

The Commission should permit CLECs to use the portion of the loop obtained through sub-loop unbundling for provision of any telecommunications service. What services CLECs choose to provide should be based on market forces and demand for services not regulatory restrictions.

Sub-loop unbundling would also not involve space constraints. While it is possible that existing pedestals or remote terminals may not have sufficient space to accommodate all requests for unbundled access, KMC does not believe that this is likely, and, to the extent it occurs, the Commission should require incumbents to address any space shortage by constructing an adjacent remote terminal that effectively extends the available collocation space, or, allow the CLEC to do so. Electronic and wiring techniques that are virtually standard industry practices make this a practical and affordable solution to eliminating any space constraints at remote terminals.

#### IV. UNBUNDLING OBLIGATIONS

In the *Section 706 NPRM*, the Commission sought comment on the specific unbundling obligations it should impose on network elements used by incumbent LECs in the provision of **advanced services**.<sup>37</sup> KMC urges the Commission to consider what network features should be provided to CLECs for their provision of advanced services independent of what features the incumbent may provide in any provision of its own advanced services. It is unclear from the *Section 706 NPRM* whether the Commission contemplates that only features that the incumbent LEC or its affiliate uses must be provided as unbundled network elements. KMC urges the

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<sup>37</sup> *Section 706 NPRM* at para. 180.

Commission to define UNEs for advanced services regardless of whether the incumbent uses them. This approach will best achieve the pro-competitive goals of the 1996 Act.

Further, as a general matter, KMC does not believe that there will be any UNEs that could be considered proprietary under Section 251(d)(2)(a). At this point, most technology employed by incumbents is well understood and should not be accorded proprietary treatment. Further, in assessing what should be a UNE the Commission should give substantial weight to the statutory standard under Section 251(d)(2)(b) of whether requesting carriers' ability to provide services would be impaired if the desired elements were not provided.

KMC does not support the Commission's suggestion that it should grant Section 251(c) relief for incumbents that offer advanced services on an integrated basis. Apart from the fact that the Commission does not have authority under Section 10 to forbear from application of the key obligations of Section 251(c), this would directly conflict with the Commission's determinations in the Commission's recent *Section 706 Order* that incumbent LECs provision of advanced services, except through an affiliate, would be fully subject to Section 251.<sup>38</sup> Moreover, advanced services are most likely to provided to all Americans if incumbents are fully subject to unbundling obligations so that competing LECs may provide service. Absent unbundling obligations, incumbents can readily thwart provision of competitive services and would not have the threat of competition to encourage them to provide their own advanced services. It is the

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<sup>38</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 ("*Section 706 Order*").

prospect of competition, not deregulation, that would best spur incumbents to provide advanced services.

## V. RESALE OBLIGATIONS.

KMC agrees with the Commission's tentative conclusion that the resale obligations of Section 251(c)(4) would apply to any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers, regardless of whether the telecommunications service in question is classified as local exchange service or exchange access service.<sup>39</sup> However, KMC questions whether some DSL services could be appropriately classified as exchange access services. Section 3(16) of the act states that exchange access service "means the offering of access to telephone exchange services or facilities for the purpose of origination or termination of telephone toll services."<sup>40</sup> Thus, an advanced service could only be an exchange access service if it used for the purpose of completing telephone toll calls, but would not include services that are not associated with telephone service, such as most data and Internet services - the very services which are likely to be considered advanced.

## VI. LIMITED INTERLATA RELIEF

Given the express provision in Section 271(a) of the Act that a Bell Operating Company may not provide interLATA service except as provided in that section, the Commission may not grant requests for interLATA entry by means of redefining LATAs under Section 3(25). This would unlawfully subvert the express language and intent of Section 271. While the

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<sup>39</sup> *Section 706 NPRM* at para. 189.

<sup>40</sup> 47 U.S.C. Sec. 153(16).

Commission has exercised its authority under Section 3(25) to approve changes to LATA boundaries, it has only done so for limited reasons, such as to permit independent telephone companies to route traffic through a BOC LATA other than the one with which they are currently associated,<sup>41</sup> or to permit expanded local calling service between communities that lie on different sides of existing LATA boundaries,<sup>42</sup> not to grant requests for interLATA entry. Moreover, the Commission has recognized that it can authorize changes in LATA boundaries only where this would not reduce a BOC's incentive under Section 271 to open its market to competition.<sup>43</sup>

Moreover, based on information submitted by the BOCs in connection with earlier filed Section 706 petitions, there is no bandwidth crisis that would justify the proposed relief. Thus, for example, as KMC pointed out in its opposition to Bell Atlantic's West Virginia petition it appears that West Virginians enjoy a level of access to the Internet backbone comparable to most persons in the United States in that somewhere between approximately 78% to 43% of persons residing in the United States enjoy complete Internet access but do not happen to live in a city or metropolitan where an Internet node is located.<sup>44</sup> At the same time, allowing BOCs to modify

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<sup>41</sup> *Petitions for LATA Association Changes by Independent Telephone Companies*, CC Docket No. 96-158, Memorandum Opinion and Order, 12 FCC Rcd 10529 (1997).

<sup>42</sup> *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, CC Docket No. 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646 (1997).

<sup>43</sup> *Petitions for LATA Association Changes by Independent Telephone Companies*, supra, para. 10; *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, supra, para. 14.

<sup>44</sup> Opposition of KMC Telecom, Inc., filed August 10, 1998, File No. NSD-L-98-99. KMC derived this figure from calculations based on information submitted by USWest in its Section

LATA boundaries so that Internet nodes would be within a LATA would essentially eviscerate current LATA restrictions given that most persons residing in the United States do not happen to live in a city or metropolitan area where a node on the Internet backbone is located. Modifying LATA boundaries to encompass an Internet node would involve wholesale modifications to virtually all LATA boundaries throughout the country and abandonment of LATA boundaries as any meaningful restriction on BOCs provision of long distance services.

Moreover, it has not been shown that moving LATA boundaries could increase access to Internet nodes to a significant number of persons, since moving a boundary merely shifts areas between LATAs. In other words, since all BOC customers are already in an existing LATA, it is not rational to expect that moving boundaries could increase access to Internet nodes unless, of course, LATA boundaries are essentially abandoned as a restriction on BOCs provision of long distance services.

Finally, it is not necessary to grant such sweeping relief since other carriers are racing to meet the needs for higher speed Internet access where it is economically justified. There is no

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706 petition in CC Docket No. 98-26. See Petition of US West Communications, Inc. for relief from Barriers to Deployment of Advanced Telecommunications Service, filed February 25, 1998. In that petition, US West included a map which purported to show the cities in the United States in which major backbone providers offer DS3 connections. The total population of these cities is 58,563,128 or approximately 21.9% of the population of the United States of 267,368,000 persons. By this calculation, West Virginians have access to the Internet that is comparable to 78% of persons in the United States. Moreover, when the total population of any MSA is considered in cases where one of these cities is part of such an area, the total population of these areas with DS3 service is 153,912,328 or 57.5% of the United States population. Thus, even under this more expansive measure of areas that have may have ready access to DS3 service, West Virginians enjoy access comparable to approximately 43% of persons in the United States. These population figures were taken from the *State and Metropolitan Area Data Book 1997-1998*, U.S. Bureau of the Census (5th Edition) Washington, DC, 1998, pp,172-177.

rational basis to assume that non-BOC carriers will not meet market demand for higher speed Internet access. For these reasons, the Commission should not pursue the idea of moving LATA boundaries to increase access to Internet nodes.

## VII. CONCLUSION

For the foregoing reasons, KMC respectfully requests that the Commission not adopt its proposal to permit incumbent LECs to offer advanced telecommunications capabilities on an unregulated basis through a separate affiliate. In establishing a definition of incumbent LEC, Congress did not intend to create the loophole for application of the key obligations of Section 251(c) that the Commission is trying to create. This proposal also contains a significant risk that incumbent LECs would be able to harm competition by discriminating in favor of their advanced services affiliates.

KMC urges the Commission to adopt its proposed strengthened collocation and unbundling requirements. A vigorous enforcement and implementation of the fundamental market opening provisions of the 1996 Act is the best way for the Commission to encourage the provision of advanced telecommunications capabilities to all Americans.

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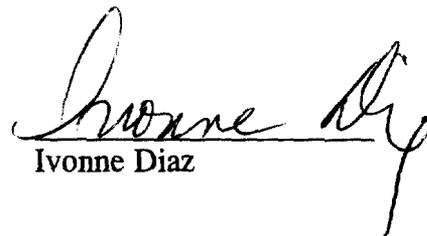
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