

The Commission also expects that requesting carriers will maintain the appropriate documentation to support their certifications.

62. *Modification of Existing Network.* The Commission concludes that incumbent LECs must make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed, meaning that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers. Routine modifications, however, do not include the construction of new wires for a requesting carrier. The Commission finds that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include rearrangement or splicing of cable, and deploying a new multiplexer or reconfiguring an existing multiplexer. The Commission also concludes that incumbent LECs must provide access, on an unbundled basis, to xDSL-capable stand-alone copper loops because competitive LECs are impaired without such loops. Such access may require incumbent LECs to condition the local loop for the provision of xDSL-capable services by removing bridge taps and similar devices as part of this obligation. The Commission concludes that incumbent LECs are not obligated to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates. However, the Commission also clarifies that an incumbent LEC's unbundling obligation includes all deployed transmission facilities in its network, unless specifically exempted in the Order. To ensure that no incumbent LEC is obligated to build out facilities at TELRIC pricing, the Commission clarifies that the tariffed termination liabilities for special construction apply to the conversion of special access circuits built to customer specification.

63. *Section 271 Issues.* The Commission concludes that BOCs have an independent obligation, under section 271(c)(2)(B), to provide access to each network element on section 271's "competitive checklist" even where that element is no longer required to be unbundled under section 251(c)(3). This conclusion follows from the plain language and structure of section 271(c)(2)(B) and is a reasonable interpretation of the Act. Sections 251, 252 and 271 do not establish standards for the rates, terms and conditions of offerings pursuant to section 271(c)(2)(B) alone. Rather, the offering of such network elements is governed

by the just, reasonable and nondiscriminatory rate standards of sections 201 and 202. The Commission further concludes that following a grant of section 271 authorization, the BOC must continue to comply with any conditions required for approval, subject to changes in the law. It would be inconsistent with public policy to impose different—and potentially out-of-date or vacated—rules on BOCs based solely on the date of section 271 entry.

64. *Clarification of TELRIC Rules.* The Order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the Order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The Order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation. In addition to these clarifications, the Order notes that the Commission plans to open a proceeding to consider issues related to its TELRIC pricing rules.

65. *Fresh Look.* The Commission retains the determination made in the *UNE Remand Order* that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a special access circuit to a UNE. Although "fresh look" has occurred in the past, this rare exercise of Commission discretion is not appropriate here because it would be unfair to both incumbent LECs and other competitors, disruptive to the market place, and ultimately inconsistent with the public interest.

66. *Transition Period.* The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of our rules.

67. *Periodic Review of National Unbundling Rules.* The Commission will evaluate these rules consistent with the biennial review mechanism

established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

68. *Duty to Negotiate in Good Faith.* The Commission amends its duty-to-negotiate rule 51.301(c)(8)(ii) to make the rule conform to the text of the *Local Competition Order*.

Final Regulatory Flexibility Analysis

69. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the **Federal Register** summary of the *NPRM*. The Commission sought written public comments on the proposals in the *NPRM*, including comments on the IRFA. Comments addressed the proposals contained in the *NPRM*, as well as the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) addresses comments on the IRFA and conforms to the RFA.

Need for, and Objectives of, the Rules

70. This Order fulfills the commitment the Commission undertook in its 1999 *UNE Remand Order* to reexamine, in three years, the list of network elements that incumbent LECs must offer to competitors on an unbundled basis, and responds to several significant judicial rulings that have been issued since the Commission last conducted a comprehensive review of its unbundling rules. More specifically, this Order refines the "impair" standard set forth in section 251(d)(2) of the Act, and applies the revised standard to an array of "transmission" and "intelligence" network elements. The revised "impair" standard is designed to reflect both the experience of the local service market during the seven years since the Act's market-opening provisions took effect and the legal guidance mentioned above. Applying this standard, which pays special attention to the requesting carrier's ability to self-provision the element or to obtain it from a source other than the incumbent LEC, this Order adopts a list of network elements that must be unbundled and sets forth the particular circumstances in which unbundling will be required. The approach adopted is substantially more granular than our earlier formulations of the "impair" standard, accounting for considerations of customer class, geography, and service. This Order also reaffirms a state commission's authority to establish unbundling requirements, as long as the unbundling obligations are consistent with the requirements of section 251(d)(3) and do not