

xDSL service to the particular end user customer. During this interim period, the Commission directs incumbent LECs to charge the same price for access to the HFPL for those grandfathered customers as the incumbent LECs charged prior to the effective date of this Order.

24. The Commission also adopts a three-year transition period for new line sharing arrangements of requesting carriers. During the first year, which begins on the effective date of this Order, competitive LECs may obtain new line sharing customers using the HFPL at recurring charge equal to 25 percent of the state-approved rates or the agreed-upon rates in existing interconnection agreements for stand-alone copper loops for that location. During the second year, the recurring charge for access to the HFPL for customers acquired after the effective date of this Order will increase to 50 percent of the state-approved rate or the agreed-upon rate in existing interconnection agreements for a stand-alone copper loop for that location. In the last year of the transition period, the recurring charge for access to the HFPL for those customers obtained after the effective date of this Order will increase to 75 percent of the state-approved rate or the agreed-upon rate for a stand-alone loop for that location. After the transition period, any new customer must be served through a line splitting arrangement, through use of a stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing. If line sharing obligations are imposed by a state law decision after the effective date of this Order, any party that believes such decision is inconsistent with the limits of sections 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission.

25. In addition, incumbent LECs are only required to provide access to the HFPL if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the loop over which the requesting carriers seeks access to provide ADSL service. In the event that the customer ceases purchasing voice service from the incumbent LEC, either the new voice provider or the xDSL provider, or both, must purchase the full stand-alone loop to continue providing xDSL service. Incumbent LECs may also maintain control over the loop and splitter equipment and functions.

26. The Commission concludes that the level of impairment without access to fiber to the home (FTTH) loops varies depending on whether such loops are

new loops or replacements of a pre-existing copper loops. The Commission does not require incumbent LECs to provide unbundled access to new FTTH loops for either narrowband or broadband services. Regarding "overbuild" deployment in which an incumbent LEC constructs fiber transmission facilities parallel to or in replacement of its existing copper plant, the Commission must ensure continued access to an unbundled transmission path suitable for providing narrowband services to customers served by FTTH loops. In this situation, incumbent LECs have the option to either (1) keep the existing copper loop connected to a particular customer location after deploying FTTH; or (2) provide unbundled access to a 64 kbps transmission path over its FTTH loop. Incumbent LECs do not have to offer unbundled access to overbuilt fiber loops for competing carriers to provide broadband services.

27. The Commission finds that a blanket prohibition on the ability of incumbent LECs to retire any copper loops or subloops they have replaced with FTTH loops is unnecessary at this time because existing rules, with minor modifications, serve as adequate safeguards. Because the retirement of copper loop plant is a network modification that affects the ability of competitive LECs to provide service, the Commission clarifies that incumbent LECs must provide notice of such retirement in accordance with our rules. The Commission revises its network modification rules with respect to the retirement of copper loops to allow parties to file objections to the incumbent LEC's notice of such retirement on the basis that competitors will be denied access to the loop facilities required under our rules. This process does not preempt the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure that such retirement complies with any applicable state requirements.

28. In making our unbundling determination for hybrid loops, the Commission considers both impairment and, through our section 251(d)(2) "at a minimum" authority, additional factors. The Commission declines to require incumbent LECs to unbundle the next-generation network, packetized capabilities of their hybrid loops to enable requesting carriers to provide broadband services to the mass market. The Commission concludes that applying section 251(c) unbundling obligations to these next-generation network elements would blunt the deployment of advanced

telecommunications infrastructure in direct opposition to the express statutory goals authorized in section 706 of the Telecommunications Act of 1996. Further, a primary benefit of unbundling hybrid loops—to spur competitive deployment of broadband services to the mass market—appears to be obviated to some degree by the existence of cable broadband service competitors, which have a leading position in the marketplace. The Commission thus does not require incumbent LECs to unbundle any transmission path over a fiber transmission facility between the central office and the customer's premises (including fiber feeder plant) that is used to transmit packetized information. Moreover, the Commission does not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities to the mass market.

29. The Commission requires incumbent LECs to provide unbundled access to the entire non-packetized transmission path capable of voice-grade service between the central office and customer's premises. This unbundling obligation for narrowband services is limited to the TDM-based features, functions, and capabilities of these hybrid loops. Incumbent LECs may elect, instead, to provide homerun copper loops rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC has not removed such loop facilities. The Commission further requires incumbent LECs to provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems.

30. The Commission retains competitive LECs' existing right to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service. Incumbent LECs remain obligated to comply with the nondiscrimination requirements of section 251(c)(3) in their provision of loops to requesting carriers, including stand-alone spare copper loops, copper subloops, and the features, functions, and capabilities for TDM-based services over their hybrid loops. The Commission prohibits incumbent LECs from engineering the transmission capabilities of their loops in a way that would disrupt or degrade the local loop UNEs (either hybrid loops or stand-alone copper loops) provided to competitive LECs.