

or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

(c) Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.

■ 9. Section 51.317 is revised to read as follows:

§ 51.317 Standards for requiring the unbundling of network elements.

Proprietary network elements. A network element shall be considered to be proprietary if an incumbent LEC can demonstrate that it has invested resources to develop proprietary information or functionalities that are protected by patent, copyright or trade secret law. The Commission shall undertake the following analysis to determine whether a proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

(a) Determine whether access to the proprietary network element is "necessary." A network element is "necessary" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting telecommunications carrier or acquiring an alternative from a third-party supplier, lack of access to the network element precludes a requesting telecommunications carrier from providing the services that it seeks to offer. If access is "necessary," the Commission may require the unbundling of such proprietary network element.

(b) In the event that such access is not "necessary," the Commission may require unbundling if it is determined that:

(1) The incumbent LEC has implemented only a minor modification to the network element in order to qualify for proprietary treatment;

(2) The information or functionality that is proprietary in nature does not differentiate the incumbent LEC's services from the requesting telecommunications carrier's services; or

(3) Lack of access to such element would jeopardize the goals of the Act.

■ 10. Section 51.318 is added to read as follows:

§ 51.318 Eligibility criteria for access to certain unbundled network elements.

(a) Except as provided in paragraph (b) of this section, an incumbent LEC shall provide access to unbundled network elements and combinations of unbundled network elements without regard to whether the requesting telecommunications carrier seeks access to the elements to establish a new circuit or to convert an existing circuit from a service to unbundled network elements.

(b) An incumbent LEC need not provide access to an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service, unless the requesting telecommunications carrier certifies that all of the following conditions are met:

(1) The requesting telecommunications carrier has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

(2) The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 enhanced extended link, and each DS1-equivalent circuit on a DS3 enhanced extended link:

(i) Each circuit to be provided to each customer will be assigned a local number prior to the provision of service over that circuit;

(ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;

(iii) Each circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit;

(iv) Each circuit to be provided to each customer will terminate in a collocation arrangement that meets the requirements of paragraph (c) of this section;

(v) Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of paragraph (d) of this section;

(vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting

telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section; and

(vii) Each circuit to be provided to each customer will be served by a switch capable of switching local voice traffic.

(c) A collocation arrangement meets the requirements of this paragraph if it is:

(1) Established pursuant to section 251(c)(6) of the Act and located at an incumbent LEC premises within the same LATA as the customer's premises, when the incumbent LEC is not the collocater; and

(2) Located at a third party's premises within the same LATA as the customer's premises, when the incumbent LEC is the collocater.

(d) An interconnection trunk meets the requirements of this paragraph if the requesting telecommunications carrier will transmit the calling party's number in connection with calls exchanged over the trunk.

■ 11. Section 51.319 is revised to read as follows:

§ 51.319 Specific unbundling requirements.

(a) *Local loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

(1) *Copper loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis. A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network