

**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)	

IOWA TELECOM OPPOSITION TO PETITION FOR RECONSIDERATION

In response to the Public Notice in which the Federal Communications Commission (“Commission”) requested oppositions to Petitions for Clarification and Reconsideration of the Commission’s *Order on Remand* in WC Docket No. 04-313 and CC Docket No. 01-338 (“*Order on Remand*”)¹ filed on March 28, 2005, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom (“Iowa Telecom”) files this Opposition to Petition for Reconsideration.

This Opposition addresses a portion of the Petition for Reconsideration filed by Birch Telecom Inc.; BridgeCom International, Inc.; Broadview Networks; Eschelon Telecom, Inc.; NuVox Communications, Inc; SNIPLiNK, LLC; XO Communications, Inc.; and Xspedius Communications, Inc. (“Birch Telecom Petition”). Iowa Telecom opposes the Birch Telecom Petition insofar as the Birch Telecom Petition requests that the Commission reconsider its decision to use a disjunctive (“or”), rather than conjunctive (“and”), test to determine when a competitive local exchange carrier’s (“CLEC’s”) ability to provide services would be impaired without access to an incumbent local exchange carrier’s (“ILEC’s”) dedicated interoffice

¹ *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, 20 FCC Rcd 2533 (2005)(“*Order on Remand*”).

transport pursuant to Section 251(c)(3) of the Communications Act of 1934, as amended (“Act”).² Although this Opposition focuses exclusively on the dedicated interoffice transport matters discussed in the Birch Telecom Petition, the Commission should in no way interpret Iowa Telecom’s silence on other matters raised in the Birch Telecom Petition or in several of the other petitions to be endorsement of the requests contained therein.

In the *Order on Remand*, the Commission concluded that the test for whether a competitor is impaired without access to unbundled dedicated interoffice transport should be conducted on a route specific (wire-center-to-wire-center) basis by evaluating market conditions at each end of the route in question.³ To this end, the Commission adopted two disjunctive criteria for evaluating the market in a wire center. The first indicator is the number of “fiber-based collocators” in that wire center, which represents the actual developed or developing presence of competitive dedicated interoffice transport providers.⁴ The second indicator is the number of business lines in the wire center, representative of potential revenue in such wire center and therefore also representative of the desirability of providing competitive transport to/from such market.⁵ Under the newly-adopted rules, a sufficient demonstration regarding either indicia permits a wire center to be classified as “Tier 1” or “Tier 2” and therefore one in which dedicated interoffice transport need not always be provided as a UNE.⁶

² 47 U.S.C. § 251(c)(3).

³ *Order on Remand* at ¶¶ 79-85.

⁴ *Id.* at ¶¶ 93-124; 47 C.F.R. § 319(e)(3)(i), (ii).

⁵ *Id.*

⁶ 47 C.F.R. § 319(e).

Iowa Telecom explained in its own Petition for Reconsideration why the Commission's test for impairment with regard to dedicated interoffice transport 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 (“POP”) anywhere in the wire center. Iowa Telecom explained how the test for actual competitive entry is too narrow if it ignores non-collocated competitive dedicated interoffice transport competition. Iowa Telecom will discuss its petition in greater detail in its Reply Comments to the extent necessary.

The Commission's decision to establish a two-part disjunctive impairment test for dedicated interoffice transport is in contrast to the Commission's conclusion that a conjunctive test is appropriate with regard to high-capacity loops.⁷ Seizing on this contrast, Birch Telecom, *et al.*, request that the Commission increase regulation of dedicated interoffice transport to the same level as high-capacity loops, that is, dramatically narrow the potential for a non-impairment finding with respect to dedicated interoffice transport.⁸

Because Iowa Telecom's largest current wire center serves far fewer total lines than the threshold number of business lines in the newly-adopted rules, Iowa Telecom believes that no such line count test should be necessary when actual competitive dedicated interoffice transport can already be proven. Iowa Telecom leaves to others the discussion of whether a lesser competitive presence criteria is necessary in addition to the line count criteria.⁹ In this regard,

⁷ For a discussion of this, *see Order on Remand* at ¶ 168.

⁸ Birch Telecom Petition at 17-21.

⁹ Iowa Telecom notes, however, that competitive dedicated interoffice transport has developed between wire centers in Iowa that are significantly smaller (sometimes by two orders of magnitude) than what the FCC presumes is necessary to induce competition in its newly-adopted rules.

Iowa Telecom respectfully requests that the Commission deny the Birch Telecom Petition insofar as such petition requests that a wire center include a certain minimal number of business lines *in addition* to already being served by multiple competitive providers of dedicated interoffice transport.

After assuming that the competitive presence prong of the disjunctive test is met, the Birch Telecom Petition makes only one argument – “A high number of fiber collocators may only indicate that the wire center is close to rights of way or close to other wire centers. It does not say anything about the level of demand for transport to or from that office.”¹⁰ Birch Telecom, *et al.*, contrast this with the Commission’s conclusion with regard to high-capacity loops that a proxy-based test for non-impairment include *both* the presence of fiber-based collocators *and* relatively high line counts,¹¹ implying that the same logic should apply with respect to both potential unbundled network elements (“UNEs”).

Birch Telecom, *et al.*, fail to realize that existence of competitive fiber-based dedicated interoffice transport in a wire center is direct evidence of the lack of competitive barriers. No other measure is necessary. Further, whatever factors may have led to such presence of a competitive alternative (such as, for example, the convenience factors of rights-of-way access and proximity to other wire centers cited by Birch Telecom, *et al.*) probably serve to lessen barriers for even more competitors. Because the dedicated interoffice transport impairment test is specific to each pair of wire centers, there should be no false no-impairment results based on

¹⁰ Birch Telecom Petition at 20. The remainder of the Birch Telecom Petition’s discussion of the disjunctive test for unbundled dedicated interoffice transport impairment focuses exclusively on the supposed inadequacy of a test relying exclusively on wire center line counts.

¹¹ *Id.* at 18-19.

the collocation prong of the Commission's test even if different competitors served each wire center.¹² Further, as discussed in Iowa Telecom's Petition for Reconsideration, the FCC could improve its measure of competitiveness by including non-located fiber-based dedicated interoffice transport with associated POPs in the wire center as such transport is not even reliant on an ILEC's collocation facilities.

Whether or not the Commission had good reason to create a conjunctive impairment test with regard to high-capacity loops (requiring both the existence of an actual collocated competitive presence *and* significant revenue opportunity) is an argument that Iowa Telecom will leave to others. It is nonetheless clear that the Commission need only require a disjunctive test for dedicated interoffice transport. The existence of a competitive dedicated interoffice transport POP in a wire center, whether collocated or not collocated, is the ultimate proof of the viability of competitive dedicated interoffice transport in that market. A local competitor need only deploy entrance facilities to connect its customers or POP to the interexchange carrier's POP to access dedicated interoffice transport. Since the Commission has already concluded that competitors must provide their own entrance facilities,¹³ it is unimportant whether that entrance facility is associated with an Iowa Telecom wire center or another carrier's POP. Competitive providers of high-capacity loops, on the other hand, still have to deploy the loops, themselves, in addition to having a POP in the wire center.¹⁴ The Commission therefore logically required some further reason to believe that such competitive deployment would occur and reasonably

¹² This is not, of course, to say that the wire center size test cannot also serve as an independent basis for a finding of non-impairment. As discussed above, because Iowa Telecom serves no wire centers with such relatively high line counts, this criteria is irrelevant to Iowa Telecom, so long as it is only used disjunctively.

¹³ See 47 C.F.R. § 319(e)(2)(i).

¹⁴ See *Order on Remand* at ¶ 168.

chose a proxy for the revenue opportunity necessary to cost-justify competitive entry – minimal line counts. Iowa Telecom does not necessary agree or disagree with the line counts chosen by the Commission, or even the choice of line counts as an additional proxy. Instead, Iowa Telecom discusses this to illustrate the logic of creating different impairment tests with regard to two different types of facilities.

Therefore, for the reasons discussed above, Iowa Telecom respectfully requests that the Commission deny the Birch Telecom Petition insofar as the Birch Telecom Petition requests that the Commission reconsider requiring a disjunctive, rather than conjunctive, test for when the ability of a CLEC to provide the services that such CLEC seeks to offer would be impaired without access to an incumbent local exchange carrier's ("ILEC's") dedicated interoffice transport pursuant to Section 251(c)(3) of the Act.

Respectfully submitted,

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