

administratively feasible nor required by the courts. The Commission considered the differing needs of three classes of telecommunications customers: mass market customers (*i.e.*, residential customers and sometimes very small business customers), small and medium enterprise customers, and large enterprise customers. Mass market customers typically generate lower revenue and tighter profit margins than the other classes and therefore require service providers to minimize costs. Small and medium business customers typically are willing to pay higher prices but are more sensitive to reliability and quality of service. Large enterprise customers tend to demand extensive and sophisticated service packages, and reliability and quality of service are essential to these customers.

123. In addition, because requiring unbundling in the absence of impairment imposes unnecessary costs—including for small or rural incumbent LECs—we considered whether impairment varies geographically throughout the country. The Commission makes unbundling decisions on a national scale where the record permits us to, but delegate some determining role to the states where it appears that impairment might exist in some regions of the country but not others. In this regard, we note that Congress provided a mechanism—in section 251(f) of the Act—to exempt small and rural incumbent LECs from several of the Act's obligations. For example, unbundling rules shall not apply to a rural telephone company until it receives a bona fide request for interconnection and until the state commission determines that the request is technically feasible, not unduly economically burdensome, and consistent with section 254. Or, a LEC with fewer than two percent of the nation's subscriber lines may obtain relief from unbundling if the state commission decides, among other things, that relief is necessary to avoid imposing a economically burdensome requirement or other significant adverse economic impact.

124. Through our granular impairment analysis, the Commission has considered the resources and needs of various carriers, including small businesses, and have examined the state of the marketplace to determine whether it was economically feasible for competitors to self-provision network elements or obtain them from competitive sources other than incumbent LECs. This approach strikes the appropriate balance between the needs of competitors—including small competitors—to access certain network

elements, against the burdens unbundling imposes upon incumbent LECs—including small incumbents—and yields a more accurate picture of the state of competition for each of the varied network elements composing the local telephone network. For those network elements for which carriers may be impaired only in certain geographic markets, such as certain high capacity loops and transport, we adopt an approach that permits localized determination—with a role for the states—as to where and whether impairment exists. In this way, the Commission has sought to take a more specific view of the needs of differently situated competitors.

125. The Commission also has established service eligibility requirements for UNEs which are designed to ensure that carriers use UNEs primarily to provide local services in competition with incumbent LECs, “while avoiding burdensome administrative rules that serve as a drag on competitive entry.” While we recognize that regulatory requirements may disproportionately impact smaller entities, we have adopted the least burdensome of several available alternatives in requiring competitors to satisfy certain service eligibility criteria. For example, rather than requiring carriers to certify to be the sole provider of local service in order to access certain elements (*e.g.*, high capacity loops and transport)—an approach that might require frequent and costly assurance from a carrier's customers—the Commission permits carriers to certify that they are the primary providers of local service. In this regard, being certified as a competitive LEC is probative of providing qualifying service. The Commission also adopts collocation and local interconnection requirements as less burdensome ways of assuring service eligibility. By contrast, we have rejected a number of suggested approaches as unnecessarily burdensome, such as measuring minutes or traffic percentages, separately measuring voice and data use, or permitting UNEs only where a competitive carrier uses certain types of switches. It finds that our adopted indicia of service eligibility serve as adequate and less burdensome assurance that a carrier is using UNEs in a manner consistent with the local competition goals of the Act.

Ordering Clauses

126. Accordingly, pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, 303(r),

and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, the *Report and Order on Remand and Further Notice of Proposed Rulemaking* in CC Docket No. 01–338 is adopted, and that part 51 of the Commission's Rules, 47 CFR part 51, is amended as set forth in the rule changes.

127. The rules contained herein are effective October 2, 2003.

128. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Low Tech Designs, Inc. on February 15, 2000, and by the Telecommunications Resellers Association on February 18, 2000; the petition for partial reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Birch Telecom, Inc. on February 17, 2000; the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by Sprint Corporation on February 17, 2000; the petition for clarification on reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98, 95–185 by MGC Communications, Inc.; d/b/a Mpower Communications, Corp. on February 17, 2000; the joint petition filed in CC Docket No. 96–98 by BellSouth Corporation and BellSouth Telecommunications, Inc., SBC Communications, Inc., and Verizon Telephone Companies on April 5, 2001; the petitions for waiver of the supplemental order clarification filed in CC Docket No. 96–98 by WorldCom, Inc. on September 12, 2000, and ITC/DeltaCom Communications, Inc. on August 16, 2001; the petition filed in CC Docket Nos. 01–338, 96–98, 98–147 by Promoting Active Competition Everywhere (PACE) Coalition on February 6, 2002; and the petition for declaratory ruling filed in CC Docket No. 01–338 by WorldCom, Inc. on August 8, 2002 are dismissed as moot.

129. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the joint petition for declaratory ruling filed in CC Docket No. 96–98 by AT&T Wireless Services, Inc. and VoiceStream Wireless, Corp. on November 19, 2001 is granted to the extent indicated herein and otherwise is moot.