BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of a Commission Inquiry into the possibility of Impairment without Unbundled Local Circuit Switching When Serving the Mass Market	))))	**Case No. TO-2004-0207**

DIRECT TESTIMONY OF

SEAN MINTER

ON BEHALF OF

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,

TCG KANSAS CITY, INC., AND TCG ST. LOUIS, INC.

January 12, 2004

TABLE OF CONTENTS

I. INTRODUCTION OF WITNESS AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.

A. My name is Vishal Sean Minter. My business address is 1222 Granger Dr, Allen, TX 75013.

Q. WHAT IS YOUR RELEVANT EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

A. I am an independent consultant providing analysis of regulatory issues and testimony for telecommunications companies and providing due diligence on network, operational, regulatory and marketing issues for investors, including Credit Suisse First Boston, who are interested in investing in telecommunications and cable firms worldwide. My consulting activities are in addition to my entrepreneurial activity in telecommunications and related high technology businesses.

In terms of current business ventures, I am a director of Nextcare Systems, Inc., which is an early stage company building OSS solutions for the healthcare industry. I am also Chairman of Reallinx, Inc., which is a networking and security company.

My industry experience includes serving as COO and Founder of IP Communications, Inc which was the operator of the largest competitive DSL network in Missouri, Texas, Kansas and Oklahoma. In this role, I was responsible was all network, OSS, IT, operations and certain marketing organizations. Relevant to my testimony in this case, I was responsible for decisions on vendors for purchasing hundreds of dedicated transport

and enterprise loop links. IP Communications deployed over 400 collocations in SBC territory in Missouri, Kansas, Oklahoma and Texas. Prior to IP Communications, I co-founded and served as President of ALT Communications, Inc. ALT Communications was one of the first UNE-P based CLECs in the country and served customers in Texas.

Prior to ALT Communications, I was employed by AT&T Corp in the Southwest Local Service Organization. At AT&T, I provided regulatory support on UNE, OSS and performance measure issues and worked with internal organizations to help roll out competitive local services in the Southwest.

I began my employent in the industry at MCI Communications Inc. in the MCImetro and ATS organizations. My primary responsibilities at MCI were related to the engineering, planning and implementation of Metro Fiber Networks and Local Service Switches in major cities across the country.

In addition, I served for two years on the board of the Competitive Telecommunications Association ("Comptel"), which is the leading trade association representing competitive telecommunications companies that occupy virtually every sector of the marketplace. While at Comptel, I worked on legislative activities involving meeting with members of the United States House of Representatives, Senate, White House staff, and FCC Commissioners.

I have previously testified before regulatory commissions in SBC ILEC states, including Missouri, in arbitrations associated with AT&T's interconnection agreements with SBC and in cases addressing SBC's applications to enter the long-distance market in Southwestern Bell Telephone states, under section 271 of the federal Telecommunications Act of 1996 (the "Act").

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis, Inc.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide a workable framework to the Commission for evaluating SBC Missouri ("SBC") and CenturyTel claims of non-impairment that will be faithful to the principles and requirements set forth in the FCC's *Triennial Review Order* ("*TRO*").[1]

In the *TRO*, the FCC determined that incumbent local exchange carriers ("ILECs") must continue to provide competitive carriers ("CLECs") with unbundled access to loops and dedicated transport at the DS1, DS3, and dark fiber capacity levels ("high-capacity loops" and "dedicated transport"). These determinations followed from the FCC making national findings that CLECs are impaired without access to high-capacity loops and

[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147)*, FCC No. 03-36 (rel. Aug. 21, 2003).

dedicated transport at these levels. *TRO,* ¶¶ 202, 359. Nevertheless, the FCC also has authorized state commissions to evaluate *specific* claims that an ILEC might advance that competing carriers are not impaired without unbundled access to high capacity loops at a *particular* customer location and *specific* capacity level, or without unbundled access to dedicated transport on a *particular* route at a *specific* capacity level. In the *TRO*, the FCC set out specific criteria for state commissions to apply in evaluating such non-impairment claims. At this stage of this proceeding, my purpose is to review those criteria, and to put them in a general factual context, in order to provide an appropriate framework for evaluating the specific claims that are to be submitted by the ILECs in their direct cases.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is divided into six sections. Section I is a discussion of my personal background and the general scope and purpose of my testimony. Section II provides a brief overview of dedicated transport and high-capacity loops and and how competitive carriers use (and continue to need) access to these ILEC facilities. Section III summarizes the reasons why the FCC, recognizing the needs of competing carriers, concluded that ILECs should continue to provide access to high capacity loops and dedicated transport as unbundled network elements ("UNEs"). Sections IV and V set forth the analysis that the Commission must undertake under the *TRO* to determine whether certain "triggers" have been met – i.e., whether certain FCC-specified conditions exist on a specific transport route, or at a particular customer location, that indicate that a CLEC is not impaired without access to UNE dedicated transport or UNE high-capacity loops. Satisfaction of a trigger is a necessary, though not sufficient, condition to the state

lifting the unbundling obligation for dedicated transport or high-capacity loops on a particular route or at a particular location. In Section IV, I will explain the *self-provisioning triggers* that the FCC devised for high capacity loops and dedicated transport at the DS3 and dark fiber capacity levels. In Section V, I will explain the *wholesale triggers* for high capacity loops and transport, as well as the requirements needed to define a carrier as a wholesale provider. In addition, Section V discusses why, even when there is evidence that a trigger has been satisfied, it may be appropriate for the Commission to find that CLECs remain impaired with respect to particular transport routes or customer locations. In Section VI, I discuss the concept of potential deployment claims allowed for under the *TRO*, including the fact that DS1-level loops and transport are not eligible for potential deployment claims. Lastly, in Section VII, I will describe the transitional issues this Commission should consider if it de-lists any loops or transport routes in order to protect CLECs and their customers from unanticipated disruption to their services and rates.

II. FACTUAL BACKGROUND

A. Dedicated Transport

Q. WHAT IS DEDICATED TRANSPORT?

A. The interoffice transmission facilities that provide telecommunications between wire centers or switches are called dedicated transport. Such facilities are generally offered at DS1, DS3 and OCn capacity levels. The FCC also included dark fiber in the definition of dedicated transport. Until recently, the FCC, defined dedicated transport as "incumbent transmission facilities… that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned

by incumbent LECs or requesting telecommunications carriers."[2] However, in the *TRO,* the FCC modified its definition of dedicated transport to include only "those transmission facilities connecting incumbent LEC switches and wire centers within a LATA."[3] Thus, CLECs will no longer be able to obtain the transmission facilities between ILEC wire centers or switches and CLEC wire centers or switches as UNEs.

Q. WHY DO CLECS NEED UNBUNDLED ACCESS TO DEDICATED TRANSPORT?

A. CLECs use dedicated transport to interconnect to the ILECs' networks pursuant to Section 251(c)(2), and they also use dedicated transport facilities (where available) to backhaul traffic to their wire centers or switches. Although, as noted above, the FCC has changed the definition of dedicated transport so that CLECs no longer can obtain dedicated transport between ILEC wire centers or switches and CLEC wire centers or switches, CLECs still need access to transport between ILEC wire centers or switches, because it is not economical to replicate these transport facilities, and because numerous operational issues can prevent a carrier from building its own facilities, or from building them in a sufficiently timely manner to be competitive. Thus, CLECs continue to need access to such ILEC-provided dedicated transport.

[2] *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999), App. C., § 51.319(d)(1).
[3] *TRO,* ¶ 365.

Q. WHY DO CLECS NEED TO BACKHAUL TRAFFIC TO THEIR WIRE CENTERS OR SWITCHES?

A. The short answer is because the CLECs' network architecture differs from the ILECs' network.

In the ILEC's network, every customer has a loop that is connected to the ILEC's switch. Generally, these loops terminate in a wire center (also known as a central office) on the customer-facing side of the main distribution frame ("MDF"). On the other side of the MDF (the equipment side) are the appearances for the various pieces of equipment found in that central office, including the ILEC's switch ports. Relatively short pairs of wires known as jumper wires are extended between the two sides of the MDF to make a connection between the loops and the switch. The important point here is, that with the ILEC's network architecture the customer loops all terminate in the same central office where the ILEC's switch that serves those customers is located.

Because all of the existing customer loops terminate in the ILEC's central office, before any CLEC can gain access to these loops it must first establish a collocation arrangement in the ILEC's wire center. Once these collocation arrangements are established the CLEC must install the equipment in its collocated space to allow it to convert the analog loop to a digital signal to make it capable of being extended without a degradation in customer service. The CLEC must also install or lease the high capacity transport facilities that will be needed to extend the loops from the ILEC's central office to the distant location where the CLEC has its switch installed. This extension of the loops to

the distantly located CLEC switch is generally referred to as backhaul.[4] For the high capacity facility portion of this arrangement the CLEC commonly uses ILEC dedicated transport to backhaul the loops to its switch.[5] Similarly, CLECs may aggregate Internet-bound traffic from many different wire centers via dedicated transport into a single ILEC wire center before sending it to the Internet.

B. Enterprise Loops

Q. WHAT IS AN ENTERPRISE LOOP?

A. I should begin by saying what a loop is. "Loops in their simplest form are the transmission facilities between a central office and the customer's premises, *i.e.*, 'the last mile' of a carrier's network that enables the customer to receive, for example, a telephone call or a facsimile, as well as to originate similar communications." (I address the more precise definition of an unbundled loop and some of its implications for the current proceedings below). The FCC has defined two distinct loop types: Mass Market Loops, representing voice-grade DS0 loops used by residential and very small business customers, and Enterprise Market Loops, representing higher capacity loops, which typically are used by larger business customers. The FCC defined Enterprise Loops as loops at a capacity level of DS1 or above; the FCC analyzed these loops separately at the following capacity levels: OC(n), dark fiber, DS3, and DS1.

[4] The FCC acknowledged that CLECs need to deploy equipment to "backhaul" the customer's loop to the CLEC switch in connection with UNE-L, stating "the need to backhaul the circuit derives from the use of a [CLEC] switch in a location relatively far from the end user's premises. This effectively requires competitors to deploy much longer loops than the incumbent." *TRO*, ¶ 480.

[5] As noted above, in the past ILECs were required to provide dedicated transport from their wire center or switch to the CLEC's wire center or switch. Now, the CLECs will have to provide such "entrance facilities" themselves, or purchase them from the ILEC as special access.

Q. WHY DO CLECS NEED ENTERPRISE LOOPS?

A. Simply put, to reach customers. The costs of loop deployment, the fact that loops generally do not aggregate multiple customers' traffic, the fact that the distribution portion of a loop serves a specific location, the operational problems that can delay and increase the cost of deploying loops, and the limited revenue opportunties associated with individual loops, even at "high" electronic capacities (DS1, DS3), all mean that, the loop is the last and least likely component that of the network that a competing carrier will be able to justify constructing, or for which competitive alternatives are ever likely to be made available.

Q. DO DIFFERENCES BETWEEN THE CONDITIONS UNDER WHICH THE ILECS BUILT AND COMPETITIVE CARRIERS ARE BUILDING THEIR NETWORKS IMPACT THE CLECS' USE OF THE INCUMBENTS' LOOPS AND THEIR DECISIONS ABOUT CONSTRUCTING THEIR OWN LOOPS?

A. Yes. A CLEC's network growth is tied directly to the number of customers served and the amount of traffic they generate (and thus the CLEC's ability to justify the initial build – assuming available capital). ILECs, however, were able to build their network with the assurance of serving 100 percent of the demand in any one area and with no concern for the availabilityof capital because of their guaranteed rates of return. This fundamental difference requires a CLEC to develop its network from the core (*i.e.*, backbone and switch) outward to its nodes, and then ultimately, to the customers.

III. THE FCC FOUND THAT COMPETITIVE CARRIERS ARE IMPAIRED NATIONWIDE WITHOUT UNBUNDLED ACCESS TO HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT

Q. WHAT DID THE FCC CONCLUDE WITH REGARD TO HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. After extended proceedings and after considering an enormous factual record, the FCC concluded that competing carriers are impaired on a national level without access to unbundled high capacity loops and dedicated transport, up to specifically defined limits.[6] More particularly, the FCC found that competing carriers are impaired without unbundled access to DS1 loops, DS3 loops (up to two DS3s per customer location) and dark fiber loops. Similarly, the FCC found that competing carriers are impaired without unbundled access to DS1 dedicated transport, DS3 dedicated transport (up to twelve DS3s per route), and dark fiber dedicated transport. As a result, the FCC rules require that competing carriers have access to these categories of unbundled loops and transport everywhere, unless a state commission finds a lack of impairment with respect to a specific transport route or with respect to deployment of high capacity loops to a particular customer location.

Q. HOW WAS THE FCC ABLE TO MAKE NATIONWIDE FINDINGS OF IMPAIRMENT FOR THESE ELEMENTS?

A. The FCC found that the deployment of high-capacity loops and dedicated transport involves characteristics "that do not vary significantly from area to area," but rather are applicable throughout the country, and that are inherent in the economics of network

[6] *See TRO* ¶¶ 202 (stating that "requesting carriers are impaired on a location-by-location basis without access to incumbent LEC loops nationwide."), *TRO*, ¶¶, 311-314, 320-327, 359 (stating that it finds "on a national level that requesting carriers are impaired without access to unbundled dark fiber transport facilities … [DS3 transport and DS1 transport])", *TRO*, ¶¶ 381-93.

construction and market entry. *TRO*, ¶ 202; *see, e.g., id.* at ¶¶ 205, 206 (loops); *TRO*, ¶¶ 371, 373, 382 (transport).

Q. DID THE FCC'S IMPAIRMENT ANALYSIS DISTINGUISH BETWEEN DIFFERENT TYPES OF UNBUNDLED LOOPS AND TRANSPORT?

A. Yes. The FCC defined two distinct loop types: Mass Market Loops, representing voice-grade DS0-level loops, and Enterprise Market Loops, representing higher capacity loops. The FCC defined Enterprise Market Loops as loops at a capacity level of DS1 or above; the FCC analyzed these loops separately at the following capacity levels: OC(n), dark fiber, DS3, and DS1.[7] For the purposes of my testimony, Enterprise Market Loops are equivalent to high capacity loops. Only high capacity loops are at issue in this proceeding.

The FCC segregated dedicated transport by capacity levels before performing its impairment analysis stating that this would "be the most informative manner to review the economic barriers to entry that affect how a competing carrier is impaired without access to unbundled transport." *TRO,* ¶ 380. The FCC performed separate impairment analyses for OC(n) Transport, Dark Fiber Transport, DS3 Transport, and DS1 Transport.

The FCC's separate analyses for differing capacity levels of high capacity loops and dedicated transport will be reflected here in the requirement that the ILECs' claims of non-impairment must not only be directed to individual customer locations and transport

[7] DS1 loops have the capacity to carry 24 voice grade equivalents. DS3 can carry the equivalent of 28 DS1s, or 672 voice grade equivalents. OCn circuits range from OC3 to OC192. The smallest capacity OCn circuit is an OC3, which is equivalent in capacity to three DS3s, 84 DS1s, or 2016 voice-grade equivalents.

routes, but also to specific transport capacity levels (e.g., whether SBC can show that CLECs are not impaired without access to DS3 dedicated transport between SBC central office A and SBC central office Z is a separate issue from whether SBC can show non-impairment with respect to DS1 dedicated transport over that same route).

Q. ARE THE REASONS THAT THE FCC FOUND CLECS IMPAIRED WITHOUT UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT RELEVANT TO THE ISSUES BEFORE THIS COMMISSION NOW?

A. Yes. It is not possible to understand, or properly evaluate, disputes among the parties over whether a trigger has been satisfied without a grounding in the impairments that led the FCC to make its nationwide findings. It is appropriate to summarize these impairment characteristics at the outset, because these are the factors that the trigger analysis must show have been overcome.

A. Bases for FCC's Impairment Findings for High-Capacity Loops

Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING CARRIERS WERE IMPAIRED WITHOUT ACCESS TO HIGH-CAPACITY LOOPS AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?

A. Basically, the FCC's impairment analysis examines whether carriers can economically self-provision high-capacity loops and whether competitive alternatives to the ILEC's facilities exist that may be utilized by competitors. For enterprise market loops at the dark fiber, DS3, and DS1 capacity levels, the FCC's conclusion that CLECs are impaired without unbundled access was based in large part on the fact that the costs to construct loops are high, fixed and sunk.

The FCC's impairment analysis for loops began with the fact that [c]onstructing loop plant is both costly and time consuming, regardless of the type of loop being deployed." *TRO*, ¶ 205. In particular, the FCC noted that "the loop itself can be overwhelmingly difficult for competitors to self-deploy due to the sunk and fixed costs associated with entry." *TRO*, ¶348. The FCC recognized that the high fixed costs of loops include "substantial fixed costs to obtain the rights-of-way, dig up the streets, and trench the cable . . . ." *TRO*, ¶ 312. The FCC also stated that "[b]ecause the distribution portion of the loop serves a specific location, and installing and rewiring that loop is very expensive, most of the costs of constructing loops are sunk costs." *TRO,* ¶ 205.

The FCC concluded that it would be extremely difficult to recover these construction costs and be a viable competitor in the marketplace – in other words, these high fixed and sunk costs pose substantial economic barriers to deploying loops. The FCC stated that "the cost to self-deploy local loops at any capacity is great . . . and that a competitive LEC that plans to self-deploy its facilities must target customer locations where there is sufficient demand from a potential customer base, usually a multitenant premises location, to generate a revenue stream that could recover sunk construction costs of the underlying loop transmission facility …." *TRO,* ¶ 303. As a practical matter, the FCC found, the only customers who could meet that profile are large enterprises that require "a very high-capacity loop facility." *Id*

Q. ARE THE BARRIERS TO DEPLOYING HIGH-CAPACITY LOOPS STRICTLY ECONOMIC IN NATURE?

A. No. The FCC also recognized other obstacles to deploying high capacity loops. For example, carriers encounter barriers in obtaining reasonable and timely access to the customer's premises and in "convincing customers to accept the delays and uncertainty associated with deployment of alternative loop facilities." *TRO,* ¶ 303 (citations omitted). Loop construction is time-consuming. According to the FCC, it "generally takes between 6-9 months without unforeseen delay" to construct such facilities. Negotiations with, or objections from, local authorities and property owners can further delay loop construction and increase costs. *TRO*, ¶ 304. As a result, even when it may be "economically feasible" to build a loop to a given customer, these "other barriers" may preclude a carrier from practically using its own facilities to compete with the incumbent.

Q. DID THE FCC FIND THAT INCUMBENTS FACE THESE SAME OBSTACLES TO LOOP SELF-DEPLOYMENT?

A. No. As the FCC recognized, the ILECs do not face the same obstacles, because they enjoy the benefits of "their first-mover advantage." *TRO*, ¶ 306. As legally protected monopolists, the ILECs were expected to build facilities to serve all current (and virtually all future) demand for telecommunications services for every customer within their respective service areas. This allowed them to spread the high fixed costs of loop deployment over both large and small customers, lowering per-unit costs. And because the incumbents were the sole suppliers of a valuable service, municipalities and private landowners had every incentive to cooperate in providing them rights-of-way and building access. As a result, the ILECs are able to add new services, capacity or

customers by using existing facilities together with comparatively inexpensive, incremental additions. In sum, the ILECs not only have built, but remain able to maintain and expand, ubiquitous local networks without facing the barriers that new entrants now confront.

Q. DID THE FCC FIND A LACK OF IMPAIRMENT FOR ANY CATEGORY OF LOOPS?

A. The FCC found that "[m]any types of loops continue to represent an enduring 'last-mile' bottleneck." *TRO*, ¶ 348. It recognized only one exception – lit OCn loops, *TRO*, ¶ 315, and its reasons for that finding are instructive. The FCC found that the large enterprise customers which use OCn lit loops not only provide the high demand and revenue stream needed to cover construction costs, they also frequently enter into long term contracts with early termination charges, thus providing some assurance to carriers that they will recover these largely sunk costs. *TRO*, ¶ 316. The delays inherent in loop construction are also less of an obstacle for large enterprise customers, who "begin the process of seeking a new or alternative service provider well in advance of their actual need for service." *Id.* And as large customers, they "may have ability to exert greater influence over building access," either through their own control of premises or because of landlords' willingness to accommodate them. *TRO*, ¶ 317.

Indeed, the FCC observed that competitive self-deployment of loops has chiefly been to serve customers that required the capacity of an OC3 loop or higher. *TRO*, ¶¶ 219, 315. The record before the FCC confirmed that competitive carriers prefer to self-deploy where they can, but also led the FCC to find that such self-deployment is economically and practically feasible only for the largest enterprise customers. *Id.*

B. Bases for FCC's Impairment Findings For Dedicated Transport

Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING CARRIERS ARE IMPAIRED WITHOUT ACCESS TO UNBUNDLED DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?

A. The FCC began its analysis by limiting the definition of dedicated transport "to only those transmission facilities connecting incumbent LEC switches or wire centers." *TRO*, ¶¶ 359, 360. The FCC then determined that there is an important and continuing need for the incumbent LECs to provide competitors with unbundled access to dedicated transport. The FCC stated that its "impairment findings with respect to DS1, DS3, and dark fiber transport facilities recognize that competing carriers face substantial sunk costs and other barriers to self-deploy facilities and that competitive facilities are not available in a majority of locations, especially non-urban areas." *TRO,* ¶ 360 (citations omitted). The FCC concluded that it would be extremely difficult to recover these costs and to be a viable competitor in the marketplace. Indeed, as with loops, the FCC concluded that "[d]eploying transport facilities is an expensive and time-consuming process for competitors, requiring substantial fixed and sunk costs." *TRO,* ¶ 371 (citations omitted). The FCC elaborated that the costs of self-deployment include collocation costs, fiber costs, costs of rights-of-way, costs to physically deploy the fiber, and costs of the equipment ("optronics") necessary to light the fiber. *Id.*

Q. ARE THERE NON-ECONOMIC COSTS TO CONSTRUCTING DEDICATED TRANSPORT?

A. Yes. CLECs also encounter delays in constructing dedicated transport due to having to obtain rights-of-way and other permits, as the FCC recognized. *Id.*

Q. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF NON-IMPAIRMENT FOR DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 LEVELS?

A. Any evidence of non-impairment was minimal. For transport, the FCC found that "alternative facilities are not available to competing carriers in a majority of areas." *TRO,* ¶ 387. Indeed, even relying on ILEC data, which was not subject to cross-examination in the FCC proceeding, at most 13 percent of BOC wire centers have a single competing carrier collocated using non-ILEC transport facilities. *TRO,* fn. 1198. Accordingly, and in light of the evidence of impairment discussed above, the FCC concluded that competitive carriers continue to need unbundled access to dark fiber dedicated transport, DS3 dedicated transport (up to a maximum of 12 unbundled DS3 transport circuits along a single route), and DS1 dedicated transport.

Q. ARE THE FCC'S FINDINGS ON IMPAIRMENT CONSISTENT WITH TYPICAL CLEC FACILITIES-BASED NETWORKS?

A. Yes. CLECs have a substantial incentive to provide service over their own facilities, because doing so allows them to control the service from end-to-end, avoiding reliance on other carriers to maintain service quality. As a practical reality, however, competitive carriers in Missouri and elsewhere find that providing service to all but a very small set of customers is virtually impossible without the use of ILEC facilities and, in particular, loop and transport facilities.

IV. SELF-PROVISIONING TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT

Q. WHAT IS THE PURPOSE OF THE FCC'S SELF-PROVISIONING TRIGGERS FOR UNBUNDLED LOOPS AND TRANSPORT?

A. First, it is important to understand that none of the FCC's trigger analyses are mere counting exercises. In the *TRO*, the FCC made the national findings, discussed above, that CLECs are impaired without unbundled access to high-capacity loops and dedicated transport. The FCC allowed ILECs to challenge these impairment findings on a location- and route-specific basis before state commissions. However, such a challenge required the ILEC to put forward evidence that shows CLECs are not impaired on each challenged route, or customer location, at the identified capacity levels. This requires the ILEC to provide clear evidence that CLECs have overcome the economic and operational barriers that they face in deploying such facilities, so that real competition is available on that transport route or at that customer loop location.

One of the ways ILECs may seek to demonstrate non-impairment under the *TRO* is by showing that sufficient CLECs provide high-capacity loops or dedicated transport on their own. The criteria specified by the FCC for this showing are known as the "Self-Provisioning Triggers." The Self-Provisioning Triggers are intended to identify those customer locations and transport routes where there has already been sufficient deployment of competitively owned facilities to demonstrate that competitors are not impaired without access to unbundled loops and transport in those places, even if the competitors that own those facilities do not make them available to other competitive providers.

Q WHAT CAPACITY LEVELS ARE SUBJECT TO THE SELF-PROVISIONING TRIGGERS?

A. The Self-Provisioning Triggers only apply to DS3 and dark fiber loops and transport. DS1 loops and transport are not included under these triggers, because the FCC found there is effectively no likelihood that a competitor could economically construct its own DS1 facilities. *TRO*, ¶ 334 (loops); *TRO*, ¶ 409 (transport).

Q. WHAT MUST A CHALLANGER DEMONSTRATE TO THE COMMISSION TO SATISFY THE SELF-PROVISIONING TRIGGERS AT THE RELEVANT CAPACITY LEVEL?

A. For loops, the petitioner must demonstrate that there are ***two or more*** competing providers that have deployed their own facilities at the location at the specific capacity level (DS3 or dark fiber), and are serving customers using those facilities.

For dedicated transport, the petitioner must demonstrate there are ***three or more*** competing providers that have deployed their own facilities on the route at the specific capacity level (DS3 or dark fiber), and are offering service using those facilities.

Q. WHAT MUST THE ILEC DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGER IS SATISFIED FOR HIGH-CAPACITY LOOPS AT A SPECIFIC CUSTOMER LOCATION?

A. As a preliminary matter, the ILEC must demonstrate that the two competitive providers:

- Are not affiliated with each other or the ILEC
- Use their own facilities and not facilities owned or controlled by the other competitive provider or the ILEC; and
- Are serving customers at that location using their facilities, deployed at the relevant capacity level.

Q. WHAT MUST THE ILEC DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGER IS SATISFIED FOR DEDICATED TRANSPORT BETWEEN TWO ILEC WIRE CENTERS?

A. The ILEC must demonstrate, for each of the three qualifying competitive providers, that:

- It is not affiliated with any other qualifying provider or the ILEC
- Each self-provisioned facility along the defined route must be operationally ready to provide transport into and out of an ILEC central office at each terminus of the route
- Each self-provisioned facility terminates in a collocation arrangement.

Q. FOR THE SELF-PROVISIONING TRIGGERS TO APPLY, MUST A CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN QUESTION?

A. Yes. The trigger analysis must be performed for each particular capacity of transport or loop (*i.e.*, DS3, dark fiber). The FCC organized its loop and transport impairment analysis based on capacity level "because it is a more reliable indicator of the economic abilities of a requesting carrier to utilize third-party alternatives, or to self-deploy." *TRO*, ¶376. And as the FCC also explained, the requirement of separate application of the trigger analysis for each capacity level of transport means that if impairment "at a particular capacity" of transport on one specific route is no longer found, transport at other capacities might still be available. *TRO*, ¶ 407.

Thus, the relevant threshold inquiry for the self-provisioning transport trigger is whether, for any single route between two ILEC central offices, three carriers have self-provisioned dedicated transport at a particular capacity level. The upper boundary (12 DS3s) reflects the FCC's decision to relieve the ILECs of any obligation to provide

dedicated transport on an individual route at a capacity level above 12 DS3 circuits. *TRO*, ¶¶388-389.

Therefore, an ILEC that wishes to establish a finding of no impairment based on the self-provisioning triggers for a particular transport capacity level (which, by definition, must be at or below 12 DS3s) must show that three carriers have self-deployed dedicated transport facilities along the route in question *at the relevant capacity level*. A carrier that has deployed transport at a capacity level of, say, 18 DS3 circuits, or that has deployed optical level (OC) transport facilities, would not count for these purposes. If three carriers had self-deployed dedicated transport circuits at a level of 12 DS3s (or less) on the route, then the self-provisioning trigger would be met and, if the other criteria are met, the ILEC would no longer need to provide unbundled access to DS3 dedicated transport on that particular route.

A similar analysis applies for high-capacity loops, where the FCC set a maximum of two UNE DS3 loops to any single customer location. A party who wishes to establish a finding of no impairment based on the self-provisioning triggers for DS3 loops to a particular customer location, therefore, must show that two carriers have self-deployed loops to that location at a capacity level of 1 or 2 DS3 circuits. A carrier that has deployed loops to that location at a capacity level of 3 DS3 circuits or more would not count for these purposes, because the FCC has relieved the ILEC of any obligation to provide 3 DS3 unbundled loops to a requesting carrier at a particular customer location. Nor would a carrier who has deployed optical level loop facilities count toward the self-

provisioning trigger, for the same reasons, given that the smallest optical loop capacity (OC3) is the equivalent of 3 DS3s.

For dark fiber, no capacity levels apply. The relevant inquiry is simply whether the requisite number of carriers (that meet the remaining requirements) have deployed dark fiber along the relevant route or to the relevant customer location.

Q. WHAT ARE THE KEY DEFINITIONS THAT A STATE COMMISSION MUST APPLY IN DETERMINING WHETHER THE ILEC HAS PROVIDED SUFFICIENT DATA TO DEMONSTRATE THAT THE SELF-PROVISIONING TRIGGER HAS BEEN MET FOR A PARTICULAR CUSTOMER LOCATION OR TRANPSORT ROUTE?

A. The Commission should ensure that the ILEC has defined loops and transport routes in a manner consistent with the FCC's rules, and is applying those definitions appropriately. For loops, the FCC's definition is "the connection between the relevant service central office and the network interface device ("NID") or equivalent point of demarcation at a specific customer premises." Specifically, the FCC requires that state commissions apply the triggers "on a customer-by-customer location basis." *TRO*, ¶ 328. The FCC's decision reflects the fact that loops can only be used to serve individual customer locations.

The FCC defined a transport route as "a connection between wire center or switch 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competing providers must *offer service connecting* wire centers 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC through wire

center 'X'." The question, then, is whether the ILEC identified as a trigger candidate has dedicated transport between the two wire centers at issue, not whether the CLEC's transport circuit follows the same path as the ILEC's circuit.

At the same time, however, the FCC limits qualifying providers (whether self-provisioning or wholesale) to those who provide transport for the *entire* route between A and Z. The FCC specifically rejected ILEC claims that competitors could be forced to use a "daisy chain" of individual links, managed by multiple providers, between intervening wire centers. *TRO*, ¶ 402.

The FCC's emphasis on *connecting* wire centers in the new definition of dedicated transport, *TRO*, ¶ 365, and its emphasis on *offering services connecting* wire centers in its example of a transport route, *TRO*, ¶ 401, are also instructive on what does not constitute a route. For example, a SONET ring that passes by wire center "A", but is not connected to wire center "A", cannot count as a trigger for transport routes that include wire center "A", under the FCC's guidance. Likewise, a SONET ring that collects traffic from both wire centers "A" and "Z" and carries that traffic to a CLEC point of presence not located in either wire center "A" or "Z" does not qualify as a trigger if it does not provide dedicated transport services connecting "A" to "Z".[8] Finally, if a CLEC route between

[8] Such rings would not fit the definition of "dedicated transport" set out be the FCC. That definition makes clear that the two end points of a qualifying route must each lie in an ILEC central office or ILEC switch; in the SONET ring example in the text above, by contrast, transport is provided only to and from the CLEC POP. *See, e.g.,*TRO, ¶¶ 365-66, 401. It is also true because SONET rings are limited in the number of nodes that can be placed on a particular physical ring and the maximum distance that can exist between any two nodes.

"A" and "Z" has to pass through the CLEC's switch or traffic has to pass through the CLEC's switch, the route does not qualify for purposes of the trigger.[9] Indeed, SBC appears to agree, having stated in parallel California proceedings that "'[d]edicated' transport means all or part of the facility is dedicated to a particular carrier or use and that there is no switching interposed along the transport route."[10]

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE DEFINITION OF A LOOP COULD BE MISINTERPRETED BY SBC FOR THE PURPOSES OF THE SELF-PROVISIONING TRIGGER?

A. Yes. In a multi-tenant building, two CLECs may have provisioned loop facilities to specifically serve one customer each, while the rest of the building is being served solely by SBC. Even though there are two competing loop facilities into the building, an SBC request that the Self-Provisioning Trigger is satisfied for the entire building, or even the two customers served by the CLECs, would be incorrect, because no customer location within the building is being served by the facilities of two or more competing providers. The key distinction in this example is that the customer unit at the location, which is the endpoint of the loop per the FCC, is only a subset of the building "location."

[9] Again, transport between an ILEC wire center and CLEC switch is not defined as dedicated transport by the FCC.
[10] Answer 8 of Direct Testimony of Scott Alexander on behalf of SBC Regarding Dedicated Transport, submitted Nov. 20, 2003, in Cal. PUC Docket No. R.95-04-03.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE DEFINITION OF A TRANSPORT ROUTE COULD BE MISINTERPRETED BY SBC FOR THE PURPOSES OF THE SELF PROVISIONING TRIGGER?

A. Yes. It appears that SBC may suggest that the Commission need only perform a primitive counting exercise, in which it simply identifies all of the collocation arrangements for a given CLEC, confirms that fiber optic facilities are present in the collocation arrangement, then declares that transport routes "exist" between each collocation arrangement. This approach is clearly insufficient under the FCC's requirements, because it provides no evidence that the CLEC in question is actually "offering" dedicated transport service between two SBC wire centers. Moreover, such an approach does not identify the capacity levels of the facilities deployed to provide service, nor is it evidence that the CLEC is operationally ready. CLECs generally use collocation arrangements to aggregate unbundled loops, so there is a high probability that the equipment and fiber optics associated with a collocation arrangement is *not* being used to provide transport between two SBC wire centers. For example, a CLEC may have deployed digital loop carrier equipment used to concentrate voice-grade loops in its wire center collocation arrangement. In this instance, the fiber-optic facilities exiting the wire center would be routed to a CLEC switch, disqualifying the traffic from being considered dedicated transport. Alternatively, a CLEC may have installed a DSLAM in its wire center collocation for the purpose of providing DSL services connecting customers to their internet service providers. Both of these examples demonstrate how a CLEC could have equipment in its collocation connected to fiber-optic facilities, but not be using the equipment to provide DS3 or dark fiber transport between ILEC wire centers.

Q. WHAT IS THE APPROPRIATE EVIDENCE THAT SBC SHOULD PROVIDE TO MEET THE FCC'S REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-PROVISIONING TRIGGERS?

A. The only effective and practical way of demonstrating that a CLEC is operationally ready under the Self-Provisioning Triggers is to produce evidence that the CLEC is actually providing service over a self-deployed loop at the customer location or on the given transport route. This is consistent with the FCC's requirement that evidence be provided that CLECs are *serving* customers using self-provisioned loop services, and that CLECs *offer service* between two wire centers on a given dedicated transport route. While the existence of CLEC facilities (at the appropriate capacity level) is obviously a *prerequisite* to the provision of service, the mere existence of those facilities does not demonstrate they can actually be used to provide the service required to satisfy the trigger at the requisite capacity level. Nor does it demonstrate that the CLEC has performed the necessary engineering, provisioning, and administrative tasks to ensure that service can be provided.

Q. FOR PURPOSES OF APPLYING THE TRIGGERS, WHICH FACILITIES COUNT AS "OWNED FACILITIES"?

A. In order for a carrier to count toward the trigger, it must have deployed its "own facilities" on the entire loop. There are two ways that a carrier can be demonstrated to have "ownership": (1) the carrier can have legal title to the facilities or (2) the carrier can have a "long-term" (*i.e.,* 10 years or more) dark fiber indefeasible right of use ("IRU") if (but only if) the fiber is "lit" by the qualifying carrier by attaching its own optronics to the facilities. If the carrier does not use its own facilities as defined, then it may not count for purposes of the self-provisioning trigger.

Q. WHICH FACILITIES DO NOT COUNT AS "OWNED FACILITIES"?

A. Facilities obtained from other sources such as through special access arrangements, UNEs, capacity leases (except for long term IRUs), and all third party provided facilities do not count as "owned facilities." The FCC specifically emphasized that a CLEC "using the special access facilities of the incumbent LEC or the transmission facilities of the other competitive provider … would *not* satisfy the definition of a self-provisioning competitor for purposes of the trigger." *TRO,* ¶ 333.

In addition, the triggers are designed to prevent double counting of facilities. Therefore, for purposes of the self-provisioning test, a carrier may not be using "facilities owned or controlled by one of the other two providers on the premises [for loops]." *TRO,* ¶ 333.

Q. IF A CARRIER SATISFIES THE SELF-PROVISIONING TRIGGER, WILL IT AUTOMATICALLY QUALIFY AS AN ELIGIBLE PROVIDER UNDER THE COMPETITIVE WHOLESALE FACILITIES TRIGGERS OR VICE VERSA?

A. No. The FCC emphasized that the triggers are separate and distinct. The purpose of the Self-Provisioning Trigger is to determine through actual experience whether similarly situated CLECs can feasibly overcome the nationally-identified impairments and deploy their own facilities on a particular route. In contrast, the Wholesale Trigger examines whether a provider makes its facilities widely available to other carriers.

V. WHOLESALE TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT

Q. WHAT IS THE PURPOSE OF THE FCC'S WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The Wholesale Triggers provide ILECs an opportunity to demonstrate that there is no impairment for a specific customer location or route upon demonstration that there are sufficient alternative providers offering wholesale loop or transport services at that location or route, at the relevant capacity, to CLECs. These alternative providers must meet all the criteria discussed above in connection with the self-provisioning triggers, but the ILEC also is obliged to demonstrate that the alternative provider is actually offering wholesale service for the specific route or location at the requisite capacity level, is making that service widely available, has equipped its network to facilitate numerous wholesale customers, and has developed the appropriate systems and procedures to manage a wholesale business.

Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT?

A. Wholesale loops and transport at both the DS1 and DS3 level are subject to the Wholesale Triggers. Dark fiber *loops* are not subject to the Wholesale Trigger, while dark fiber *transport* is.

Q. WHAT MUST SBC DEMONSTRATE TO THIS COMMISSION TO SATISFY THE WHOLESALE TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The Wholesale Triggers examine whether two or more competing providers offer a bona fide wholesale loop or transport product at the specific location or on the specific route.

Q. WHAT MUST SBC DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGER FOR HIGH-CAPACITY LOOPS?

A. Specifically, under the FCC's rules, this trigger requires evidence that:

- Two or more competing providers not affiliated with each other or the ILEC are present at the customer location;
- Each provider has deployed its own facilities and is operationally ready to use those facilities to provide wholesale loops at that location;
- Each provider is willing to provide wholesale loops on a widely available basis at that location; and
- Each provider has access to the entire multiunit customer premises. *See* 47 C.F.R. § 51.319(a)(5)(i)(B).

Q. WHAT MUST SBC DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGER FOR DEDICATED TRANSPORT?

A. Specifically, the trigger requires evidence that:

- Two or more competing providers not affiliated with each other or with SBC are present on the route;
- Each provider has deployed its own transport facilities "and is operationally ready to use those facilities to provide dedicated … transport along the particular route";
- Each provider "is willing immediately to provide, on a widely available basis," dedicated transport to other carriers on that route;
- Each provider's "facilities terminate in a collocation arrangement at each end of the transport route that is located at in incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises"; and

- Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement, including cross-connections that accommodate line splitting arrangements;

See 47 C.F.R. § 51.319(e)(1)(ii) [DS1 transport], 51.319(e)(2)(i)(B) [DS3 transport], 51.319(e)(3)(i)(B) [dark fiber transport].

Q. FOR THE WHOLESALE TRIGGERS TO APPLY, MUST A CLEC OFFER AT WHOLESALE THE SPECIFIC CAPACITY LEVEL IN QUESTION?

A. Yes. The *Triennial Review Order* contemplates that the Wholesale Triggers apply when a CLEC offers for wholesale the particular capacity level in question. For example, a CLEC that is a wholesale provider of loops or transport at the OCn capacity level would not necessarily offer DS1, DS3 or dark fiber functionality on a "widely available" wholesale basis loops. Such evidence must be separately introduced.

Q. IN ADDITION TO THE ISSUES RAISED IN THE SELF-DEPLOYMENT TRIGGER ANALYSIS, ARE THERE OTHER CRITERIA SBC MUST ADDRESS IN ORDER TO SATISFY THE WHOLESALE TRIGGERS?

A. Yes. A significant issue is to properly identify the relevant wholesale providers of high-capacity loops and transport, and to ensure that SBC is not overly broad in its identification of wholesale providers. Many carriers may provide some wholesale services, but may not choose, or be in a position, to offer the specific loop or transport services necessary to satisfy the Wholesale Triggers. For example, a carrier may offer wholesale long distance voice services, and may also have established collocation arrangements for the self-provision of a data service for a specific retail customer. The fact that the carrier is a wholesale provider of an unrelated service is not relevant to the trigger analysis if the carrier is not offering wholesale services specific to its collocation

arrangements. Thus, it is essential to know which specific types/levels of service (if any) the proposed wholesaler actually offers.

Q. ARE THERE ADDITIONAL ISSUES RELATED TO HIGH-CAPACITY LOOPS THAT NEED TO BE ADDRESSED FOR THE WHOLESALE TRIGGER?

A. Yes. First, each loop must terminate at a location that affords alternative providers access to the *entire* customer premises – including, in multi-tenant buildings, access to the same common space, house, and riser, and other intra-building wire as SBC. If a loop does not provide alternative providers with access to the entire customer premises, then the carrier providing the loop may not be counted for purposes of the wholesale trigger.

Second, the high-capacity loop in question must provide a connection into SBC's central office. Competitors must be able to connect a wholesale loop with another carrier's transport, with their own collocated facilities, or with SBC UNE transport.

Q. HOW DOES THE REQUIREMENT OF OPERATIONAL READINESS APPLY TO THE WHOLESALE TRIGGERS?

A. In addition to the requirements of the self-provisioning triggers, SBC must demonstrate that the proposed wholesale provider is operationally ready and willing to provide loops or transport to other carriers at each capacity level. At a minimum, SBC must show that each wholesale provider:

- Has sufficient systems, methods and procedures for electronic pre-ordering, ordering, provisioning, maintenance and repair, and billing to support wholesale loop or transport products at the specific customer location or transport route and at the relevant capacity level;

- Possesses the ability to immediately provision wholesale high-capacity loops to each specific customer location identified or to provide dedicated transport along the identified route;

- For loops, has access to an entire multi-unit customer premises;
- Is capable of providing transport at a comparable level of capacity, quality, and reliability as that provided by SBC;
- For transport, is collocated in the ILEC central office, or in a similar arrangement not in the ILEC central office, at the end point of each transport route;
- Has the ability to provide wholesale high capacity loops and transport in reasonably foreseeable quantities, including having reasonable quantities of additional, currently installed capacity; and
- Reasonably can be expected to provide wholesale loop and transport capacity on a going-forward basis.

Q. WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE WHOLESALE FACILITIES TRIGGERS?

A. To be widely available, service must be made available on a common carrier basis, for example, through a tariff or standard contract. The fact that a carrier may have provided service to only one or a few other carriers on a route is not sufficient, unless it is also willing to provide comparable service to others. Moreover, a mere offer to negotiate an individualized contract does not constitute being widely available. In addition, each carrier identified as a wholesale provider must be able "immediately to provide" wholesale service. 47 C.F.R. § 51.319(e). Thus, if the carrier is required to construct facilities or OSS in order for the service to be made available, then the service is not widely available.

Q. WHAT DOES IT MEAN TO HAVE REASONABLE ACCESS TO THE WHOLESALE PROVIDER?

A. Requesting carriers must be able to access cross-connects at nondiscriminatory rates, terms, and conditions in accordance with FCC and state commission rules. In addition, ILECs must provide requesting carriers with adequate cross-connect terminations at cost-

based rates, and must enable sufficient capacity expansion. If carriers are not able to cross connect at the ILEC central offices, then they cannot obtain access to the wholesale providers' facilities.

As I stated above, for a competitive wholesale market to be in place, there must be proper systems and processes for electronic ordering and provisioning from the alternative supplier. In addition, carriers must be able to obtain the service at nondiscriminatory rates and on nondiscriminatory intervals. Requesting carriers also must be able to order circuits to terminate in all qualified wholesale providers' collocation space.

Q. WHAT ARE THE REMAINING STEPS?

A. Once the Commission has determined the appropriate application of the triggers, then it must gather the evidence for each route and location identified by SBC or CenturyTel. As I stated above, as the parties seeking non-impairment findings, the ILECs are responsible for challenging the national finding of impairment and must provide demonstrative evidence that a trigger is satisfied for each location (for loops) or route (for dedicated transport) for which it challenges the FCC's national finding. The challenger then has the burden of proving that the competing carriers that it has identified indeed satisfy a trigger for the particular loop location or transport route at issue. The ILEC's evidence must also be differentiated among each capacity type and for each loop location or transport route.

Once the ILECs have put forth the routes that they intend to challenge and the supporting evidence, then the Commission must evaluate whether the carriers that they have

identified as satisfying a trigger for each loop location or transport route meet the qualifying criteria. The Commission then must classify the location or route as impaired or not impaired based on all of evidence that the parties have submitted.

Q. IF THIS COMMISSION FINDS THAT EITHER THE SELF-PROVISIONING OR WHOLESALE TRIGGER IS SATISFIED, IS IT REQUIRED TO MAKE A FINDING OF NON-IMPAIRMENT ON A PARTICULAR LOOP LOCATION OR TRANSPORT ROUTE?

A. No. The *TRO* provides that, if the Commission finds that one of these triggers is facially satisfied but believes that impairment still exists, then the Commission may petition the FCC for a waiver of application of the trigger until the barrier to deployment identified by the Commission no longer exists. For example, the FCC explained that a state commission might find impairment – despite the existence of a trigger – if "a municipality has imposed a long-term moratorium on obtaining the necessary rights-of-way such that a competing carrier can not deploy new facilities." *TRO,* ¶ 411. As another example, ILECs have claimed collocation exhaust in many central offices. If a CLEC cannot collocate in one or both of the central offices on a route, then CLECs clearly remain impaired on that route, regardless of whether a trigger is facially satisfied.

VI. POTENTIAL DEPLOYMENT

Q. PLEASE DESCRIBE WHAT YOU MEAN BY POTENTIAL DEPLOYMENT.

A. Under the Self-Provisioning Trigger, the FCC provides that a party may attempt to demonstrate that no impairment exists for loop locations or transport routes even though the Self-Provisioning Trigger has not been satisfied.

Q. ARE DS1-CAPACITY LEVEL LOOPS AND TRANSPORT ELIGIBLE FOR A POTENTIAL DEPLOYMENT CLAIM?

A. No. As this is an exception to the Self-Provisioning Trigger, only DS3 and Dark Fiber Services are eligible for potential deployment claims.

Q. CAN AN ILEC MAKE A GENERAL CLAIM FOR POTENTIAL DEPLOYMENT, SUCH AS A CLAIM THAT NO IMPAIRMENT EXISTS FOR ALL BUILDINGS SERVED OUT OF A WIRE CENTER?

A. No. The FCC's language is clear that potential deployment claims must be location- or route-specific.

Q. WHAT TYPE OF DEMONSTRATION WOULD AN ILEC NEED TO MAKE IN ORDER TO SUCCESSFULLY PROVE NO IMPAIRMENT EXISTS AT A LOCATION OR ROUTE EVEN THOUGH THE TRIGGERS HAVE NOT BEEN MET?

A. An ILEC would need to demonstrate for each specific customer location and route that, contrary to the FCC's impairment determination, multiple competitive providers would be able to overcome the significant construction delays noted by the FCC and still manage to win customers' business at the level and quantity of facility that is available as a UNE (i.e., a maximum of two DS3s per location and twelve DS3s on a transport route). The party seeking a finding of non-impairment would thus be required to demonstrate that the competitive providers would receive sufficient revenues relative to their provision of one or two DS3s (or dark fiber) to a specific customer loop location or their provision of fewer than 12 DS3s (or dark fiber) on a specific dedicated transport route to cover the significant fixed and sunk costs of construction to self-provision such facilities.

VII. THE COMMISSION SHOULD CONSIDER CERTAIN TRANSITIONAL ISSUES IF THE COMMISSION MAKES ANY FINDINGS OF NON-IMPAIRMENT.

Q. ARE THERE TRANSITION ISSUES THAT THE COMMISSION MUST ADDRESS?

A. Yes. If the Commission finds that requesting carriers are not impaired without access to unbundled dedicated transport and/or loops on any particular route or at any customer location, then the Commission must address certain transition issues. Specifically, in the *Triennial Review Order*, the FCC required state commissions to establish an "appropriate period for competitive LECs to transition from any unbundled [loops or transport] that the state finds should no longer be unbundled." *TRO,* ¶¶ 339, 417.

Q. WHAT PRINCIPLES SHOULD GUIDE THE SETTING OF AN APPROPRIATE TRANSITION PERIOD?

A. At a minimum, the Commission should set a transition period that provides competing carriers a reasonable period of time to self-provision the loops or transport in question and continue to offer service using UNEs pursuant to existing contracts. The latter is essential because services to enterprise customers are contract-based and generally do not allow the provider to terminate or modify the contract based upon sudden cost increases. Without a transition period, CLECs and their customers would face significant disruptions to their services if access to unbundled loops were disconnected or migrated to other services.

Q. WHAT IS YOUR RECOMMENDATION REGARDING THE SETTING OF A TRANSITION PROCESS?

A. I recommend that the Commission develop a multi-tiered transition process such as the one applicable to mass-market switching. First, there should be a transition period of nine months in which CLECs may order new UNEs for locations and routes where the Commission found a trigger is met. Second, CLECs should have a transition period equal to that applied to line sharing and mass-market switching, which provides a 3-year transition process, with one-third of existing customers transitioned within 13 months, and another one-third transitioned within 20 months and the remainder within 27 months. Third, all high-capacity loops and transport should continue to be made available at TELRIC/TSLRIC rates as set by this Commission during this transition period**.**

Q. SHOULD THE COMMISSION ESTABLISH AN EXCEPTION PROCESS FOR LOCATIONS AND ROUTES WHERE THE TRIGGERS HAVE BEEN MET?

A. Yes. If a carrier demonstrates that it is attempting in good faith to construct facilities for a location or route for which UNEs are no longer available and that it is incurring a specific problem that makes construction within the applicable timeframe unachievable (e.g., issues with rights-of-way or building access), it should be permitted to seek an exception from the Commission consistent with the problem it faces. The CLEC should be permitted to continue to purchase the identified facility as a UNE until the Commission acts on its request.

Q. ARE THERE ADDITIONAL TRANSITION ISSUES THE COMMISSION SHOULD CONSIDER?

A. Yes. The Commission should ensure that SBC maintains an adequate process for ordering combinations of loops and transport, in situations where one or both network elements of the combination has been delisted. In the *Triennial Review Order*, over ILEC objections, the FCC specifically stated that competing carriers are permitted to continue to have access to combinations of loops and transport regardless of whether one of the items has been delisted. *See TRO,* ¶ 584. Similarly, the Commission should ensure that SBC has adequate billing processes and procedures in place for CLECs to purchase delisted network elements, whether individually or in combination.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.