

incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, *preclude* a requesting carrier from providing the services it seeks to offer.

14. *"At a Minimum"*. Section 251(d)(2) provides that "the Commission shall consider, *at a minimum*, whether * * * the failure 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." While this phrase permits the Commission to take factors other than "necessary" and "impair" into account in making the unbundling determination, the Commission applies "at a minimum" with restraint. In this Order, the Commission has not required the unbundling of any network element in the absence of impairment. But it has used this authority to inform its consideration of unbundling in contexts where some level of impairment may exist, but unbundling appeared likely to undermine important goals of the 1996 Act, such as in the analyses of fiber-to-the-home and hybrid loops.

15. *Role of the States*. The 1996 Act—specifically sections 251(d)(3) and 252(e)(3)—preserves the states' authority to establish unbundling regulations pursuant to state law as long as the exercise of state authority does not conflict with the Act and its purposes or substantially prevent the Commission's implementation. In addition, sections 261(b) and (c) generally preserve state authority to take action pursuant to state law, provided that such action is consistent with the Act and the federal framework. The Communications Act assigns the Commission the responsibility for establishing a framework to implement the unbundling requirements of section 251(d)(2). In this Order, the Commission creates rules for UNEs based on the impairment standard and marketplace developments over the past three years. The Commission recognizes that competition has evolved at a different pace in different geographic markets and for different market segments. Thus, to ensure that the proper degree of unbundling occurs, the Commission relies, in certain instances when such analysis is necessary, on market-by-market fact-finding determinations made by the states.

16. While the Commission delegates to the states a role in the implementation of the federal unbundling requirements for certain network elements that require this more

granular approach, the Commission makes clear that any action taken by the states pursuant to this delegated authority must be in conformance with the Act and the regulations set forth herein. The Commission also finds that the 1996 Act preserved the states' authority to prescribe access obligations pursuant to state law in section 251(d)(3), but only to the extent that state laws or regulations do not conflict with or frustrate the Act and its purposes or substantially prevent the federal implementation regime.

17. If a state commission fails to perform the granular inquiry this Commission delegates to it, any aggrieved party may petition this Commission to step into the state's role. Any carrier seeking Commission review of a state commission's failure to act shall file a petition with this Commission that explains with specificity the bases for the petition and information that supports the claim that the state has failed to act. The Commission will issue a public notice seeking comment on the petition and rule on the petition within ninety days from this public notice. If the Commission agrees that the state has failed to act, it will assume responsibility for the proceeding and make any findings in accordance with the rules set forth herein. These findings will be made nine months from the time the Commission has assumed responsibility for the proceeding.

18. Parties that believe that a particular state unbundling obligation (imposed pursuant to state law) is inconsistent with the limits of section 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission. If a decision pursuant to state law were to require the unbundling of a network element for which the Commission has either found no impairment—and thus has found that unbundling that element would conflict with the limits in section 251(d)(2)—or otherwise declined to require unbundling on a national basis, it is unlikely that such decision would fail to conflict with, and thus would "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(C).

19. *Mass Market Loops*. The Commission finds that requesting carriers are impaired on a national basis without unbundled access to an incumbent LEC's local loops used to provide narrowband services to the mass market. The Commission thus requires that incumbent LECs provide unbundled access to the complete transmission path comprised of a copper local loop between the central

office and the customer's premises, including all intermediate devices (*e.g.*, repeaters, load coils) used to establish the transmission path. This network element includes all local loops comprised of copper cable, whether in active service or deployed as spares. Incumbent LECs also must provide the requesting carriers with nondiscriminatory access to the same detailed loop information that is available to the incumbent LEC in the same time intervals it is provided to the incumbent LEC's retail operations.

20. The Commission reaffirms the existing rules that require incumbent LECs to permit competing carriers to engage in line splitting where a competing carrier purchases the whole loop and provides its own splitter. For purposes of clarity and regulatory certainty, however, the Commission also adopts line splitting-specific rules, including the requirement that incumbent LECs modify their OSS to facilitate line splitting.

21. The Commission requires incumbent LECs to provide unbundled access to their copper subloops, *i.e.*, the distribution plant consisting of the copper transmission facility between a remote terminal and the customer's premises, including inside wire. To facilitate competitive LEC access to the copper subloop UNE, the Commission requires incumbent LECs to provide, upon a site-specific request, access to the copper subloop at a splice near their remote terminals. Unlike the Commission's previous subloop unbundling rules, the Commission does not require incumbent LECs to provide unbundled access to their feeder loop plant as stand-alone UNEs. The Commission expects, however, that incumbent LECs will develop wholesale service offerings for access to their fiber feeder, which would be subject to sections 201 and 202 of the Act.

22. The Commission finds that unbundled access to conditioned, stand-alone copper loops is sufficient to overcome impairment for the provision of broadband services. Consequently, the Commission finds that, subject to the grandfather provision and transition period, incumbent LECs do not have to unbundle the high-frequency portion of the local loop (HFPL) for requesting telecommunications carriers.

23. The Commission adopts an interim grandfathering rule to help alleviate the impact of the elimination of the HFPL UNE on competitive LECs and end user customers. Until the next biennial review, the Commission grandfathers all existing line sharing arrangements unless the respective competitive LEC discontinues providing