



December 2, 2004

VIA ELECTRONIC FILING

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

*Re: WC Docket No. 04-313, CC Docket No. 01-338; Triennial Review
Remand Proceeding*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, CompTel/ASCENT ("CompTel") hereby gives notice that on December 1, 2004, its representatives met with Jeffrey Dygert, Chris Killion, John Stanley, Jeremy Miller, and Russ Hanser of the FCC. In this meeting, CompTel discussed its concerns over reports that the FCC was considering applying eligibility restrictions to "standalone" network elements, such as loops and transport, in addition to the use restrictions that the Commission has—since 2000—felt compelled to place on loop/transport combinations in order to protect Bell special access revenues. CompTel explained that these restrictions were unnecessary, and counter-productive, because loop-only restrictions would only punish those competitors that have taken the FCC's previous policies to heart and either pushed fiber deeper into the network.—into central office collocations—or switched the provision of all their services, including voice, into data-only broadband formats.

During the meeting, CompTel/ASCENT argued that extending the EELs criteria to stand-alone DS1 and DS3 loops would be contrary to the statute as well as the *USTA II* decision. Section 251(c)(3) authorizes a CLEC to use UNEs to provide "a telecommunications service," and there is no dispute that exchange access services, long distance services, and many data services qualify as "telecommunications services" as defined at 47 U.S.C. Section 153(46). The *USTA II* Court struck down the Commission's decision in the Triennial Review Order that certain services, such as interexchange voice and data services, are not "qualifying services." To impose the EELs criteria on DS1 and

DS3 loops would accomplish indirectly what the Court has held the Commission cannot accomplish directly. Through these EELs criteria, the Commission would be imposing the functional equivalent of a rule, which the *USTA II* Court struck down, that long distance voice and data services are not "qualifying services" under the statute.

Representing CompTel were Robert Aamoth of Kelley Drye & Warren, and the undersigned attorney.

Sincerely,

A handwritten signature in black ink, reading "Jonathan D. Lee". The signature is written in a cursive style with a large, prominent initial "J".

Jonathan Lee
Sr. Vice President
Regulatory Affairs