

November 2, 2004

**VIA ELECTRONIC SUBMISSION**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **Ex Parte**  
**WC Docket No. 04-313; CC Docket Nos. 01-338, 96-98, and 98-147**

Dear Ms. Dortch:

On October 4, 2004, the undersigned filed a summary of data (the “QSI Study” or “Study”) regarding the deployment of competitive local loop and transport facilities compiled from the records of state commission *Triennial Review Order* (“TRO”) proceedings. Because of the exhaustive and objective manner in which these data were collected, these data – whose results are validated by the assessments of regulators in three major states<sup>1</sup> -- are the best possible indicator of whether there are viable alternatives to unbundled ILEC loop and transport UNEs at the capacity limits identified in the *TRO*.

Not surprisingly, in their reply comments filed on October 19, 2004, a variety of incumbent local exchange carriers (“ILEC”) attempted to make various criticisms to the Study<sup>2</sup>. To demonstrate that these criticisms are baseless and should be rejected by the Commission, we submit the attached Rebuttal Declaration by Gary J. Ball and QSI Consulting. Mr. Ball’s declaration addresses each of the criticisms levied by the ILECs and soundly demonstrates each is either wrong or inapt.

What is most important to note about the ILECs’ criticisms is that none even attempts to show there are any material errors in the data underlying the Study or in the Study’s conclusions. The competitive carriers’ data regarding their facilities deployment and use were submitted under oath, and they unambiguously show that there is virtually no self-provisioning or wholesaling alternative for DS1, DS3, or dark fiber facilities at the capacity limits the Commission adopted in the *TRO* – and that the competitive providers continue to support in the pending proceeding.

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<sup>1</sup> These state assessments are: the Michigan ALJ’s Proposed Decision and the assessments of loop and transport deployment information filed in this docket by the California PUC and the New York Public Service Commission.

<sup>2</sup> Scott J. Alexander and Rebecca Sparks on behalf of SBC Communications, Inc, Shelley W. Padgett and Aniruddha Banerjee on behalf of BellSouth Telecommunications, Inc., Lynn Walker on behalf of Verizon, and David Teitzel of Qwest.

Sincerely,

Comptel/ASCENT  
Association for Local Telecommunications Service  
AT&T  
Broadview Networks, Inc.  
Covad Communications Group  
ITC DeltaCom  
KMC Telecom  
MCI, Inc.  
NuVox Communications  
XO Communications

cc: Scott Bergmann  
Matthew Brill  
Dan Gonzalez  
Christopher Libertelli  
Jessica Rosenworcel  
Russell Hanser  
Jeremy Miller  
Tom Navin  
Marcus Maher  
Christina Langlois  
Tim Stelzig  
Carol Simpson  
Gail Cohen  
Ian Dillner  
Cathy Zima