

31. *Enterprise Market Loops.* The Commission concludes that different economic characteristics affect alternative loop deployment according to whether the loop facility is dark fiber or "lit" fiber, as well as the loop capacity level. The Commission finds that incumbent LECs are no longer required to unbundle OCn loops, nationwide. Incumbent LECs must continue to offer, on a nationwide basis, unbundled access to dark fiber loops, DS3 loops (limited to two DS3 loops per requesting carrier per customer location) and DS1 loops, except at specified customer locations where state commissions have found no impairment based on federally-defined triggers within nine months of the effective date of this Order.

32. Specifically, a state commission must determine that unbundling is no longer required at a specific customer location for dark fiber or DS3 loops when two or more unaffiliated competitive LECs have self-provisioned their own transmission facilities at the same loop capacity level to that customer location. A state commission must determine that unbundling is no longer required at a specific customer location for DS3 loops or DS1 loops when two or more unaffiliated competitive providers offer wholesale loops at the same capacity level to competitive LECs at that customer location. State commissions have a continuing responsibility to conduct periodic granular reviews of impairment, which must be completed within six months of a petition to initiate each subsequent review.

33. *Subloops for Multiunit Premises Access.* The Commission concludes that competitive carriers are impaired on a nationwide basis without access to unbundled subloops used to access customers in multiunit premises. Based on evidence in the record, the barriers faced by requesting carriers in accessing customers in multiunit premises are not unique to customers typically associated with the enterprise market residing in such premises but extend to all customers residing therein, including residential or other tenants typically associated with the mass market. Similarly, impairment is also not limited by the type or capacity of the loop the requesting carrier will provide. The Commission finds that incumbent LECs must offer unbundled access to subloops necessary to access wiring at or near multiunit customer premises, including the Inside Wire Subloop, *i.e.*, all incumbent LEC loop plant between the minimum point of entry (MPOE) at a multiunit premise and the point of demarcation, regardless of the capacity

level or type of loop the requesting carrier will provision to its customer. Unbundled access must be provided at any technically feasible accessible terminal at or near the multiunit premise, including but not limited to, a pole or pedestal, a network interface device (NID), the MPOE, the single point of interconnection (SPOI) or a feeder distribution interface. Upon notification by a requesting carrier that interconnection at a multiunit premise is required through a SPOI, an incumbent LEC is required to provide a SPOI at that multiunit premise if the incumbent LEC owns, controls or leases the wiring at such premise. A requesting carrier accessing a subloop on the incumbent LEC's network side of the NID obtains the NID functionality as part of that subloop.

34. *Network Interface Device (NID).* The Commission concludes that the NID must remain available as a stand-alone unbundled network element as the means to enable a competitive LEC to connect its loop to customer premise inside wiring. The NID is the gateway to the consumer and thus a key element to local competition. The record shows that the NID may often be the only means through which a competitive LEC can provide facilities-based service to customers, particularly those located in multiunit premises. The NID is defined as any means of interconnecting the incumbent LEC's loop distribution plant to wiring at a customer premises location. Incumbent LECs must offer unbundled access to the NID on a stand alone basis to carriers requesting only stand-alone NID access. An incumbent LEC shall permit a requesting carrier to connect its loop facilities through the incumbent LEC's NID.

35. *Dedicated Transport.* Pursuant to the approach of the *NPRM*, the Commission adopts in this Order a more granular unbundling analysis for transport facilities. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 67 FR 1947 (2002) (proposed Jan. 15, 2002). As an initial matter, the Commission limits its definition of the dedicated transport network element to only those transmission facilities connecting incumbent LEC switches or wire centers as this provides a reasonable interpretation of an incumbent LEC's unbundling obligations. The Commission makes findings regarding impairment by evaluating the attributes of each capacity of transport and the effect of barriers to entry on each. It believes that its analysis of transport will create market certainty and provide incentives for competitive LECs to deploy and utilize alternate facilities.

Specifically, based on the evidence in the record, the Commission makes the following determinations. First, due to the ability to self-deploy or utilize unbundled dark fiber or multiple unbundled DS3 circuits, the Commission finds on a national level that requesting carriers are not impaired without access to unbundled OCn transport facilities. Second, due to barriers to entry, including high sunk costs, and the general lack of alternatives in most areas, it finds on a national level that requesting carriers are impaired without access to unbundled dark fiber, DS3, and DS1 transport facilities. However, the record indicates that competitive dark fiber, DS3, and DS1 transport facilities are available on a wholesale basis in some areas, and that competing carriers have deployed their own transport networks in some areas. Because the record is not sufficiently detailed concerning exactly where these facilities have been deployed, and because the nature of transport facilities requires a highly granular impairment analysis, the Commission establishes specific triggers for states to apply in conducting such an analysis. It establishes two ways for states to identify where requesting carriers are not impaired without unbundled transport: (1) By identifying specific point-to-point routes where carriers have the ability to use two or more alternatives to the incumbent's network, or (2) by identifying specific point-to-point routes where three or more competing carriers have self-deployed transport facilities. The Commission delegates to state regulators the authority to make findings of fact within the scope of these triggers to identify on a more granular scale where carriers are not impaired without access to incumbent LEC unbundled transport. In addition to allowing a more precise finding of impairment, the Commission's analysis provides a roadmap for deregulation where regulation does not serve the goals of the Act.

36. *Local Circuit Switching.* The Commission finds that, on the national level, competitive LECs are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers. DS1 enterprise customers are served using DS1 and above capacity facilities, or served by a sufficient number of DS0 lines that state commissions have determined they could be served using DS1 and above capacity facilities. The record reveals widespread switch deployment by competing carriers to serve the DS1 enterprise market and