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March 26, 1998

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments in CC Docket Nos. 95-20 &98-10.

Dear Sirs:

Enclosed for filing in the above matters are the comments of KWOM Communications, Inc. I have enclosed an original and eleven copies for circulation to all commissioners. In addition, I have enclosed an extra copy to be marked "received" and returned to me in the enclosed prepaid envelope.

If there is any question or problem regarding this filing, please do not hesitate to call me at (630) 858-9514 or, at KWOM Communications, Inc. at (630)942-5940.

Kindest Regards,

Patrick H. Gaughan

cc: JWM

No. of Copies rec'd 0+11
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MAR 27 1998

FCC MAIL ROOM

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

In Re:	)	CC Docket Nos.
Computer III Further Remand Proceedings;	)	95-20; 98-10
	)	
1998 Biennial Regulatory Review	)	Comments of
	)	KWOM
	)	Communications, Inc.

KWOM Communications, Inc., by and through counsel, hereby files its comments in the above-listed proceedings. KWOM is a small, local, internet service provider serving Chicago and all of its surrounding suburbs. Over the last several years, KWOM has established a successful market niche based upon premium personal service and access to top-quality emerging communications technology

KWOM supports the Commission's effort to encourage innovation and competition in telecommunications-related services. However, non-discriminatory access to new technologies is pivotal if small competitors, such as KWOM, are to continue providing tailored personal service offerings. For this reason, KWOM believes that full section 251-type unbundling rights must be extended to all ISPs. Extending these rights will provide a cost-effective, self-correcting mechanism assuring non-discriminatory access. Extending these rights will also assure the public of expedited access to innovative technologies as well as the premium personal service offered by ISPs like KWOM.

The reasons for KWOM's comments are set forth more fully in the attached brief, which is incorporated herein.

Respectfully Submitted,

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On behalf of:
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Comments of KWOM Communications, Inc.

I. Summary of Argument

The FCC should extend Section 251-type unbundling rights to all ISPs. Absent provision for unbundling rights, the current ONA requirements are not sufficient to assure ISPs future access to the services they need to compete. The participation of large information service competitors will only serve to make access discrimination more acute against small, local, ISPs. Furthermore, in light of plans to lessen restrictions on BOCs, ISP unbundling rights are imperative to assure that emerging technologies are available to all ISPs on a non-discriminatory basis

At the same time, by providing Section 251-type unbundling rights to all ISPs, the FCC will be assuring the expedited provision of technical service offerings to the public. By providing unbundling rights to all ISPs, the FCC will also preserve the current quality and availability of premium personal services to the public.

Lastly, the extension of unbundling rights to all ISPs should not impose any additional responsibilities as long as the ISP is operating on lines owned by regulated telecommunications carriers or where the number of lines owned by the ISP are minimal [as determined by the Commission].

II. Introduction

Picture this. It is Sunday afternoon. You've finally found the time to sit before your computer - the one with all those high-tech gadgets that promise to revolutionize your very existence. You've already paid to access the fastest communications service available in your area. You've finally had the chance to install that new piece of software that supposedly will bring you all the wonders of the information age and e-commerce. The excitement is killing you.

You know you've purchased the most highly touted equipment that any small business or personal consumer can afford. You've had the necessary wiring installed. Now you're looking forward to actually see this miracle of technology deliver on its promise. Your heartbeat quickens. Your hands become sweaty.

You pause and stare at the "Icon" on the screen - you agree that "Icon" is an apt name for this mysterious key to superhuman powers. At last you click on your mouse and wait for the promised miracle.

After a few uneasy moments of waiting, nothing happens. You glance at the computer. It is on. At least all those lights that usually flicker are doing their usual stuff. So you wait a little longer...
and wait...
and wait.

Eventually you conclude that you must have done something wrong. You pull out the instructions – for the computer; for the communications equipment; for the software; and for your phone service. You even consider checking the family bible for inspiration. You check the computer cables. You check the phone line. You reboot your computer and try again. Nothing.

Surely the technology gods are laughing at you. Your excitement has turned to frustration and anger ... but what can you do? Of course, you can always: 1) guess which component is malfunctioning then spend hours on your phone navigating an electronic maze, or 2) get access to another computer and email "S.O.S." to every related vendor. But neither of these options assure a resolution within your lifetime. What you need is a living person – NOW.

Ideally, you need the option to take your computer to that person to look at it – on the spot – or have someone actually come to your home. What do you need? You need a Local Internet Service Provider who provides premium personal service.

KWOM Communications, Inc. ("KWOM") is a local Internet Service Provider located in the suburbs of Chicago, Illinois. KWOM is in the premium personal service industry. It is this personal aspect which constitutes the unique "value-added" component of KWOM's services.

For several years now, KWOM has developed partnering arrangements with Chicagoland computer retailers. Each retailer is qualified to repair computers. Each is also trained to install communications equipment, install software, and set up Internet Access Accounts for KWOM service. In addition, KWOM offers free carry-in troubleshooting and 24-hour live technical support for Internet Access problems. KWOM also offers first-rate internet access. If there are any problems, KWOM essentially works with the customer to find solutions or refers the customer to the proper vendors. In short, KWOM provides a unique personal service bridging technological promises with actual implementation.

As a personal service provider, KWOM is fully aware that its market segment is not subject to true economies of scale. It is simply impossible to provide personal service on a broad scale without diluting the "personal" component. At the same time, KWOM realizes that the prime qualifying criteria of many consumers is immediate access to high-speed communications - as defined by the consumer. For this reason, without access to top quality communications technology, ISPs like KWOM simply could not exist – and the public could not have the choice to select premium personal service offerings.

In recent months, with the apparently increased commercial viability of xDSL technology, KWOM has reviewed its current technology offerings. KWOM currently supports 56k*flex*, x/2, and ISDN connections. KWOM is now just starting to examine the feasibility of offering some form of xDSL service.

KWOM does not want to become a telecommunications carrier in any way, shape or form. Hopefully this will never become necessary. In preliminary

discussions with carriers, KWOM has been assured that availability of circuits for xDSL will be supplied on a non-discriminatory basis; however, "talk is cheap."

KWOM has been informed that service will not be provided if equipment capacity has already been allocated to other customers. The allocation between carriers and "others" is unclear. As for pricing, KWOM has been informed that pricing will "generally" not vary from user to user – except that volume discounts and specials may be promoted in the future. Simply put, to date no carrier has guaranteed KWOM non-discriminatory access to the facilities necessary to implement emerging technologies like xDSL service.

At the same time, if access is not provided, KWOM and similar local ISPs will not be able to supply premium personal services. Such ISPs will go out of business. Small ISPs simply can not afford to waste time and legal fees bogged down in administrative proceedings or litigation.

What all ISPs need is the right to obtain access on the identical terms as offered telecommunications carriers. If access is available on a non-discriminatory basis, companies like KWOM will happily stay out of the telecommunications carrier business. Otherwise, the self-help provision of Section 251 rights will afford small ISPs immediate redress in a cost-effective manner. In both instances the telecommunications carriers do what they claim to be doing already; the small ISPs continue to provide premium personal services; and the public wins.

III. Discussion: Section 251-type unbundling rights should be extended to all ISPs.

As the Commission is aware, Section 251 of the Telecommunications Act of 1996 imposes a duty on incumbent local exchange carriers to provide non-discriminatory interconnection to the carrier's network and unbundling of telecommunication services. Thus the incumbent must provide a connection at any technically feasible point within the carrier's network "that is at least equal in quality to that provided by the local exchange carrier to itself... or any other party to which the carrier provides interconnection... on rates, terms, and conditions that are just, reasonable and non-discriminatory." Section 251(c)(2)(C-D). However, the right to interconnect and to obtain access to unbundled network elements currently extends only to "requesting telecommunications carriers." The provisions do not currently apply to pure ISPs, like KWOM Communications Inc.

This distinction, which excludes pure ISPs from unbundled access to network components, has become increasingly important as telecommunication carriers have increased their internet service marketing efforts and as innovative communication technologies have become increasingly in demand.

To date, ISPs like KWOM have been fortunate because their market niches were able to develop with easy access to communications bandwidth. The market was immature. Most ISP consumers (including small businesses) were not demanding high-speed telephone connections. The ISP consumers were preoccupied getting acquainted with the internet, web design and innovations in computer technology.

Perhaps more fundamentally, the last few years have seen many of the technological innovations relied upon by Internet Service Providers being in areas outside the control of telecommunications companies. The concept of what constituted "high-speed" communications was addressed in large part by focusing on server capabilities and user-to-modem ratios. Areas where telecommunications carriers play a central role, such as the provision of ISDN and xDSL services, was not yet a pressing competitive advantage issue among ISPs. However, the situation is changing.

Currently, all the incumbent local exchange carriers are offering their own internet access services (not to mention AT&T and numerous other large businesses). Furthermore, as the internet market has progressed toward maturity, both business and personal consumers are requesting more than the 56k speeds available through basic telephone service. The consumers are becoming more demanding.

Within this new market environment, KWOM is confident of its ability to satisfy its customers based upon its premium personal service. However there is reason to be concerned about the access to innovative communications technology by small ISPs like KWOM.

In at least one circumstance of which KWOM is aware, an incumbent local exchange carrier has already limited access to its network by pure ISPs for its own competitive advantage. This was done by essentially removing necessary circuits from "basic service." The carrier then proceeded to use the circuits to offer its own competing internet service. Since this carrier is not active in the Chicago area currently, KWOM will merely note its alarm. The competitive advantage obtained by the carrier in that instance would not exist if ALL ISPs were entitled to unbundled non-discriminatory access. Absent provision by the FCC, similar discrimination could – and most likely will – occur within the Chicago area.

As the internet services market matures, there will be a natural consolidation of providers and increased reliance upon innovative communications technology. Access to this technology will increasingly become the minimum qualifying criteria – without which no ISP can compete. At the same time, there will be a natural inclination of exchange carriers to favor larger providers. The large providers [many of whom will be exchange carriers too] will provide services only to the extent that economies of scale can be recognized. For these companies, customer service will largely be limited to electronic voicemail, email and internet support. The value of personal service will be minimized or externalized. The primary interest to incumbent exchange carriers will continue to be capacity utilization. As such, a single deal with a large provider could easily be the

equivalent to dozens of deals with ISPs the size of KWOM. Moreover, discriminating against small ISPs like KWOM will have little internal cost to the carrier. The use of telecommunications resources is unlikely to drop since the orphaned customers will be acquired by the larger, surviving provider. The cost will be borne by the public in the loss of premium personal services and delay (in some instances) of innovative offerings.

The only way to insure that no adverse consequences flow from loosening the restrictions on incumbent exchange carriers (and the entry of large information service providers), is to extend Section 251 unbundling rights to all ISPs. In this fashion, if discrimination is perceived, all ISPs will have an immediate recourse through "going direct." This cost-effective and self-correcting mechanism is vital if small ISPs are to survive and compete.

According to the most recent Boardwatch Directory of Internet Service Providers, "Quarterly Directory, Fall 1997", there were 4,354 Internet Service Providers in North America as of last fall. The typical ISP had an average of 3,019 subscribers and 18 employees, and charged an average charge of $19.78 per subscriber, per month. Directory at page 6. From this information its easy to see why it is imperative that ISPs be assured cost-effective self-help redress for access discrimination. With gross revenues of less than $60,000 per month, and high labor costs, ISPs are unable to engage in protracted administrative hearings or litigation. The data from Boardwatch is fully consistent with the experience of KWOM in its operations.

Furthermore, if there is no access or price discrimination (as the incumbents will likely argue), there will not be any visible change due to the extension of 251 unbundling rights. ISPs like KWOM do not want to become involved in telecommunications carrier business. If given a viable choice, companies like KWOM will continue to focus on their core business of providing personal services and quality internet access. As such, the extension of Section 251 rights will merely serve to guarantee the continued competitive market for internet services, preserve the offering of premium personal services, and encourage innovative introductions of technology to the public.

IV. Conclusion

For the foregoing reasons, KWOM Communications, Inc. urges the FCC to provide unbundled rights to all ISPs. These rights will expand and accelerate the availability of innovative technologies to the public. These rights will assure the continued provision of premium personal services by ISPs like KWOM. These rights will also counterbalance the risks of discrimination and anticompetitive conduct by carriers.

Respectfully submitted,

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D.C. Bar No. 42772

Certificate of Service

This is to certify that a copy of the forgoing comments was served via Federal Express on the 26th day of March, 1998 to the Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554; Janice Myles, FCC Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20036; International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

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