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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Commission
Washington, D.C. 20554

In Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunciations Act of 1996	)	**Docket 96-98**
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	**Docket 95-185**

Further Notice of Proposed Rulemaking

Initial Comments of KMC Telecom Inc.

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October 2, 1997

Summary

In the Further Notice of Proposed Rulemaking in its interconnection dockets, the Commission seeks comment on whether incumbent LECs should be obligated to make unbundled transport and switching elements available to requesting telecommunications carriers even when such requesting carriers do not offer local exchange service to the end users for whom the unbundled transport and switching elements would be provided. KMC is a competitive local exchange carrier actively involved in expanding its service both geographically and in terms of the variety of configurations it can make available to its customers. It urges the Commission to conclude that, pursuant to 47 U.S.C. section 251(c)(3), competitive carriers should have access to dedicated or shared transport and switching elements for the provision of service whether or not the competitive carrier provides local exchange service to its subscribers. The requesting carriers can use such unbundled elements to carry traffic in configurations which do not involve local exchange service, such as, for example, to carry originating or terminating interstate toll traffic between an incumbent LEC's end office and an IXC's point of presence. Similarly, an IXC could use such elements to terminate interstate toll traffic from its POP to an incumbent LEC's end office.

The availability of such configurations will add flexibility to the service configurations which competitive LECs or IXCs can offer to their customers and by doing so will hasten the introduction of greater competition, objectives fully consistent with the provisions of section 251 of the Communications Act, with the Commision's policies on local competition and with all current judicial interpretations relevant to the question presented. KMC sees no legal or public policy basis to restrict the obligations of LEC's under Part 51 of the rules to carriers providing local exchange service.

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To: The Commission

Further Notice of Proposed Rulemaking

Initial Comments of KMC Telecom Inc.

Pursuant to the provisions of sections 1.415 and 1.419 of the Rules, 47 CFR sections 1.415 and 1.419, KMC Telecom Inc., ("KMC"), a competitive local exchange carrier, by its undersigned counsel, submits Initial Comments in response to the Further Notice of Proposed Rulemaking in the above-captioned matter. KMC urges the Commission to conclude that requesting carriers should have access to dedicated transport facilities or shared transport facilities in conjunction with unbundled switching to originate or terminate interexchange traffic

KMC Telecom Inc.
October 2, 1997

to customers whethor or not the requesting carrier provides local exchange service to such customers.

I. Background

KMC is a facilities-based competitive local exchange carrier which is building facilities and offering services in a number of communities, principally in the South and Midwest. This proceeding, one of the key elements of the Commission's implementation of the procompetitive provisions of the Communications Act of 1996, seeks to establish interconnection obligations among incumbent local exchange carriers and those carriers, such as KMC, which are seeking to provide competitive services to the public.

In its *Third Order on Reconsideration ("Third Order")* in the above-captioned dockets, FCC 97-295, rel. August 18, 1997, the Commission considered two petitions for reconsideration of its *Local Competition Order*[1] which adopted rules to implement sections 251(c)(3) and 251(d)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").[2] In essence those rules, in particular sections 51.319(d)(1) and (d)(2), 47 CFR

[1]Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (Local Competition Order), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), further recon. pending, aff'd in part and vacated in part sub nom. *CompTel v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (CompTel), aff'd in part and vacated in part sub nom. *Iowa Utilities Board v. FCC*, No. 96-3321 et al, 1997 WL 403401 (8th. Cir., Jul 18, 1997) ("*Iowa Utilities Bd.*").

[2] 47 U.S.C. sections 251(c)(3) and (d)(2).

sections 51.319(d)(1) and (2), establish standards for identifying unbundled network elements and codify the obligations of incumbent LECs to make available such facilities and functionalities to requesting telecommunications carriers.

In its *Third Order*, the Commission addressed first what is meant by "shared transport" and concluded that, as used by the *Local Competition Order,* shared transport includes a facility that is shared by multiple carriers, including the incumbent LEC. *Third Order,* par. 22. The Commission also noted that the *Local Competition Order* imposed on incumbent LECs the obligation to offer access to the routing table resident in the local switch to requesting carriers purchasing access to the unbundled local switch. Id., par. 23. Based on these conclusions, the *Third Order* identified all portions of the network to which incumbent LECs must provide interoffice transport facilities on a shared basis, including shared transport between end offices, between tandems, and between tandems and end offices. Id., pars. 24-25.[3] The Commission also concluded that requesting carriers may use shared or dedicated transport as an unbundled network element to provide interstate exchange access service to IXCs or other customers to whom they also provide local exchange service. *Third Order,* par. 38. Noting that it did not impose any restrictions on the types of telecommunications services that could be provided over network elements, the Commission also held that a requesting carrier may use shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service. Id., par. 39. Further, the *Third Order* concluded that a

[3]In contrast to this sweeping obligation, the Commission clarified that incumbent LECs are required to offer only dedicated transport between their switches, or serving wire centers, and requesting carriers' switches. Third Order, par. 27

"requesting carrier may use shared transport facilities to provide exchange access service to originate or terminate traffic to its local exchange customers, regardless of whether the requesting carrier or another carrier is the IXC for that traffic." Id., par. 52.

In the *Further Notice of Proposed Rulemaking* ("FNPRM"), the Commission seeks comment on the question whether requesting carriers should be permitted to use unbundled dedicated or shared transport facilities in conjunction with unbundled switching to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service. The *FNPRM* also specifically asks commenters supporting such an extension of the rule to consider whether that approach is consistent with its *Order on Reconsideration,* 11 FCC Rcd 13042 (1996) as well as the recent *Iowa Utilities Board* and *CompTel* decisions of the 8th Circuit Court of Appeals.[4]

2. The Commission Should Require Incumbent LECs To Make Available To Requesting Carriers Unbundled Transport Facilities And/Or Unbundled Switching To Originate Or Terminate Toll Traffic To Their Customers Whether Or Not Such Customers Are Provided Local Exchange Service By The Requesting Carrier

Expansion of the interconnection rules to permit requesting carriers to provide interstate toll traffic through unbundled incumbent LEC transport and switching facilities even to end users to whom requesting carriers do not provide local exchange service is fully consistent with the broad purposes of the Communications Act, the tenor of the Commission's *Local Competition Order*, and the rules adopted thereunder. Indeed, given the broad language and clear purpose of section 251(c)(3) of the Act, the burden should be on those who oppose the *FNPRM's* proposal,

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[4]See note 1, above.

rather than on those who support it. The merits of adopting the expanded availability of unbundled transport and switching is clear. For many entities seeking to establish communications services competitive with those of incumbent LECs, providing local exchange service is the most difficult element in establishing a local or regional presence. To require a competitive LEC to have overcome the substantial difficulties associated with the provision of local service before it can have the advantages of unbundled transport for the provision of interstate traffic sets the bar at an unnecessarily high level and will inhibit competition. In para. 61 of the *FNPRM* the Commission describes two possible configurations in which a requesting carrier could use transport links for interstate traffic even without itself providing local exchange service. There are many others, but these applications should be left to the creativity of the requesting carriers and the exigencies of the market place.

The *FNPRM* seeks comments on the proposed expansion of the rules in connection with the Commission's *Order on Reconsideration* and with the two 8th Circuit cases cited by the Commission. In the *Order on Reconsideration,* 11 FCC Rcd. 13042, 13048-9 (1996), at paras. 12-13, the Commission merely noted that a requesting carrier which takes an unbundled switching element in connection with the provision of local exchange service necessarily must use the end user's dedicated local loop to transport all services desired by the end user, at least to the serving end office of the end-user, since the dedicated loop is typically the only (wired) access the end-user has to the telephone network. But that is in no way inconsistent with directing an incumbent LEC to offer unbundled transport or switching facilities to a requesting carrier who does not assume responsibility for the local loop but instead, as suggested by the

Commission in the *FNPRM,* uses the unbundled network elements to carry originating or terminating interstate toll traffic between an incumbent LEC's end office and an IXC's POP. Indeed, this sort of incremental move into a local market makes a great deal of sense from a marketing viewpoint and will help to implement the Commission's interconnection policies.

Nor is there anything in the *Iowa Utilities Board* or *CompTel* decisions that is inconsistent with the proposed extension of interconnection rights. Footnote 20 of the *Iowa Utilities Board* decision, to which the *FNPRM* makes specific reference, is either irrelevant to, or, if relevant affirmatively strengthens, the rule change advocated herein. Footnote 20 concerns the Commission's jurisdiction to set rates for services which the Court's decision deems to be intrastate in nature. Because the *FNPRM* does not address in any way the rates which incumbent LECs may charge for the unbundled network elements in question, footnote 20's relevance to the rule change is difficult to discern. But even if it is relevant, the primary emphasis in footnote 20 is on the local (i.e. intrastate) nature of local exchange services as a point of demarcation between FCC and state PUC ratemaking jurisdiction. To the extent the modification of federal policy addressed herein removes the provision of local exchange service as an anchor or prerequisite for the establishment or expansion of an affirmative interconnection obligation policy and instead relies on exchange access-type service, the logical conclusion is that the Court's rejection of FCC jurisdiction in the premises is mitigated or even eliminated.

Similarly, there is nothing in the *CompTel* decision which is inconsistent with the rule change proposed in the *FNPRM.* In that case the Court affirmed the Commission's definition of "interconnection" and its determination to allow LECs to collect access charges for interstate

calls on a temporary basis and vacated only the Commission's attempt to regulate temporary recovery of access charges for intrastate calls. 117 F.3d at 1075 n.5. But the rule proposed in the *FNPRM* does not address rates or rate levels; it would merely impose on LECs the obligation to provide unbundled network elements for requesting carriers who do not provide local exchange service.

The broad language of rule sections 51.307 and 51.309, 47 CFR sections 51.307 and 51.309, which impose affirmative obligations on incumbent LECs to provide access to unbundled network elements would appear sufficient to encapsulate the policy KMC advocates.[5] If, however, the Commission wishes to adopt specific rule language to set forth specifically the policy advocated here, the following is suggested as an appropriate addition to the rules:

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[5]§ 51.307 provides in part as follows:

Duty to provide access on an unbundled basis to network elements. - (a) An incumbent LEC shall provide, to a requesting telecommunications carrier for the provision of a telecommunication service, non discrininatory access to network elements on an unbundled basis . . . . (c) An incumbent LEC shall provide a requesting telecommunciations carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network elements ... .

§ 51.309 provides in part as follows:

Use of unbundled network elements. - (a) An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or for the use of , unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends. .... .

§ 51.309 Use of Unbundled Network Elements

. . . .

(d) The use of unbundled network elements by a requesting telecommuncations carrier shall not be limited to instances in which the requesting telecommunications carrier provides local exchange service within the area served by the incumbent LEC.

4. Conclusion

As indicated, KMC supports the adoption of a rule which specifically provides that incumbent LECs are obligated to provide unbundled transport and switching network elements to requesting carrriers whether or not such carriers are currently engaged in providing local exchange service to their end users. Such a rule would assist competitive entrants in entering individual markets by providing a further degree of flexibility to such carriers in procuring the elements of service for their existing or potential subscribers. By doing so it would fulfill the general purposes of Section 1 of the Act as well as the specific obligations set forth in section 251(c)(3) and 251(d)(2) of the Act.

October 2, 1997

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