Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
The Establishment of Rules to Prohibit	)	
the Imposition of Unjust, Onerous	)	CC Docket No. 99-142
Termination Penalties on Customers	)	
Choosing to Partake of the Benefits of	)	
Local Exchange Competition	)	

OPPOSITION OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") hereby opposes the Petition for Declaratory Ruling filed by KMC Telecom, Inc. ("KMC") on April 26, 1999.[1]

More than three years after the adoption of the Telecommunications Act of 1996, KMC suddenly has decided that all existing term agreements found in incumbent local exchange carrier ("ILEC") state tariffs must be declared unlawful and suspended indefinitely in order to promote the competitive entry on the part of competitive local exchange carriers ("CLEC"). KMC's extraordinary request for blanket preemption of state tariffs is premised on the absurd notion that all termination liability provisions are the result of ILEC monopoly power and that customers would not voluntarily agree to such provisions. The Commission should reject KMC's Petition, which is merely KMC's self-serving attempt to gain an unfair competitive advantage by eliminating all existing term agreements between ILECs

[1] Public Notice, Pleading Cycle Established for Comments on KMC Telecom, Inc. Petition for Declaratory Ruling, DA 99-836, rel. May 4, 1999.

and their customers.

KMC's attempt to portray all termination liability provisions as anti-competitive ignores both the customer benefits of receiving additional payment options and their widespread use throughout the telecommunications industry. The fact is that term agreements are beneficial for both parties, particularly where the cost of providing service is high and the customer would like to reduce its monthly charges by spreading those costs out over an extended period of time. However, no carrier (whether ILEC or CLEC) would make available term agreements containing lower monthly charges if it were not allowed to recoup its costs in the event a customer discontinues service prior to the end of the term. Thus, grant of KMC's Petition effectively would limit ILEC customers to a month-to-month service option, thereby depriving those customers of the ability to select the term agreement that best suits their individual needs.

The existence of termination liability provisions in the marketplace is not a result of monopoly power, as KMC argues, but rather a reflection of an emerging competitive market in which customers have additional choices. Indeed, many of the intrastate services discussed in KMC's Petition have been classified as competitive within U S WEST's territory and either partially or entirely deregulated. KMC also fails to mention that termination liability provisions are commonly used by carriers in the highly competitive wireless industry, as well as by

CLECs competing with U S WEST in the market for intrastate services.[2] As the Commission itself recognized in the AT&T Reclassification Order, industry practices such as discount plans are evidence of a competitive marketplace.[3] There is no basis for singling out only those termination liability provisions found in ILEC state tariffs for disparate treatment.

Finally, KMC has not shown that preemption of state tariff provisions is warranted or lawful in this case. If KMC believes that a particular termination liability provision found in a state tariff does not serve a legitimate purpose and is not in line with standard industry practices, then the proper forum for its filing is with the appropriate state commission. There is no evidence that state commissions have abdicated their responsibility in regulating intrastate service or acted in a way that would justify KMC's extraordinary request for blanket preemption of state tariff provisions on a nationwide basis. Further, the Commission is ill-equipped to conduct the type of fact-intensive review of state tariffs that would be necessary to resolve every dispute regarding termination liability provisions. A much sounder approach is the one consistently used by the Commission in exercising its preemption authority under Section 253 of the Act -- if a state commission in a particular case really permits anti-competitive termination

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[2] KMC's claim that customers typically are unaware of termination liability provisions rings hollow given the widespread use of such provisions throughout the industry.

[3] In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd. 3271, 3305-06 ¶ 64.

liability provisions, the Commission can address the situation on its particular facts.

For these reasons, the Commission should reject KMC's Petition for Declaratory Ruling.

Respectfully submitted,

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June 3, 1999

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused 1) the foregoing **OPPOSITION OF U S WEST COMMUNICATIONS, INC.** to be filed electronically with the FCC by using its Electronic Comment Filing System and 2) a courtesy copy of the **OPPOSITION** to be served either via hand delivery or first class United States mail, postage pre-paid, upon the persons listed on the attached service list.

Richard Grozier
Richard Grozier

June 3, 1999

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