

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

**PETITION FOR RECONSIDERATION OF IOWA TELECOMMUNICATIONS
SERVICES, INC. (D/B/A IOWA TELECOM)**

By this Petition, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom (“Iowa Telecom”), pursuant to Section 1.429 of the Commission’s Rules, respectfully urges the Federal Communications Commission (“Commission”) to reconsider the portion of the *Order on Remand*¹ adopting certain revisions to Section 51.319(e) of the Commission’s rules.²

The Commission’s statutory mandate on remand was to determine to a more precise degree the extent to which “the failure [by an incumbent local exchange carrier (“ILEC”)] to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”³ In doing so, the Commission is grappling, in particular, with what the U.S. Court of Appeals for the D.C. Circuit observed in *USTA II* as the incongruity between the Commission’s previously-adopted impairment rules and the Commission’s “frank[] acknowledge[ment] that competitive

¹ Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, *Order on Remand*, FCC 04-290 (rel. Feb. 4, 2005)(“*Order on Remand*”).

² 47 C.F.R. § 319(e).

³ 47 U.S.C. § 251(d)(2)(B).

alternatives are available ‘in some locations.’”⁴ Iowa Telecom respectfully suggests the Commission may not fully appreciate the full range of dedicated interoffice transport facilities available to competitors in Iowa.

The Commission has chosen to conduct its impairment analysis for dedicated interoffice transport on a route-by-route basis. Rather than analyzing the entire spider web of potential routes, however, the Commission has appropriately concluded that if the competitive dedicated interoffice transport market is flourishing or is capable of flourishing at each end of a particular route, then, to the extent that a competitive local exchange carrier (“CLEC”) desires competitive dedicated interoffice transport between such wire centers, the competitive market will so provide. Iowa Telecom supports this reasoning as logically sound and administratively simple.

In a further conclusion, however, the Commission determined that the competitive health of the dedicated interoffice transport market in a particular wire center should be measured through two proxies based on its assumptions about two indicia of the likelihood of competitive entry: (1) the number of business lines in the wire center, which is representative of potential revenue in such wire center and therefore theoretically representative of the desirability of providing competitive transport to/from such market; and (2) the number of “fiber-based collocators” in that wire center, theoretically representative of the actual developed/developing presence of competitive dedicated interoffice transport providers.⁵ Under the newly-adopted rules, a sufficient demonstration regarding either indicia permits a wire center to be classified as

⁴ *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 574 (D.C. Cir. 2004) (*USTA II*), cert. denied, 125 S.Ct. 313, 316, 345 (2004).

⁵ *Order on Remand* at ¶¶ 93-124.

“Tier 1” or “Tier 2” and therefore one in which dedicated interoffice transport need not always be provided as a UNE.⁶

Clearly, the indicia adopted by the Commission are not necessary conditions for the presence or possible presence of a competitive dedicated interoffice transport market in a wire center. In adopting the disjunctive use of such indicia, the Commission openly admits that neither condition is actually necessary for the existence of competitive dedicated interoffice transport, but merely tends to indicate the presence of necessary conditions. For example, fiber-based collocation, itself, is not the be-all-end-all of a competitive dedicated interoffice transport provider’s ability to enter a market. CLECs providing their own loops/fiber to customers clearly have no need to interconnect with dedicated interoffice transport facilities connected via collocation in an ILEC’s central office.

Indeed, by the Commission’s own analysis, collocation by the dedicated interoffice transport provider is also unnecessary even when the CLEC is dependent on the ILEC’s unbundled loops because, as the Commission concluded in *Order on Remand*, entrance facilities are not bottleneck facilities and are easily reproducible.⁷ The Commission adopted the collocation test merely as a potentially sufficient condition – clearly, if several dedicated interoffice transport providers are collocated, competitive transport exists. Similarly, while a high number of business lines in a wire center would be helpful to entities seeking to provide competitive dedicated interoffice transport service using such wire center as an end point, business cases can be and have been made for entry in far smaller wire centers.

⁶ 47 C.F.R. § 319(e).

⁷ *Order on Remand* at ¶¶ 136-141.

The Commission should include in its definition of Tier 1 and Tier 2 wire centers a third disjunctive factor – the presence of at least four or three (respectively) competitive dedicated interoffice transport providers each with a point of presence anywhere in the wire center. As discussed above, collocation is not necessary for the presence of competitive dedicated interoffice transport. In fact, Iowa Telecom faces strong competition in the dedicated interoffice transport market in dozens of its wire centers, yet none remotely approaches the number of business lines, or number of collocated fiber transport competitors deemed necessary by the Commission.

According to the Commission’s newly-adopted rules, however, all Iowa Telecom wire centers would qualify only as Tier 3 wire centers. Iowa Telecom would remain required to provide transport and dark fiber between all potential wire center pairs within a Local Access and Transport Area (“LATA”).⁸ Admittedly, Tier 1 or Tier 2 classification for certain wire centers would provide Iowa Telecom with relief for only a limited number of discrete transport routes, but small carriers such as Iowa Telecom ought not be treated worse than large ILECs. The nature of the competitive transport business in Iowa, particularly given the number of large fiber optic networks traversing most of the state, will yield many more point-to-point routes on which Iowa Telecom rightly should not be expected to provide unbundled dedicated interoffice transport.

In paragraph 123 of *Order on Remand*, the Commission observed that instances of competitive deployment in Tier 3 wire centers (fewer than 24,000 business lines and also with fewer than three fiber-based collocators) are relatively rare. In making this observation, the

⁸ 47 C.F.R. §§ 319(e)(2)(ii)(A), 319(e)(2)(iii)(A).

Commission is dealing in unnecessary generalities. While this may be true in some states and perhaps even as a nationwide generalization, it is not true in Iowa. Although it has not collected the relevant data, Iowa Telecom believes that numerous instances of highly-competitive dedicated interoffice transport markets served by non-collocated competitive dedicated interoffice transport providers also exist in rural states adjoining Iowa and possibly throughout the Nation. The Commission should not ignore actual competitive conditions, particularly in light of the D.C. Circuit's mandate to consider actual deployment.

Examples of fiber-based interoffice transport competition abound in Iowa. The following list of competitors is illustrative, not complete:⁹

- Qwest fiber routes connect not only Qwest's exchanges but terminate in or pass through many independent ILEC exchanges and/or central offices. Even when Qwest's routes bypass independent ILEC central offices, Qwest often has a regeneration station in the exchange. Such points can serve as points of interconnection ("POIs").
- Iowa Network Services, Inc. ("INS") operates a statewide network that connects many independent ILEC offices.¹⁰ In addition, INS also leases capacity to Iowa Telecom and some CLECs.
- Traditional interexchange carriers, including AT&T, MCI, and Sprint, operate networks traversing the state. Each of these carriers operates multiple POIs in Iowa, including POIs in Iowa Telecom territory.
- New entrants including long haul networks (such as Fiberlink Communications Corp.) and regional or local networks traverse the state. These carriers pass through

⁹ In addition to the networks described herein, the Iowa Communications Network ("ICN"), a state-owned statewide fiber network operator, connects and serves K-12 schools, colleges, universities, state agencies, federal agencies, hospitals, libraries, and national guard locations in every county in Iowa – often the most desirable customers in small communities. In many communities, ICN does not connect to or collocate in the ILEC central office. See < <http://www.icn.state.ia.us/>>. Although current state law does not allow the ICN to provide its services to other public or private entities and prohibits the sale, lease, or other disposition of the ICN without prior authorization of a majority of each house of the Iowa legislature and approval by the governor, changes to that law have been proposed in recent legislative sessions and may be enacted in the future.

¹⁰ See < http://www.iowanetworkservices.com/about_map.asp>.

many Iowa Telecom exchanges. Some, such as McLeodUSA and Long Lines, already have POIs in Iowa Telecom exchanges; others could. Most of these do not collocate in Iowa Telecom offices. Long Lines has been particularly successful in connecting and providing support services for certain municipal-owned CLECs operating in some Iowa Telecom exchanges.

- CLECs have built some interoffice networks. In several cases, Iowa Telecom leases fiber from the CLEC operating in Iowa Telecom's exchanges to build out Iowa Telecom's own network.
- Cable television operators (for example, Mediacom, Cox, and many independent ILECs) have created their own regional distribution systems. Mediacom's telephony affiliate has teamed with Sprint to provide local and long distance services that completely avoid connections to or use of ILEC assets except joint trunk groups to exchange traffic. Mediacom recently received Iowa Utilities Board approval to offer local services in parts of 90 Iowa Telecom exchanges.
- Some electric power companies are building fiber networks with sufficient capacity to lease to the public.

In many, if not most, instances, the operators of the networks described above have no need to collocate in ILEC central offices and therefore have not done so.

Finally, the Commission also should consider some non-fiber broadband transmission systems as alternatives to ILEC provisioned interoffice transport. Most Commercial Mobile Radio Service ("CMRS") carriers, some CLECs, and some ISP providers still use microwave radio transmission systems to provide interoffice transport. For example, LTDS Corporation, a CLEC in southeastern Iowa, operates a DS-3 radio channel between an Iowa Telecom and a Qwest exchange. While DS-3 radio channels may not be a cutting-edge technology at the moment, such systems provide very effective competitive alternatives for CLECs.

Iowa Telecom does not maintain that each one of these carriers operates in each Iowa Telecom exchange. Rather, Iowa Telecom asserts three or four likely do operate in many Iowa Telecom exchanges. Importantly, however, few have any need to collocate in an Iowa Telecom

central office as, among other things, they do not use Iowa Telecom local loops. Instead, such providers directly serve high-value customers in Iowa Telecom's exchanges. The Commission should not exclude these competitor facilities in its analysis of dedicated interoffice transport competition.

Establishing a rule that requires classification of ILEC wire centers as Tier 1 or Tier 2 based on a demonstration of the presence of actual competitive dedicated interoffice transport providers (regardless of their collocated status) would not present significant administrative difficulties. In choosing not to publishing an appendix to the *Order on Remand* listing Tier 1 and Tier 2 wire centers throughout the country, the Commission demonstrated its expectation that states collect and analyze the relevant competitive data themselves in the context of arbitrations. Determining the actual existence of competitive dedicated interoffice transport providers is not a difficult task, and certainly is not any less objective than determining the number of fiber-based collocators. To the extent that the Commission has any doubts regarding this, it could place the burden of persuasion on an ILEC to demonstrate the presence of competitive dedicated interoffice transport providers with points of presence in the wire center. Requiring small and medium-sized ILECs to initiate and endure forbearance proceedings perhaps lasting up to twelve months in order to obtain relief to which they are clearly entitled, however, would be an unjust burden on carriers of such size.

For the reasons stated above, Iowa Telecom respectfully requests that the Commission reconsider the manner in which the Commission classifies ILEC exchanges as Tier 1, Tier 2, or Tier 3 by clarifying that a competing carrier may be counted if it serves a customer anywhere within the exchange rather than only if it is collocated in an ILEC central office.

Respectfully submitted,

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