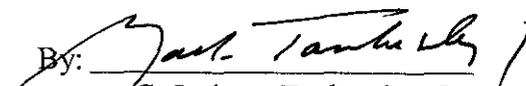
The Bell Operating Companies (“BOCs”) disingenuously argue that access to tariffed special access service is sufficient for *all* competitors, because they have been successful in their efforts to impose this burden on *some* competitors, which have not yet exited all markets. Simple logic, however, would suggest that it is far from clear whether, over time, *any* competitors can successfully compete with the BOCs if they are forced to pay prices well above cost—much less retail special access rates—for critical telecommunications service inputs such as basic DS1 level loops and transport.

As the other private equity investors cogently explained in their letters, by adopting an automatic presumption that facilities-based carriers are not impaired without access to DS1s—contrary to every previous impairment determination by the FCC, and the Commission’s vast body of policy guidance to investors—the Commission likely is falsely rejecting the outcome most consistent with the FCC’s own conclusion that maintaining cost based access to local facilities continues to be necessary for facilities-based competition. We share the concerns of our colleagues that the consequences of a mistaken presumption of non-impairment for DS1 UNEs will be significant, and certain, near-term harm to the capital structure of competitive carriers, which is directly contrary to the public interest of fostering facilities-based competition. Moreover, it is especially troubling that competitive investors should have to immediately absorb the costs of this presumption, regardless of whether the FCC ultimately rejects the “false hypothesis” of DS1 “non-impairment” in its final rules.

We are optimistic that the FCC will reasonably seek to avoid the consequences of interim rules that could only be perceived by rational investors as an abrupt policy reversal. The FCC will have ample time to consider the merits, or more likely the lack thereof, of the Bells’ arguments in its proceeding to adopt final rules. Accordingly, we are hopeful that our concerns will be considered and addressed by the Commission, and that the FCC will clarify that DS1 loops and DS1 transport when used in an EEL arrangement must continue to be provided by the incumbent LECs pending the adoption of final rules. Thank you in advance for your consideration of our concerns.

Sincerely,

Meritage Private Equity Funds

By: 
G. Jackson Tankersley, Jr.



cc: Commissioner Kathleen Q. Abernathy
Commissioner Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Assistant Secretary Michael D. Gallagher
Christopher Libertelli
Matthew Brill
Daniel Gonzalez
Jessica Rosenworcel
Scott Bergmann
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