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August 18, 2004

BY ELECTRONIC FILING

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

Re: CC Docket Nos. 96-98, 98-147, 01-338

Dear Chairman Powell:

On behalf of Alpheus Communications, L.P. (formerly known as El Paso Networks, L.P.) I am writing to express our strong support adoption of interim rules and requirements that will preserve UNE access and pricing for dark fiber pending *USTA II* remand proceedings. These interim rules are necessary in order to preserve ongoing business relationships between CLECs and their customers on a temporary basis while the Commission considers new rules and to provide for an orderly transition to whatever new UNE rules the Commission ultimately adopts. We and others have previously written to the Commission pointing out that BOC commitments are inadequate in a number of respects, particularly in regards to access to dark fiber.¹

It is our understanding that the Commission is considering an Interim Order that would automatically increase pricing for existing UNE arrangements if the FCC has not established new UNE rules or acted on the remand by a date certain, and bar orders for new UNEs. We further understand that the Chairman is proposing a reconsideration order that would ameliorate the impact of the Interim Order on facilities-based competition. Although we support interim stabilization for all UNEs, including dark fiber and other loops and transport, it would be particularly harmful and unnecessary to establish such price increases, and bar new orders for

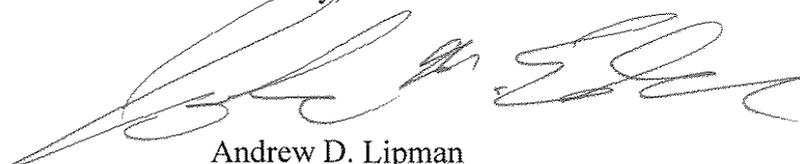
¹ Letter from Allegiance Telecom, Inc., Cbeyond Communications, LLC, El Paso Networks, L.P, Focal Communications Corp., Integra Telecom, Inc., Lightship Telecom, LLC, Mpower Communications Corp., TDS Metrocom, LLC., and XO Communications, Inc. to Hon. Michael K. Powell, CC Docket No. 01-338, June 16, 2004.

dark fiber. As we have explained before, unbundled access to dark fiber is critical so that carriers can invest capital in facilities to “light” the raw material of the network, the dark fiber, to provide innovative telecommunications services different from those offered by the incumbent LEC. Because dark fiber both now and in the future is critical to the development of sustainable facilities based competition, the Commission should send the proper signal to investors willing to support dark fiber based competition by exempting unbundled dark fiber from the automatic price increases and ban on new orders we understand are currently in the Interim Order.

Exempting UNE dark fiber from the automatic price increases and allowing CLECs to obtain unbundled access to dark fiber until the Commission’s permanent rules are in place is consistent with *USTA II* and with the Act. As Alpheus has explained, the price increase on existing UNEs and bar to obtaining new UNEs are particularly problematic because Alpheus and other CLECs can not obtain dark fiber loops and transport from the incumbent LECs special access tariffs. In addition, there is no risk of “arbitrage” with dark fiber; it is an idle raw material that requires investment and expertise to utilize. Lastly, dark fiber is ILEC fiber that would otherwise be left unused and avoids unnecessary disruption of city streets where duplicative facilities remain idle and available. Lastly, these same factors weigh strongly in favor of the Commission requiring continued unbundled access to dark fiber in its final *post-USTA II* rules. These factors all suggest that the Commission should not leave CLECs that use dark fiber to provide facilities based competition to the uncertain fate contemplated in the Interim Order.

Without access to dark fiber in the absence of the Commission’s permanent unbundling rules, carriers that use dark fiber in their facilities based networks to provide innovative and competitive services will be stymied in their efforts to grow those services and compete. While we are confident that the Commission can complete its *post-USTA II* remand rulemakings in six months, Alpheus remains concerned that the presence of the rate increases and bar on new orders provides the incumbent LECs a perverse incentive to delay the Commission’s remand order as long as possible to stymie growth of sustainable, genuine and meaningful facilities-based competition. In order to send the proper signals to the markets that the Commission will support investment in facilities-based competition the Commission’s Reconsideration Order should make clear that CLECs may continue to obtain dark fiber during the pendency of the Commission’s rulemaking proceeding.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is for Andrew D. Lipman, and the signature on the right is for Joshua M. Bobeck. Both signatures are fluid and cursive.

Andrew D. Lipman
Joshua M. Bobeck

Counsel for Alpheus Communications, L.P.