

**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 REPLY TO OPPOSITIONS TO PETITION
FOR RECONSIDERATION**

Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom (“Iowa Telecom”) filed a Petition for Reconsideration of the Commission’s *Order on Remand* in the above-referenced docket¹ on March 28, 2005. In response to the Commission’s Public Notice published in the Federal Register on May 20, 2005,² and the Oppositions of Birch Telecom Inc., et al. (“Birch Telecom”),³ and MCI, Inc. (“MCI”), Iowa Telecom files its Reply to Oppositions.

I. BACKGROUND

In the *Order on Remand*, the Commission concluded that the test for whether a competitor is impaired without access to an incumbent local exchange carrier’s (“ILEC’s”) unbundled dedicated interoffice transport should be conducted on a route specific (wire-center-

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*”).

² Petitions for Reconsideration of Action in Rulemaking Proceedings, Report No. 2703, 70 F.R. 29313.

³ The following parties joined Birch Telecom in its Opposition: BridgeCom International, Inc.; Broadview Networks; Eschelon Telecom, Inc.; NuVox Communications, Inc; SNiPLiNK, LLC; XO Communications, Inc.; and Xspedius Communications, Inc.

to-wire-center) basis by evaluating market conditions at each end of the route in question.⁴ 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.⁵ 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.⁶ 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 an unbundled network element (“UNE”).⁷

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.

Birch Telecom and MCI filed Oppositions to Iowa Telecom’s Petition on June 6, 2005. BellSouth Corporation (“BellSouth”), Qwest Communications International Inc. (“Qwest”), SBC

⁴ *Order on Remand* at ¶¶ 79-85.

⁵ *Id.* at ¶¶ 93-124; 47 C.F.R. § 51.319(e)(3)(i), (ii).

⁶ *Id.*

⁷ 47 C.F.R. § 51.319(e).

Communications Inc. (“SBC”), and Verizon all made filings favorable to Iowa Telecom’s Petition.⁸

II. DISCUSSION

Together, the arguments of Birch, et al., and MCI against Iowa Telecom’s Petition focus on five general matters: (1) the supposed need for a conjunctive, as opposed to disjunctive, impairment test for dedicated interoffice transport; (2) claims regarding the relevance of collocated, as opposed to non-collocated, competition; (3) allegations that Iowa Telecom’s proposal is not, in fact, route specific; (4) the level of detail provided by Iowa Telecom regarding existing non-collocated competitive dedicated interoffice transport; and (5) hypothetical administrative difficulties pertaining to Iowa Telecom’s proposal. Below, Iowa Telecom discusses the unpersuasive nature of each of these arguments. Iowa Telecom also discusses suggestions made by BellSouth and Verizon.

A. A disjunctive impairment test is appropriate for dedicated interoffice transport

Contrary to the claims of Birch Telecom,⁹ a disjunctive impairment test is appropriate for dedicated interoffice transport. Many of the arguments made in the Birch Telecom and MCI Oppositions are premised on the assumption that a minimum number of business lines in a wire center should be a *necessary* condition in finding that there is no impairment. Iowa Telecom discussed at length in its Opposition to the Petition for Reconsideration filed by Birch Telecom, et al., why the relative revenue business opportunity presented by a wire center should be a moot

⁸ Iowa Telecom welcomes the modifications to its proposal suggested by BellSouth and Verizon, which are discussed below.

⁹ Birch Telecom, et al., Petition, Birch Telecom Opposition at 2-6.

consideration if actual competitive presence in the wire center has been proven by collocated or non-collocated competitive dedicated interoffice transport points of presence (“POPs”) in the wire center. Iowa Telecom will not belabor this point in its Reply.

B. Collocation is not necessary to prove the existence of a robust competitive dedicated interoffice transport market.

MCI’s assertion that Collocation is necessary to demonstrate the existence of a robust competitive dedicated interoffice transport market¹⁰ is incorrect. The operational happenstance of collocation is ultimately unimportant to a CLEC’s access to competitive dedicated interoffice transport in a particular wire center. The facilities needed to interconnect such competitive dedicated interoffice transport networks to ILEC switches are widely available to such competitive providers and can be easily obtained. The Commission observed this in the *Triennial Review Order* in choosing to remove entrance facilities from the definition of the dedicated interoffice transport UNE by noting that competitive carriers are likely to self-provision entrance facilities¹¹ and that, if necessary, ILEC interconnection facilities would be available at cost-based rates pursuant to Section 251(c)(2).¹² Thus, to the extent that interconnection between an ILEC switch and a competitive dedicated transport provider is operationally necessary, such interconnection is easily obtainable and not subject to any dedicated interoffice transport-related impairment analysis.

¹⁰ MCI Opposition at 18.

¹¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 367 (2003) (“*Triennial Review Order*”)(unrelated subsequent history omitted).

¹² TRO, 18 FCC Rcd at ¶ 366.

The claim that competitive dedicated interoffice transport might not be collocated at a switch from which a CLEC may be leasing unbundled loops¹³ may be true, but is irrelevant. First, as discussed above, to the extent that such CLECs require interconnection with competitive dedicated interoffice transport providers, facilities are available at competitive rates to achieve such interconnection. Second, not all CLECs leasing unbundled loops do, in fact, collocate to do so. Many, including several CLECs in Iowa Telecom's territory, acquire office space close to Iowa Telecom's central offices – typically across an alley – and place a copper tie cable between the two offices. It is also worth noting that many CLECs, at least in Iowa Telecom's territory, do not lease Iowa Telecom loops.¹⁴

C. Iowa Telecom's proposal conforms with the commission's route-specific approach regarding dedicated interoffice transport.

Birch Telecom attempts to claim that Iowa Telecom's proposed additional disjunctive impairment test would not be route-specific. As discussed above, the Commission's impairment test for dedicated interoffice transport is route specific and entails a classification of the wire center on each end of a potential transport route. Iowa Telecom's proposal concerns exactly that classification.

To make its assertion regarding whether Iowa Telecom's proposal is, in fact, route-specific, Birch Telecom assumes the validity of their primary claim concerning Iowa Telecom's Petition – that collocation is necessary for competitive dedicated interoffice transport to be a

¹³ MCI Opposition at 18.

¹⁴ Iowa Telecom has interconnection agreements with more than 30 CLECs and 20 commercial mobile radio service providers. Some of the CLECs are primarily resellers, some lease Iowa Telecom's loops, many have constructed entire telecommunications networks of their own when they deployed cable television. This latter group typically only requires an agreement for the purpose of exchanging traffic.

relevant competitive alternative.¹⁵ As discussed above, Iowa Telecom proposes that location of competitive dedicated interoffice transport POPs within a wire center should be an independent basis on which wire centers could be categorized as Tier 1 or Tier 2. Thus, Iowa Telecom's proposal does, in fact, define with great precision, relevant geographic competitive deployment requirements. For Birch Telecom's argument to have any relevance or validity, one must assume the invalid premise that a competitive dedicated interoffice transport provider must be collocated in an ILEC central office within the wire center for such competitive provider to be a competitive alternative in that wire center. This argument, as already discussed, should be rejected.

D. Now is not the time nor is this proceeding the place to debate actual details of competitive interoffice deployment.

Faced with the reasonableness of Iowa Telecom's proposal, Birch Telecom and MCI resort to quibbling about the details of what Iowa Telecom offered as a summary presentation of competitive dedicated interoffice transport in Iowa.¹⁶ Iowa Telecom is not asking the Commission to make a nationwide non-impairment finding regarding dedicated interoffice transport. Instead, Iowa Telecom is merely requesting that it be given the opportunity to present the necessary data in the context of arbitrations because, under the newly-adopted rules, such data that would otherwise not be considered. Iowa Telecom presents in its Petition, its Opposition, and this Reply why the Commission should reconsider its impairment test for dedicated interoffice transport to permit the presentation of such information.

Iowa Telecom's purpose in its Petition of summarizing only categories of competitive dedicated interoffice transport providers in Iowa was simply to demonstrate that the

¹⁵ See Birch Opposition at 6-8.

¹⁶ Birch Opposition at 6-8, MCI Opposition at 17-19.

reconsideration requested by Iowa Telecom's Petition would not merely be an academic exercise. Indeed, the Iowa Utilities Board long ago deregulated ILEC intrastate special access statewide because it was subject to "effective competition."¹⁷ Further, the Iowa Utilities Board recognized last December that in 14 Iowa Telecom exchanges, competitive entry not dependent on any Iowa Telecom UNEs, including dedicated interoffice transport, was sufficient to completely deregulate retail local exchange service in such exchanges.¹⁸ MCI's inappropriate demands that Iowa Telecom must provide detailed competitive data to the Commission at this time merely in order to create the right to present such information in the context of arbitrations in the future ignores the relief that Iowa Telecom requests.

E. The potential administrative difficulties raised by MCI are surmountable and do not serve as valid reasons to reject Iowa Telecom's proposal.

The sole potentially valid point made by either Birch Telecom or MCI is that perhaps certain entities that may otherwise appear to have deployed competitive dedicated interoffice transport do not have sufficient capacity for such transport to be used by other CLECs.¹⁹ This argument ultimately ties to MCI's claims regarding supposed administrative difficulties of Iowa Telecom's proposed test – claims that ILECs do not possess lists of non-collocated dedicated interoffice transport providers and CLECs do not have data to dispute ILEC data. But, Birch and MCI miss the central point. The simple existence of three or four providers of dedicated

¹⁷ *Deregulation of Competitive IntraLATA Interexchange Services; InterLATA and IntraLATA ISDN, Operator Services, and Directory Assistance Services; and Voice Messaging Service*, "Order Finding Certain Services Subject to Effective Competition and Other Services Not Subject to Effective Competition," Docket No. INU-95-3 (Iowa Utils. Bd. May 20, 1996). The Iowa Utilities Board had deregulated high-capacity intrastate special access service seven years earlier in Iowa Utilities Board Docket No. INU-88-3.

¹⁸ *Deregulation of Local Exchange Services in Competitive Markets*, "Final Decision and Order," Docket No. INU-04-1 (Iowa Utils. Bd. Dec. 23, 2004).

¹⁹ MCI Opposition at 18-19.

interoffice transport in addition to the ILEC serving any particular wire center, regardless of spare capacity, demonstrates the viability of self-provisioned or competitively-provisioned dedicated interoffice transport. This is the underlying condition for which the Commission's rules attempt to test.

Further, as MCI is well aware, Section 51.319 of the Commission's rules only applies to arbitrations – carriers are generally free to negotiate the provision of UNEs apart from (and in contradiction to) the Commission's UNE rules.²⁰ To the extent that CLECs desire information concerning the basis for an ILEC's refusal to provide unbundled dedicated interoffice transport between certain wire centers, such ILECs would be bound by their duty to negotiate in good faith to provide such information.

If the matter arose at arbitration, the ILEC would have the burden of coming forward with evidence that the termini of certain transport routes are located in Tier 1 or Tier 2 wire centers. Thus, the supposed lack of information available to an ILEC is not a matter of concern to the Commission, state commissions, or CLECs. Solutions can be found regarding the verification of ILEC claims regarding non-located POPs or the available capacity of certain competitive dedicated interoffice transport networks. For example, larger rural ILECs, such as Iowa Telecom, could be permitted or encouraged to develop tentative statewide lists of Tier 1 and Tier 2 wire centers, subject to objection. Also, to the extent that a state commission is considering these issues, most state commissions are familiar with facilities deployment in their states and are fully capable of independently examining ILEC claims. What is important is that

²⁰ See 47 C.F.R. § 51.3.

the ILEC would be bearing the risk of non-persuasion. These minor potential administrative difficulties are not an excuse for ignoring actual competition.

F. Iowa Telecom welcomes the suggestions of BellSouth and Verizon regarding its proposal.

Both BellSouth and Verizon make welcomed suggestions regarding Iowa Telecom's proposal. BellSouth observes that there may be impermissible delegation issues involved with leaving the implementation of Iowa Telecom's suggested further disjunctive element of the dedicated interoffice transport UNE impairment test to state commissions.²¹ While Iowa Telecom does not seek to offer an opinion regarding the legality of such delegation at this time, it seeks to make clear that it would not object to any modification to its proposal that the Commission deems necessary to avoid the delegation concerns raised in *USTA II*.²² Verizon suggests that the Commission should infer that a POP exists in a wire center whenever a competitor has deployed its own fiber network in that wire center.²³ Iowa Telecom would find establishment of such a presumption helpful.

III. CONCLUSION

Iowa Telecom has proposed a common-sense alteration of the Commission's impairment test for unbundled dedicated interoffice transport and submits that to ignore full facilities bypass competition in rural America is neither logical nor sound public policy. Birch Telecom and MCI

²¹ BellSouth Consolidated Response at 14-15.

²² *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA I*"), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004).

²³ Verizon Response at 24-25.

have presented no persuasive reason why Iowa Telecom's Petition should be rejected. Iowa Telecom therefore respectfully requests that the Commission grant Iowa Telecom's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of June 2005, I caused copies of the foregoing Reply to the Responses/Oppositions to Petition for Reconsideration of the Commission's *Triennial Review Order on Remand* to be served on the following parties by U.S. Mail.

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