



Joan Marsh
Director
Federal Government Affairs

Suite 1000
1120 20th Street NW
Washington DC 20036
202 457 3120
FAX 202 457 3110

November 25, 2002

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Oral Ex Parte Communication, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

In recent *ex partes*, AT&T has stated that the absolute minimum “crossover” point at which it becomes economically rational for a requesting competitive carrier to consider constructing its own interoffice transport facilities is reached when the carrier can aggregate approximately 18 DS3s of *total* traffic in a Local Serving Office (LSO), including all local, data, exchange access and interexchange traffic routed through the office. At Staff’s request, AT&T has developed a detailed explanation of the methodology used to develop that estimate which can be found in Attachment A to this letter.

One of the critical points to note is that in developing the “crossover” point, AT&T did *not* attempt to assess the ILECs’ TELRIC costs of providing transport to themselves and their affiliates (and thus the actual cost disadvantage that requesting carriers face in using such facilities to offer services that compete with the ILECs’ services). Rather, AT&T compared the costs of provisioning its own transport to its average costs for purchasing ILEC *special access services*, which are admittedly *not* offered at cost-based rates. Indeed, they are priced at exorbitant levels. Thus, this analysis is highly favorable to the ILECs. Given that TELRIC costs are actually between half and two-thirds of the prevailing special access rates, the crossover point for facilities construction necessary for a competitive carrier not paying special access rates to achieve cost parity with the ILECs is between 28 and 36 DS3s of total traffic. *See* Attachment A.

As is also obvious from Attachment A, transport construction represents a high fixed cost. Moreover, nearly two-thirds of interoffice transport costs are fixed.¹ Thus, a carrier cannot be expected to begin construction of its own transport facilities until it is reasonably certain that it will have the necessary scale to recover its construction costs.² Otherwise, such construction would simply be wasteful.

In this regard, it is essential that CLECs be able to achieve a cost structure comparable to the ILEC's even where the incumbent's existing prices are well above costs. Where a CLEC has significantly higher costs than the ILEC, the CLEC knows that the ILEC could simply drop its prices below the CLEC's costs, but still above the ILEC's costs, and remain profitable. But by setting prices below the CLEC's costs, the ILEC would make it impossible for the entrant to remain economically viable. The prospect of such a pricing strategy is particularly high where, as is the case for services provided to businesses, the ILEC can price discriminate. This allows the ILEC to lower prices selectively, *i.e.*, only to those customers that could potentially be served by the CLEC, and thus to keep prices high for all other customers. Thus, because transport constitutes a sizeable percentage of the overall cost of telecommunications services, facilities-based entry is generally viable only where a CLEC can self-deploy transport at a cost that is not well in excess of the ILEC's costs.³

Finally, a carrier's analysis of whether to construct a fiber backbone ring (and thus provide its own transport) is very different from its analysis as to whether to build a Building Ring or a Customer Lateral off an existing Building Ring to provide the equivalent of a loop for large customer buildings. Accordingly, the amount of committed traffic necessary to support the construction of loops for large business customers – which AT&T has indicated is about 3 DS3s of traffic – is substantially less than the amount needed to support the construction of a backbone ring. The assumption here is that the existing transport ring is justified for other purposes and that the loop is addressed by incrementally attaching a small ring to serve a specific building and, where necessary, a short lateral extension. In support of AT&T's claim that 3 DS3s of traffic is required to support an economically rational lateral fiber build-out, and to ensure that the record is complete, AT&T is also submitting with this *ex parte* a detailed discussion regarding AT&T's estimation of loop construction costs, which is appended as Attachment B.

¹ See *ex parte* letter from C. Frederick Beckner to Marlene Dortch dated November 14, 2002, attaching white paper prepared by Professor Robert D. Willig entitled "Determining 'Impairment' Using the *Horizontal Merger Guidelines* Entry Analysis," p. 13.

² *Id.* at 5.

³ *Id.* at 7-8.

Consistent with Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,

A handwritten signature in black ink, appearing to be 'JM', followed by a horizontal line extending to the right.

Joan Marsh

cc: Michelle Carey
Thomas Navin
Robert Tanner
Jeremy Miller
Dan Shiman
Julie Veach
Don Stockdale