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(5) Number of leases and revenues from private line services provided by the filing carrier.

(d) Section 43.81 Reports for:

(1) The calendar year 1988 must be filed on or before August 1, 1989;

(2) The calendar year 1989 must be filed on or before August 1, 1990; and

(3) The calendar year 1990 must be filed on or before August 1, 1991.

(e) These reports shall apply to nine or fewer persons and therefore are not subject to the review of the Office of Management and Budget under the Paperwork Reduction Act.

[54 FR 2130, Jan. 19, 1989, as amended at 60 FR 5333, Jan. 27, 1995]

§ 43.82 International circuit status reports.

(a) Each facilities-based common carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and offshore U.S. points and any country or point outside that area shall file a circuit status report with the Chief, International Bureau, not later than March 31 each year showing the status of its circuits used to provide international services as of December 31 of the preceding calendar year.

(b) The information contained in the reports shall include the total number of activated and the total number of idle circuits by the categories of submarine cable, satellite and terrestrial facilities to geographic points outside the United States for the services designated by the Chief, International Bureau.

(c) The information required under this section shall be furnished in conformance with instructions and reporting requirements prepared under the direction of the Chief, International Bureau, prepared and published as a manual.

(d) Authority is hereby delegated to the Chief, International Bureau to prepare instructions and reporting requirements for the filing of the annual international circuit status reports.

[60 FR 51368, Oct. 2, 1995]

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AUTHORITY: Sections 1-5, 7, 201-05, 207-09, 218, 225-27, 251-54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 151-55, 157, 201-05, 207-09, 218, 225-27, 251-54, 271, 332, unless otherwise noted.

SOURCE: 61 FR 45619, Aug. 29, 1996, unless otherwise noted.

Subpart A—General Information

§ 51.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement sections 251 and 252 of the Communications Act of 1934, as amended, 47 U.S.C. 251 and 252.

§ 51.3 Applicability to negotiated agreements.

To the extent provided in section 252(e)(2)(A) of the Act, a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of this part.

§ 51.5 Terms and definitions.

Terms used in this part have the following meanings:

Act. The Communications Act of 1934, as amended.

Advanced intelligent network. *Advanced intelligent network* is a telecommunications network architecture in which call processing, call routing, and network management are provided by means of centralized databases located at points in an incumbent local exchange carrier's network.

Advanced services. The term "advanced services" is defined as high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications using any technology.

Arbitration, final offer. *Final offer arbitration* is a procedure under which each party submits a final offer concerning the issues subject to arbitration, and the arbitrator selects, without modification, one of the final offers by the parties to the arbitration or portions of both such offers. "Entire package final offer arbitration," is a procedure under which the arbitrator must select, without modification, the entire proposal submitted by one of the parties to the arbitration. "Issue-by-issue final offer arbitration," is a procedure under which the arbitrator must select, without modification, on an issue-by-issue basis, one of the proposals submitted by the parties to the arbitration.

Billing. *Billing* involves the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgements and status reports. It also involves the exchange of information between telecommunications carriers to process claims and adjustments.

Binder or binder group. Copper pairs bundled together, generally in groups of 25, 50 or 100.

Commercial Mobile Radio Service (CMRS). *CMRS* has the same meaning as that term is defined in §20.3 of this chapter.

Commission. *Commission* refers to the Federal Communications Commission.

Day. *Day* means calendar day.

Dialing parity. The term *dialing parity* means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route auto-

matically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications service providers (including such local exchange carrier).

Directory assistance service. *Directory assistance service* includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

Directory listings. *Directory listings* are any information:

(1) Identifying the listed names of subscribers of a telecommunications carrier and such subscriber's telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and

(2) That the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Downstream database. A *downstream database* is a database owned and operated by an individual carrier for the purpose of providing number portability in conjunction with other functions and services.

Equipment necessary for interconnection or access to unbundled network elements. For purposes of section 251(c)(2) of the Act, the equipment used to interconnect with an incumbent local exchange carrier's network for the transmission and routing of telephone exchange service, exchange access service, or both. For the purposes of section 251(c)(3) of the Act, the equipment used to gain access to an incumbent local exchange carrier's unbundled network elements for the provision of a telecommunications service.

Incumbent Local Exchange Carrier (Incumbent LEC). With respect to an area, the local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2)(i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to §69.601(b) of this chapter; or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2)(i) of this section.

Information services. The term *information services* means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Interconnection. *Interconnection* is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

Known disturber. An advanced services technology that is prone to cause significant interference with other services deployed in the network.

Local Access and Transport Area (LATA). A *Local Access and Transport Area* is a contiguous geographic area—

(1) Established before February 8, 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(2) Established or modified by a Bell operating company after February 8, 1996 and approved by the Commission.

Local Exchange Carrier (LEC). A *LEC* is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of the such term.

Maintenance and repair. *Maintenance and repair* involves the exchange of information between telecommunications carriers where one initiates a request for maintenance or repair of existing products and services or unbundled network elements or combination thereof from the other with

attendant acknowledgements and status reports.

Meet point. A *meet point* is a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

Meet point interconnection arrangement. A *meet point interconnection arrangement* is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.

Network element. A *network element* is a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

Operator services. *Operator services* are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Such services include, but are not limited to, busy line verification, emergency interrupt, and operator-assisted directory assistance services.

Physical collocation. *Physical collocation* is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

(1) Place its own equipment to be used for interconnection or access to unbundled network elements within or upon an incumbent LEC's premises;

(2) Use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service;

(3) Enter those premises, subject to reasonable terms and conditions, to install, maintain, and repair equipment necessary for interconnection or access to unbundled elements; and

(4) Obtain reasonable amounts of space in an incumbent LEC's premises,

as provided in this part, for the equipment necessary for interconnection or access to unbundled elements, allocated on a first-come, first-served basis.

Premises. *Premises* refers to an incumbent LEC's central offices and serving wire centers; all buildings or similar structures owned, leased, or otherwise controlled by an incumbent LEC that house its network facilities; all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these central offices, wire centers, buildings, and structures.

Pre-ordering and ordering. Pre-ordering and ordering includes the exchange of information between telecommunications carriers about: current or proposed customer products and services; or unbundled network elements, or some combination thereof. This information includes loop qualification information, such as the composition of the loop material, including but not limited to: fiber optics or copper; the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

Provisioning. *Provisioning* involves the exchange of information between telecommunications carriers where one executes a request for a set of products and services or unbundled network elements or combination thereof from the other with attendant acknowledgements and status reports.

Rural telephone company. A *rural telephone company* is a LEC operating entity to the extent that such entity:

(1) Provides common carrier service to any local exchange carrier study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(2) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(3) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(4) Has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

Service control point. A *service control point* is a computer database in the public switched network which contains information and call processing instructions needed to process and complete a telephone call.

Service creation environment. A *service creation environment* is a computer containing generic call processing software that can be programmed to create new advanced intelligent network call processing services.

Service provider. A *service provider* is a provider of telecommunications services or a provider of information services.

Signal transfer point. A *signal transfer point* is a packet switch that acts as a routing hub for a signaling network and transfers messages between various points in and among signaling networks.

State. The term *state* includes the District of Columbia and the Territories and possessions.

State commission. A *state commission* means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers. As referenced in this part, this term may include the Commission if it assumes the responsibility of the state commission, pursuant to section 252(e)(5) of the Act. This term shall also include any person or persons to whom the

state commission has delegated its authority under section 251 and 252 of the Act.

State proceeding. A *state proceeding* is any administrative proceeding in which a state commission may approve or prescribe rates, terms, and conditions including, but not limited to, compulsory arbitration pursuant to section 252(b) of the Act, review of a Bell operating company statement of generally available terms pursuant to section 252(f) of the Act, and a proceeding to determine whether to approve or reject an agreement adopted by arbitration pursuant to section 252(e) of the Act.

Technically feasible. Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

Telecommunications carrier. A *telecommunications carrier* is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of the Act). A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that

the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. This definition includes CMRS providers, interexchange carriers (IXCs) and, to the extent they are acting as telecommunications carriers, companies that provide both telecommunications and information services. Private Mobile Radio Service providers are telecommunications carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.

Telecommunications service. The term *telecommunications service* refers to the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telephone exchange service. A *telephone exchange service* is:

(1) A service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or

(2) A comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Telephone toll service. The term *telephone toll service* refers to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

Unreasonable dialing delay. For the same type of calls, dialing delay is "unreasonable" when the dialing delay experienced by the customer of a competing provider is greater than that experienced by a customer of the LEC providing dialing parity, or non-discriminatory access to operator services or directory assistance.

Virtual collocation. *Virtual collocation* is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

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(1) Designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon an incumbent LEC's premises, and dedicated to such telecommunications carrier's use;

(2) Use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or for access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service; and

(3) Electronically monitor and control its communications channels terminating in such equipment.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 47348, Sept. 6, 1996; 64 FR 23241, Apr. 30, 1999; 65 FR 1344, Jan. 10, 2000; 65 FR 2550, Jan. 18, 2000; 65 FR 54438, Sept. 8, 2000]

EFFECTIVE DATE NOTE: At 65 FR 54438, Sept. 8, 2000, § 51.5 was amended by revising the definition of "premises" and by adding in alphabetical order a definition of "day", effective Oct. 10, 2000. For the convenience of the user, the superseded text is set forth as follows.

§ 51.5 Terms and definitions.

Terms used in this part have the following meanings:

* * * * *

Premises. *Premises* refers to an incumbent LEC's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.

* * * * *

Subpart B—Telecommunications Carriers

§ 51.100 General duty.

(a) Each telecommunications carrier has the duty:

(1) To interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) To not install network features, functions, or capabilities that do not comply with the guidelines and stand-

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ards as provided in the Commission's rules or section 255 or 256 of the Act.

(b) A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

Subpart C—Obligations of All Local Exchange Carriers

§ 51.201 Resale.

The rules governing resale of services by an incumbent LEC are set forth in subpart G of this part.

§ 51.203 Number portability.

The rules governing number portability are set forth in part 52, subpart C of this chapter.

§ 51.205 Dialing parity: General.

A local exchange carrier (LEC) shall provide local and toll dialing parity to competing providers of telephone exchange service or telephone toll service, with no unreasonable dialing delays. Dialing parity shall be provided for all originating telecommunications services that require dialing to route a call.

[61 FR 47349, Sept. 6, 1996]

§ 51.207 Local dialing parity.

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

[61 FR 47349, Sept. 6, 1996]

§ 51.209 Toll dialing parity.

(a) A LEC shall implement throughout each state in which it offers telephone exchange service intraLATA and interLATA toll dialing parity based on LATA boundaries. When a single LATA covers more than one state, the LEC shall use the implementation procedures that each state has approved for the LEC within that state's borders.

(b) A LEC shall implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically. LECs shall allow a customer to presubscribe, at a minimum, to one telecommunications carrier for all interLATA toll calls and to presubscribe to the same or to another telecommunications carrier for all intraLATA toll calls.

(c) A LEC may not assign automatically a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, to the customer's presubscribed interLATA or interstate toll carrier, or to any other carrier, except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same presubscribed carrier for both intraLATA and interLATA toll calls.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, states may require that toll dialing parity be based on state boundaries if it deems that the provision of intrastate and interstate toll dialing parity is procompetitive and otherwise in the public interest.

[61 FR 47349, Sept. 6, 1996]

§ 51.211 Toll dialing parity implementation schedule.

(a) A LEC that does not begin providing in-region, interLATA or in-region, interstate toll services in a state before February 8, 1999, must implement intraLATA and interLATA toll dialing parity throughout that state on February 8, 1999 or an earlier date as the state may determine, consistent with section 271(e)(2)(B) of the Communications Act of 1934, as amended, to be in the public interest.

(b) A Bell Operating Company (BOC) that provides in-region, interLATA toll services in a state before February 8, 1999 shall provide intraLATA toll dialing parity throughout that state coincident with its provision of in-region, interLATA toll services.

(c) A LEC that is not a BOC that begins providing in-region, interLATA or in-region, interstate toll services in a state before August 8, 1997, shall implement intraLATA and interLATA toll dialing parity throughout that state by

August 8, 1997. If the LEC is unable to comply with the August 8, 1997 implementation deadline, the LEC must notify the Commission's Common Carrier Bureau by May 8, 1997. In the notification, the LEC must state its justification for noncompliance and must set forth the date by which it proposes to implement intraLATA and interLATA toll dialing parity.

(d) A LEC that is not a BOC that begins providing in-region, interLATA or in-region, interstate toll services in a state on or after August 8, 1997, but before February 8, 1999 shall implement intraLATA and interLATA toll dialing parity throughout that state no later than the date on which it begins providing in-region, interLATA or in-region, interstate toll services.

(e) Notwithstanding the requirements of paragraphs (a) through (d) of this section, a LEC shall implement toll dialing parity under a state order as described below:

(1) If the state issued a dialing parity order by December 19, 1995 requiring a BOC to implement toll dialing parity in advance of the dates established by these rules, the BOC must implement toll dialing parity in accordance with the implementation dates established by the state order.

(2) If the state issued a dialing parity order by August 8, 1996 requiring a LEC that is not a BOC to implement toll dialing parity in advance of the dates established by these rules, the LEC must implement toll dialing parity in accordance with the implementation dates established by the state order.

(f) For LECs that are not Bell Operating Companies, the term *in-region, interLATA toll service*, as used in this section and § 51.213, includes the provision of toll services outside of the LEC's study area.

[61 FR 47349, Sept. 6, 1996]

§ 51.213 Toll dialing parity implementation plans.

(a) A LEC must file a plan for providing intraLATA toll dialing parity throughout each state in which it offers telephone exchange service. A LEC cannot offer intraLATA toll dialing parity within a state until the implementation plan has been approved by

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the appropriate state commission or the Commission.

(b) A LEC's implementation plan must include:

(1) A proposal that explains how the LEC will offer intraLATA toll dialing parity for each exchange that the LEC operates in the state, in accordance with the provisions of this section, and a proposed time schedule for implementation; and

(2) A proposal for timely notification of its subscribers and the methods it proposes to use to enable subscribers to affirmatively select an intraLATA toll service provider.

(3) A LEC that is not a BOC also shall identify the LATA with which it will associate for the purposes of providing intraLATA and interLATA toll dialing parity under this subpart.

(c) A LEC must file its implementation plan with the state commission for each state in which the LEC provides telephone exchange service, except that if a LEC determines that a state commission has elected not to review the plan or will not complete its review in sufficient time for the LEC to meet the toll dialing parity implementation deadlines in §51.211, the LEC must file its plan with the Commission:

(1) No later than 180 days before the date on which the LEC will begin providing toll dialing parity in the state, or no later than 180 days before February 8, 1999, whichever occurs first; or

(2) For LECs that begin providing in-region, interLATA or in-region, interstate toll service (see §51.211(f)) before August 8, 1997, no later than December 5, 1996.

(d) The Commission will release a public notice of any LEC implementation plan that is filed with the Commission under paragraph (c) of this section.

(1) The LEC's plan will be deemed approved on the fifteenth day following release of the Commission's public notice unless, no later than the fourteenth day following the release of the Commission's public notice; either

(i) The Common Carrier Bureau notifies the LEC that its plan will not be deemed approved on the fifteenth day; or

(ii) An opposition to the plan is filed with the Commission and served on the

LEC that filed the plan. Such an opposition must state specific reasons why the LEC's plan does not serve the public interest.

(2) If one or more oppositions are filed, the LEC that filed the plan will have seven additional days (*i.e.*, until no later than the twenty-first day following the release of the Commission's public notice) within which to file a reply to the opposition(s) and serve it on all parties that filed an opposition. The response shall:

(i) Include information responsive to the allegations and concerns identified by the opposing party; and

(ii) Identify possible revisions to the plan that will address the opposing party's concerns.

(3) If a LEC's plan is opposed under paragraph (d)(1)(ii) of this section, the Common Carrier Bureau will act on the plan within ninety days of the date on which the Commission released its public notice. In the event the Bureau fails to act within ninety days, the plan will not go into effect pending Bureau action. If the plan is not opposed, but it did not go into effect on the fifteenth day following the release of the Commission's public notice (see paragraph (d)(1)(i) of this section), and the Common Carrier Bureau fails to act on the plan within ninety days of the date on which the Commission released its public notice, the plan will be deemed approved without further Commission action on the ninety-first day after the date on which the Commission released its public notice of the plan's filing.

[61 FR 47349, Sept. 6, 1996]

§51.215 Dialing parity: Cost recovery.

(a) A LEC may recover the incremental costs necessary for the implementation of toll dialing parity. The LEC must recover such costs from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including that LEC. The LEC shall use a cost recovery mechanism established by the state.

(b) Any cost recovery mechanism for the provision of toll dialing parity pursuant to this section that a state adopts must not:

(1) Give one service provider an appreciable cost advantage over another service provider, when competing for a

specific subscriber (*i.e.*, the recovery mechanism may not have a disparate effect on the incremental costs of competing service providers seeking to serve the same customer); or

(2) Have a disparate effect on the ability of competing service providers to earn a normal return on their investment.

[61 FR 47350, Sept. 6, 1996]

§ 51.217 Nondiscriminatory access: Telephone numbers, operator services, directory assistance services, and directory listings.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Competing provider.* A “competing provider” is a provider of telephone exchange or telephone toll services that seeks nondiscriminatory access from a local exchange carrier (LEC) in that LEC’s service area.

(2) *Nondiscriminatory access.* “Nondiscriminatory access” refers to access to telephone numbers, operator services, directory assistance and directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives. Nondiscriminatory access includes, but is not limited to:

(i) Nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided; and

(ii) The ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC.

(3) *Providing local exchange carrier (LEC).* A “providing local exchange carrier” is a local exchange carrier (LEC) that is required to permit nondiscriminatory access to a competing provider.

(b) *General rule.* A local exchange carrier (LEC) that provides operator services, directory assistance services or directory listings to its customers, or provides telephone numbers, shall permit competing providers of telephone exchange service or telephone toll service to have nondiscriminatory access to that service or feature, with no unreasonable dialing delays.

(c) *Specific requirements.* A LEC subject to paragraph (b) of this section must also comply with the following requirements:

(1) *Telephone numbers.* A LEC shall permit competing providers to have access to telephone numbers that is identical to the access that the LEC provides to itself.

(2) *Operator services.* A LEC must permit telephone service customers to connect to the operator services offered by that customer’s chosen local service provider by dialing “0,” or “0” plus the desired telephone number, regardless of the identity of the customer’s local telephone service provider.

(3) *Directory assistance services and directory listings—(i) Access to directory assistance.* A LEC shall permit competing providers to have access to its directory assistance services, including directory assistance databases, so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iv) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer’s local service provider, or the identity of the provider for the customer whose listing is requested. A LEC must supply access to directory assistance in the manner specified by the competing provider, including transfer of the LECs’ directory assistance databases in readily accessible magnetic tape, electronic or other convenient format, as provided in paragraph (c)(3)(iii) of this section. Updates to the directory assistance database shall be made in the same format as the initial transfer (unless the requesting LEC requests otherwise), and shall be performed in a timely manner, taking no longer than those made to the providing LEC’s own database. A LEC shall accept the listings of those customers served by competing providers for inclusion in its directory assistance/operator services databases.

(ii) *Access to directory listings.* A LEC that compiles directory listings shall share directory listings with competing providers in the manner specified by the competing provider, including readily accessible tape or electronic formats, as provided in paragraph (c)(3)(iii) of this section. Such data shall be provided in a timely fashion.

(iii) *Format.* A LEC shall provide access to its directory assistance services, including directory assistance

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databases, and to its directory listings in any format the competing provider specifies, if the LEC’s internal systems can accommodate that format.

(A) If a LEC’s internal systems do not permit it provide directory assistance or directory listings in the format the specified by the competing provider, the LEC shall:

(1) Within thirty days of receiving the request, inform the competing provider that the requested format cannot be accommodated and tell the requesting provider which formats can be accommodated; and

(2) Provide the requested directory assistance or directory listings in the format the competing provider chooses from among the available formats.

(B) [Reserved]

(iv) *Unlisted numbers.* A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available, with the exception of customer name and address. The LEC shall ensure that access is permitted to the same directory information, including customer name and address, that is available to its own directory assistance customers.

(v) *Adjuncts to services.* Operator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (e.g., rating tables or customer information databases) necessary to allow competing providers full use of these services.

(d) *Branding of operator services and directory assistance services.* The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider’s request.

(e) *Disputes—(1) Disputes involving nondiscriminatory access.* In disputes involving nondiscriminatory access to operator services, directory assistance

services, or directory listings, a providing LEC shall bear the burden of demonstrating with specificity:

(i) That it is permitting nondiscriminatory access, and

(ii) That any disparity in access is not caused by factors within its control. “Factors within its control” include, but are not limited to, physical facilities, staffing, the ordering of supplies or equipment, and maintenance.

(2) *Disputes involving unreasonable dialing delay.* In disputes between providing local exchange carriers (LECs) and competing providers involving unreasonable dialing delay in the provision of access to operator services and directory assistance, the burden of proof is on the providing LEC to demonstrate with specificity that it is processing the calls of the competing provider’s customers on terms equal to that of similar calls from the providing LEC’s own customers.

[61 FR 47350, Sept. 6, 1996, as amended at 64 FR 51911, Sept. 27, 1999]

EFFECTIVE DATE NOTE: At 64 FR 51911, Sept. 27, 1999, §51.217 was amended by revising paragraph (c)(3). This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§51.219 Access to rights of way.

The rules governing access to rights of way are set forth in part 1, subpart J of this chapter.

§51.221 Reciprocal compensation.

The rules governing reciprocal compensation are set forth in subpart H of this part.

§51.223 Application of additional requirements.

(a) A state may not impose the obligations set forth in section 251(c) of the Act on a LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of the Act, unless the Commission issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs.

(b) A state commission, or any other interested party, may request that the Commission issue an order declaring that a particular LEC be treated as an

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incumbent LEC, or that a class or category of LECs be treated as incumbent LECs, pursuant to section 251(h)(2) of the Act.

§ 51.230 Presumption of acceptability for deployment of an advanced services loop technology.

(a) An advanced services loop technology is presumed acceptable for deployment under any one of the following circumstances, where the technology:

(1) Complies with existing industry standards; or

(2) Is approved by an industry standards body, the Commission, or any state commission; or

(3) Has been successfully deployed by any carrier without significantly degrading the performance of other services.

(b) An incumbent LEC may not deny a carrier's request to deploy a technology that is presumed acceptable for deployment unless the incumbent LEC demonstrates to the relevant state commission that deployment of the particular technology will significantly degrade the performance of other advanced services or traditional voiceband services.

(c) Where a carrier seeks to establish that deployment of a technology falls within the presumption of acceptability under paragraph (a)(3) of this section, the burden is on the requesting carrier to demonstrate to the state commission that its proposed deployment meets the threshold for a presumption of acceptability and will not, in fact, significantly degrade the performance of other advanced services or traditional voice band services. Upon a successful demonstration by the requesting carrier before a particular state commission, the deployed technology shall be presumed acceptable for deployment in other areas.

[65 FR 1345, Jan. 10, 2000]

§ 51.231 Provision of information on advanced services deployment.

(a) An incumbent LEC must provide to requesting carriers that seek access to a loop or high frequency portion of the loop to provide advanced services:

(1) Uses in determining which services can be deployed; and information

with respect to the spectrum management procedures and policies that the incumbent LEC.

(2) Information with respect to the rejection of the requesting carrier's provision of advanced services, together with the specific reason for the rejection; and

(3) Information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops.

(b) A requesting carrier that seeks access to a loop or a high frequency portion of a loop to provide advanced services must provide to the incumbent LEC information on the type of technology that the requesting carrier seeks to deploy.

(1) Where the requesting carrier asserts that the technology it seeks to deploy fits within a generic power spectral density (PSD) mask, it also must provide Spectrum Class information for the technology.

(2) Where a requesting carrier relies on a calculation-based approach to support deployment of a particular technology, it must provide the incumbent LEC with information on the speed and power at which the signal will be transmitted.

(c) The requesting carrier also must provide the information required under paragraph (b) of this section when notifying the incumbent LEC of any proposed change in advanced services technology that the carrier uses on the loop.

[65 FR 1345, Jan. 10, 2000]

§ 51.232 Binder group management.

(a) With the exception of loops on which a known disturber is deployed, the incumbent LEC shall be prohibited from designating, segregating or reserving particular loops or binder groups for use solely by any particular advanced services loop technology.

(b) Any party seeking designation of a technology as a known disturber should file a petition for declaratory ruling with the Commission seeking such designation, pursuant to § 1.2 of this chapter.

[65 FR 1346, Jan. 10, 2000]

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§ 51.233 Significant degradation of services caused by deployment of advanced services.

(a) Where a carrier claims that a deployed advanced service is significantly degrading the performance of other advanced services or traditional voiceband services, that carrier must notify the deploying carrier and allow the deploying carrier a reasonable opportunity to correct the problem. Where the carrier whose services are being degraded does not know the precise cause of the degradation, it must notify each carrier that may have caused or contributed to the degradation.

(b) Where the degradation asserted under paragraph (a) of this section remains unresolved by the deploying carrier(s) after a reasonable opportunity to correct the problem, the carrier whose services are being degraded must establish before the relevant state commission that a particular technology deployment is causing the significant degradation.

(c) Any claims of network harm presented to the deploying carrier(s) or, if subsequently necessary, the relevant state commission, must be supported with specific and verifiable information.

(d) Where a carrier demonstrates that a deployed technology is significantly degrading the performance of other advanced services or traditional voice band services, the carrier deploying the technology shall discontinue deployment of that technology and migrate its customers to technologies that will not significantly degrade the performance of other such services.

(e) Where the only degraded service itself is a known disturber, and the newly deployed technology satisfies at least one of the criteria for a presumption that it is acceptable for deployment under § 51.230, the degraded service shall not prevail against the newly-deployed technology.

[65 FR 1346, Jan. 10, 2000]

Subpart D—Additional Obligations of Incumbent Local Exchange Carriers

§ 51.301 Duty to negotiate.

(a) An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251 (b) and (c) of the Act.

(b) A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(1) Demanding that another party sign a nondisclosure agreement that precludes such party from providing information requested by the Commission, or a state commission, or in support of a request for arbitration under section 252(b)(2)(B) of the Act;

(2) Demanding that a requesting telecommunications carrier attest that an agreement complies with all provisions of the Act, federal regulations, or state law;

(3) Refusing to include in an arbitrated or negotiated agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules;

(4) Conditioning negotiation on a requesting telecommunications carrier first obtaining state certifications;

(5) Intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

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(8) Refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to:

(i) Refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer; and

(ii) Refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

§ 51.303 Preexisting agreements.

(a) All interconnection agreements between an incumbent LEC and a telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the appropriate state commission for approval pursuant to section 252(e) of the Act.

(b) Interconnection agreements negotiated before February 8, 1996, between Class A carriers, as defined by § 32.11(a)(1) of this chapter, shall be filed by the parties with the appropriate state commission no later than June 30, 1997, or such earlier date as the state commission may require.

(c) If a state commission approves a preexisting agreement, it shall be made available to other parties in accordance with section 252(i) of the Act and § 51.809 of this part. A state commission may reject a preexisting agreement on the grounds that it is inconsistent with the public interest, or for other reasons set forth in section 252(e)(2)(A) of the Act.

§ 51.305 Interconnection.

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) At any technically feasible point within the incumbent LEC's network including, at a minimum:

- (i) The line-side of a local switch;
- (ii) The trunk-side of a local switch;
- (iii) The trunk interconnection points for a tandem switch;

(iv) Central office cross-connect points;

(v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and

(vi) The points of access to unbundled network elements as described in § 51.319;

(3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party, except as provided in paragraph (4) of this section. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier;

(4) That, if so requested by a telecommunications carrier and to the extent technically feasible, is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection. Nothing in this section prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier; and

(5) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

(b) A carrier that requests interconnection solely for the purpose of originating or terminating its inter-exchange traffic on an incumbent

LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

(c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(d) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.

(e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

(f) If technically feasible, an incumbent LEC shall provide two-way trunking upon request.

(g) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 47351, Sept. 6, 1996]

§ 51.307 Duty to provide access on an unbundled basis to network elements.

(a) An incumbent LEC shall provide, to a requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251

and 252 of the Act, and the Commission's rules.

(b) The duty to provide access to unbundled network elements pursuant to section 251(c)(3) of the Act includes a duty to provide a connection to an unbundled network element independent of any duty to provide interconnection pursuant to this part and section 251(c)(2) of the Act.

(c) An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.

(d) An incumbent LEC shall provide a requesting telecommunications carrier access to the facility or functionality of a requested network element separate from access to the facility or functionality of other network elements, for a separate charge.

(e) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 47351, Sept. 6, 1996]

§ 51.309 Use of unbundled network elements.

(a) An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

(b) A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

(c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive

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use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element, except as provided in paragraph (c) of this section.

(b) Except as provided in paragraph (c) of this section, to the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

(c) To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall, upon request, be superior in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element or

access to such unbundled network element at the requested level of quality that is superior to that which the incumbent LEC provides to itself. Nothing in this section prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier.

(d) Previous successful access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that access is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(e) Previous successful provision of access to an unbundled element at a particular point in a network at a particular level of quality is substantial evidence that access is technically feasible at that point, or at substantially similar points, at that level of quality.

§ 51.313 Just, reasonable and non-discriminatory terms and conditions for the provision of unbundled network elements.

(a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers.

(b) Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.

(c) An incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems.

§51.315 Combination of unbundled network elements.

(a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.

(b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:

(1) Technically feasible; and

(2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

(d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

(e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.

(f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

§51.317 Standards for requiring the unbundling of network elements.

(a) *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:

(1) 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 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," then, subject to any consideration of the factors set forth under paragraph (c) of this section, the Commission may require the unbundling of such proprietary network element.

(2) In the event that such access is not "necessary," the Commission may require unbundling subject to any consideration of the factors set forth under paragraph (c) of this section if it is determined that:

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

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

(iii) Lack of access to such element would jeopardize the goals of the 1996 Act.

(b) *Non-proprietary network elements.* The Commission shall undertake the following analysis to determine whether a non-proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

(1) Determine whether lack of access to a non-proprietary network element "impairs" a carrier's ability to provide the service it seeks to offer. A requesting carrier's ability to provide service is "impaired" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks

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to offer. The Commission will consider the totality of the circumstances to determine whether an alternative to the incumbent LEC's network element is available in such a manner that a requesting carrier can provide service using the alternative. If the Commission determines that lack of access to an element "impairs" a requesting carrier's ability to provide service, it may require the unbundling of that element, subject to any consideration of the factors set forth under section 51.317(c).

(2) In considering whether lack of access to a network element materially diminishes a requesting carrier's ability to provide service, the Commission shall consider the extent to which alternatives in the market are available as a practical, economic, and operational matter. The Commission will rely upon the following factors to determine whether alternative network elements are available as a practical, economic, and operational matter:

(i) Cost, including all costs that requesting carriers may incur when using the alternative element to provide the services it seeks to offer;

(ii) Timeliness, including the time associated with entering a market as well as the time to expand service to more customers;

(iii) Quality;

(iv) Ubiquity, including whether the alternatives are available ubiquitously;

(v) Impact on network operations.

(3) In determining whether to require the unbundling of any network element under this rule, the Commission may also consider the following additional factors:

(i) Whether unbundling of a network element promotes the rapid introduction of competition;

(ii) Whether unbundling of a network element promotes facilities-based competition, investment, and innovation;

(iii) Whether unbundling of a network element promotes reduced regulation;

(iv) Whether unbundling of a network element provides certainty to requesting carriers regarding the availability of the element;

(v) Whether unbundling of a network element is administratively practical to apply.

(4) If an incumbent LEC is required to provide nondiscriminatory access to a network element in accordance with § 51.311 and section 251(c)(3) of the Act under § 51.319 of this section or any applicable Commission Order, no state commission shall have authority to determine that such access is not required. A state commission must comply with the standards set forth in this § 51.317 when considering whether to require the unbundling of additional network elements. With respect to any network element which a state commission has required to be unbundled under this § 51.317, the state commission retains the authority to subsequently determine, in accordance with the requirements of this rule, that such network element need no longer be unbundled.

[65 FR 2551, Jan. 18, 2000]

§ 51.319 Specific unbundling requirements.

(a) *Local loop and subloop.* An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the local loop and subloop, including inside wiring owned by the incumbent LEC, on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service.

(1) *Local loop.* 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, including inside wire owned by the incumbent LEC. The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning. The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops. The requirements in this section relating to dark fiber are not effective until May 17, 2000.

(2) *Subloop.* The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface. The requirements in this section relating to subloops and inside wire are not effective until May 17, 2000.

(i) *Inside wire.* Inside wire is defined as all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation as defined in §68.3 of this chapter, including the loop plant near the end-user customer premises. Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole.

(ii) *Technical feasibility.* If parties are unable to reach agreement, pursuant to voluntary negotiations, as to whether it is technically feasible, or whether sufficient space is available, to unbundle the subloop at the point where a carrier requests, the incumbent LEC shall have the burden of demonstrating to the state, pursuant to state arbitration proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible, to unbundle the subloop at the point requested.

(iii) *Best practices.* Once one state has determined that it is technically feasible to unbundle subloops at a designated point, an incumbent LEC in any state shall have the burden of demonstrating, pursuant to state arbitration proceedings under section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own loops at such a point.

(iv) *Rules for collocation.* Access to the subloop is subject to the Commission's collocation rules at §§51.321 through 51.323.

(v) *Single point of interconnection.* The incumbent LEC shall provide a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligation to provide nondiscriminatory access to subloops at any technically feasible point. If parties are unable to negotiate terms and conditions regarding a single point of interconnection, issues in dispute, including compensation of the incumbent LEC under forward-looking pricing principles, shall be resolved under the dispute resolution processes in section 252 of the Act.

(3) *Line conditioning.* The incumbent LEC shall condition lines required to be unbundled under this section whenever a competitor requests, whether or not the incumbent LEC offers advanced services to the end-user customer on that loop.

(i) Line conditioning is defined as the removal from the loop of any devices that may diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to, bridge taps, low pass filters, and range extenders.

(ii) Incumbent LECs shall recover the cost of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act.

(iii) Incumbent LECs shall recover the cost of line conditioning from the requesting telecommunications carrier in compliance with rules governing nonrecurring costs in §51.507 (e).

(iv) In so far as it is technically feasible, the incumbent LEC shall test and report trouble for all the features, functions, and capabilities of conditioned lines, and may not restrict testing to voice-transmission only.

(b) *Network interface device.* An incumbent LEC shall provide nondiscriminatory access, in accordance with §51.311 and section 251(c)(3) of the Act, to the network interface device on

an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. The network interface device network element is defined as any means of interconnection of end-user customer premises wiring to the incumbent LEC's distribution plant, such as a cross connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.

(c) *Switching capability.* An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to local circuit switching capability and local tandem switching capability on an unbundled basis, except as set forth in § 51.319(c)(2), to any requesting telecommunications carrier for the provision of a telecommunications service. An incumbent LEC shall be required to provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to packet switching capability on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service only in the limited circumstance described in § 51.319(c)(4).

(1) *Local circuit switching capability, including tandem switching capability.* The local circuit switching capability network element is defined as:

(i) Line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;

(ii) Trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and

(iii) All features, functions and capabilities of the switch, which include, but are not limited to:

(A) The basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a tele-

phone number, white page listing and dial tone, and

(B) All other features that the switch is capable of providing, including but not limited to, customer calling, customer local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

(2) Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides nondiscriminatory access to combinations of unbundled loops and transport (also known as the "Enhanced Extended Link") throughout Density Zone 1, and the incumbent LEC's local circuit switches are located in:

(i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, and

(ii) In Density Zone 1, as defined in § 69.123 of this chapter on January 1, 1999.

(3) *Local tandem switching capability.* The tandem switching capability network element is defined as:

(i) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;

(ii) The basic switch trunk function of connecting trunks to trunks; and

(iii) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

(4) *Packet switching capability.* (i) The packet switching capability network element is defined as the basic packet switching function of routing or forwarding packets, frames, cells or other data units based on address or other routing information contained in the packets, frames, cells or other data

units, and the functions that are performed by Digital Subscriber Line Access Multiplexers, including but not limited to:

- (ii) The ability to terminate copper customer loops (which includes both a low band voice channel and a high-band data channel, or solely a data channel);
- (iii) The ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches;
- (iv) The ability to extract data units from the data channels on the loops, and
- (v) The ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

(5) An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied. The requirements in this section relating to packet switching are not effective until May 17, 2000.

(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

(ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;

(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and

(iv) The incumbent LEC has deployed packet switching capability for its own use.

(d) *Interoffice transmission facilities.* An incumbent LEC shall provide nondiscriminatory access, in accordance with §51.311 and section 251(c)(3) of the Act, to interoffice transmission facilities on an unbundled basis to any re-

questing telecommunications carrier for the provision of a telecommunications service. The requirements in this section relating to dark fiber transport are not effective until May 17, 2000.

(1) Interoffice transmission facility network elements include:

(i) Dedicated transport, defined as incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, 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;

(ii) Dark fiber transport, defined as incumbent LEC optical transmission facilities without attached multiplexing, aggregation or other electronics;

(iii) Shared transport, defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.

(2) The incumbent LEC shall:

(i) Provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or use the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier.

(ii) Provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;

(iii) Permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including but not limited to, the requesting telecommunications carrier's collocated facilities; and

(iv) Permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers.

(e) *Signaling networks and call-related databases.* An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to signaling networks, call-related databases, and service management systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service.

(1) *Signaling networks.* Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(i) When a requesting telecommunications carrier purchases unbundled switching capability from an incumbent LEC, the incumbent LEC shall provide access from that switch in the same manner in which it obtains such access itself.

(ii) An incumbent LEC shall provide a requesting telecommunications carrier with its own switching facilities access to the incumbent LEC's signaling network for each of the requesting telecommunications carrier's switches. This connection shall be made in the same manner as an incumbent LEC connects one of its own switches to a signaling transfer point.

(2) *Call-related databases.* Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service.

(i) For purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including but not limited to, the Calling Name Database, 911 Database, E911 Database, Line Information Database, Toll Free Calling Database, Advanced Intelligent Network Databases, and downstream number portability databases by means of physical access at the signaling transfer point linked

to the unbundled databases. The requirements in this section relating to the Calling Name Database, 911 Database, and E911 Database are not effective until May 17, 2000.

(ii) Notwithstanding the incumbent LEC's general duty to unbundle call-related databases, an incumbent LEC shall not be required to unbundle the services created in the AIN platform and architecture that qualify for proprietary treatment.

(iii) An incumbent LEC shall allow a requesting telecommunications carrier that has purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(iv) An incumbent LEC shall allow a requesting telecommunications carrier that has deployed its own switch, and has linked that switch to an incumbent LEC's signaling system, to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related database-supported services to customers served by the requesting telecommunications carrier's switch.

(v) An incumbent LEC shall provide a requesting telecommunications carrier with access to call-related databases in a manner that complies with section 222 of the Act.

(3) *Service management systems:*

(i) A service management system is defined as a computer database or system not part of the public switched network that, among other things:

(A) Interconnects to the service control point and sends to that service control point the information and call processing instructions needed for a network switch to process and complete a telephone call; and

(B) Provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call.

(ii) An incumbent LEC shall provide a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the incumbent LEC's service management system.

(iii) An incumbent LEC shall provide a requesting telecommunications carrier the same access to design, create, test, and deploy Advanced Intelligent Network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(iv) An incumbent LEC shall provide a requesting telecommunications carrier access to service management systems in a manner that complies with section 222 of the Act.

(f) *Operator services and directory assistance.* An incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol. Operator services are any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

(g) *Operations support systems.* An incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 and section 251(c)(3) of the Act to operations support systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. An incumbent LEC, as part of its duty to provide access to the pre-ordering function, must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC. The requirements in this section relating to loop qualification information are not effective until May 17, 2000.

(h) *High frequency portion of the loop.*

(1) The high frequency portion of the loop network element is defined as the

frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions.

(2) An incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 of these rules and section 251(c)(3) of the Act to the high frequency portion of a loop to any requesting telecommunications carrier for the provision of a telecommunications service conforming with §51.230 of these rules.

(3) An incumbent LEC shall only provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting carrier seeks access.

(4) *Control of the loop and splitter functionality.* In situations where a requesting carrier is obtaining access to the high frequency portion of the loop, the incumbent LEC may maintain control over the loop and splitter equipment and functions, and shall provide to requesting carriers loop and splitter functionality that is compatible with any transmission technology that the requesting carrier seeks to deploy using the high frequency portion of the loop, as defined in this subsection, provided that such transmission technology is presumed to be deployable pursuant to §51.230.

(5) *Loop conditioning.* (i) An incumbent LEC must condition loops to enable requesting carriers to access the high frequency portion of the loop spectrum, in accordance with §§51.319(a)(3), and 51.319(h)(1). If the incumbent LEC seeks compensation from the requesting carrier for line conditioning, the requesting carrier has the option of refusing, in whole, or in part, to have the line conditioned, and a requesting carrier's refusal of some or all aspects of line conditioning will not diminish its right of access to the high frequency portion of the loop.

(ii) Where conditioning the loop will significantly degrade, as defined in §51.233, the voiceband services that the incumbent LEC is currently providing over that loop, the incumbent LEC must either:

(A) Locate another loop that has been or can be conditioned, migrate the incumbent LEC's voiceband service to that loop, and provide the requesting carrier with access to the high frequency portion of the alternative loop; or

(B) Make a showing to the relevant state commission that the original loop cannot be conditioned without significantly degrading voiceband services on that loop, as defined in § 51.233, and that there is no adjacent or alternative loop available that can be conditioned or to which the customer's voiceband service can be moved to enable line sharing.

(iii) If the relevant State commission concludes that a loop cannot be conditioned without significantly degrading the voiceband service, the incumbent LEC cannot then or subsequently condition that loop to provide advanced services to its own customers without first making available to any requesting carrier the high frequency portion of the newly-conditioned loop.

(6) *Digital loop carrier systems.* Incumbent LECs must provide to requesting carriers unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, pursuant to § 51.319(a)(2) and § 51.319(h)(1).

(7) *Maintenance, repair, and testing.* (i) Incumbent LECs must provide, on a nondiscriminatory basis, physical loop test access points to requesting carriers at the splitter, through a cross-connection to the competitor's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purposes of loop testing, maintenance, and repair activities.

(ii) An incumbent seeking to utilize an alternative physical access methodology may request approval to do so from the relevant state commission, but must show that the proposed alternative method is reasonable, non-discriminatory, and will not disadvantage a requesting carrier's ability to perform loop or service testing, maintenance or repair.

[65 FR 2551, Jan. 18, 2000; 65 FR 19334, Apr. 11, 2000]

§ 51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.

(a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

(b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to:

(1) Physical collocation and virtual collocation at the premises of an incumbent LEC; and

(2) Meet point interconnection arrangements.

(c) A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on any incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points. A requesting telecommunications carrier seeking a particular collocation arrangement, either physical or virtual, is entitled to a presumption that such arrangement is technically feasible if any LEC has deployed such collocation arrangement in any incumbent LEC premises.

(d) An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.

(e) An incumbent LEC shall not be required to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises if it demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

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In such cases, the incumbent LEC shall be required to provide virtual collocation, except at points where the incumbent LEC proves to the state commission that virtual collocation is not technically feasible. If virtual collocation is not technically feasible, the incumbent LEC shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

(f) An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. These floor plans or diagrams must show what space, if any, the incumbent LEC or any of its affiliates has reserved for future use, and must describe in detail the specific future uses for which the space has been reserved and the length of time for each reservation. An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not only the area in which space was denied, without charge, within ten days of the receipt of the incumbent's denial of space. An incumbent LEC must allow a requesting telecommunications carrier reasonable access to its selected collocation space during construction.

(g) An incumbent LEC that is classified as a Class A company under § 32.11 of this chapter and that is not a National Exchange Carrier Association interstate tariff participant as provided in part 69, subpart G, shall continue to provide expanded interconnection service pursuant to interstate tariff in accordance with §§ 64.1401, 64.1402, 69.121 of this chapter, and the Commission's other requirements.

(h) Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in

the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publically available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.

(i) An incumbent LEC must, upon request, remove obsolete unused equipment from their premises to increase the amount of space available for collocation.

[61 FR 45619, Aug. 28, 1996, as amended at 64 FR 23241, Apr. 30, 1999; 65 FR 54438, Sept. 8, 2000]

EFFECTIVE DATE NOTE: At 65 FR 54438, Sept. 8, 2000, § 51.321 was amended by revising paragraph (f), effective Oct. 10, 2000. For the convenience of the user, the superseded text is set forth as follows.

§ 51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.

* * * * *

(f) An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not just the area in which space was denied, without charge, within ten days of the receipt of the incumbent LEC's denial of space.

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§ 51.323 Standards for physical collocation and virtual collocation.

(a) An incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers.

(b) Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of

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section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety. Equipment used for interconnection or access to unbundled network elements includes, but is not limited to:

(1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers, and

(2) Equipment being collocated to terminate basic transmission facilities pursuant to §§ 66.1401 and 64.1402 of this chapter as of August 1, 1996.

(3) Digital subscriber line access multiplexers, routers, asynchronous transfer

(c) Nothing in this section requires an incumbent LEC to permit collocation

of equipment used solely for switching or solely to provide enhanced services; provided, however, that an incumbent LEC may not place any limitations on the ability of requesting carriers to use all the features, functions, and capabilities of equipment collocated pursuant to paragraph (b) of this section, including, but not limited to, switching and routing features and functions and enhanced services functionalities.

(d) When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:

(1) Provide an interconnection point or points, physically accessible by both the incumbent LEC and the collocating telecommunications carrier, at which the fiber optic cable carrying an interconnector's circuits can enter the incumbent LEC's premises, provided that the incumbent LEC shall designate interconnection points as close as reasonably possible to its premises;

(2) Provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points;

(3) Permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission; and

(4) Permit physical collocation of microwave transmission facilities except where such collocation is not practical for technical reasons or because of space limitations, in which case virtual collocation of such facilities is required where technically feasible.

(e) When providing virtual collocation, an incumbent LEC shall, at a minimum, install, maintain, and repair collocated equipment identified in paragraph (b) of this section within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.

(f) An incumbent LEC shall allocate space for the collocation of the equipment identified in paragraph (b) of this

section in accordance with the following requirements:

(1) An incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis, provided, however, that the incumbent LEC shall not be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted;

(2) To the extent possible, an incumbent LEC shall make contiguous space available to requesting telecommunications carriers that seek to expand their existing collocation space;

(3) When planning renovations of existing facilities or constructing or leasing new facilities, an incumbent LEC shall take into account projected demand for collocation of equipment;

(4) An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that neither the incumbent LEC nor any of its affiliates may reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

(5) An incumbent LEC shall relinquish any space held for future use before denying a request for virtual collocation on the grounds of space limitations, unless the incumbent LEC proves to the state commission that virtual collocation at that point is not technically feasible; and

(6) An incumbent LEC may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that the incumbent LEC shall not set maximum space limitations applicable to such carriers unless the incumbent LEC proves to the state commission that space constraints make such restrictions necessary.

(g) An incumbent LEC shall permit collocating telecommunications carriers to collocate equipment and connect such equipment to unbundled network transmission elements obtained from the incumbent LEC, and shall not require such telecommunications carriers to bring their own transmission facilities to the incumbent LEC's

premises in which they seek to collocate equipment.

(h) An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

(1) An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, the connection between the equipment in the collocated spaces of two or more telecommunications carriers. The incumbent LEC must permit any collocating telecommunications carrier to construct its own connection between the carrier's equipment and that of one or more collocating carriers, if the telecommunications carrier does not request the incumbent LEC's construction of such facilities. The incumbent LEC must permit the requesting carrier to construct such facilities using copper or optical fiber equipment.

(2) An incumbent LEC shall permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space, subject only to reasonable safety limitations.

(i) As provided herein, an incumbent LEC may require reasonable security arrangements to protect its equipment and ensure network reliability. An incumbent LEC may only impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises for their own employees or authorized contractors. An incumbent LEC must allow collocating parties to access their collocated equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitor's employees' entry into the incumbent LEC's premises. Reasonable security

measures that the incumbent LEC may adopt include:

(1) Installing security cameras or other monitoring systems; or

(2) Requiring competitive LEC personnel to use badges with computerized tracking systems; or

(3) Requiring competitive LEC employees to undergo the same level of security training, or its equivalent, that the incumbent's own employees, or third party contractors providing similar functions, must undergo; provided, however, that the incumbent LEC may not require competitive LEC employees to receive such training from the incumbent LEC itself, but must provide information to the competitive LEC on the specific type of training required so the competitive LEC's employees can conduct their own training.

(j) An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by an incumbent LEC shall be based on the same criteria it uses in approving contractors for its own purposes.

(k) An incumbent LEC's physical collocation offering must include the following:

(1) *Shared collocation cages.* A shared collocation cage is a caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to by the competitive LECs. In making shared cage arrangements available, an incumbent LEC may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the per-

centage of the total space utilized by that carrier. An incumbent LEC must make shared collocation space available in single-bay increments or their equivalent, i.e., a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.

(2) *Cageless collocation.* Incumbent LECs must allow competitors to collocate in any unused space in the incumbent LEC's premises, without requiring the construction of a cage or similar structure, and without requiring the creation of a separate entrance to the competitor's collocation space. An incumbent LEC may require collocating carriers to use a central entrance to the incumbent's building, but may not require construction of a new entrance for competitors' use, and once inside the building, incumbent LECs must permit collocating carriers to have direct access to their equipment. An incumbent LEC may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible. In addition, an incumbent LEC must give competitors the option of collocating equipment in any unused space within the incumbent's premises, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment. An incumbent LEC must make cageless collocation space available in single-bay increments, meaning that a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.

(3) *Adjacent space collocation.* An incumbent LEC must make available, where physical collocation space is legitimately exhausted in a particular incumbent LEC structure, collocation in adjacent controlled environmental vaults, controlled environmental huts, or similar structures located at the incumbent LEC premises to the extent technically feasible. The incumbent LEC must permit a requesting telecommunications carrier to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and

physical collocation services and facilities, subject to the same non-discrimination requirements as applicable to any other physical collocation arrangement. The incumbent LEC must permit the requesting carrier to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and telecommunications equipment, in adjacent facilities constructed by the incumbent LEC, the requesting carrier, or a third-party. If physical collocation space becomes available in a previously exhausted incumbent LEC structure, the incumbent LEC must not require a carrier to move, or prohibit a competitive LEC from moving, a collocation arrangement into that structure. Instead, the incumbent LEC must continue to allow the carrier to collocate in any adjacent controlled environmental vault, controlled environmental vault, or similar structure that the carrier has constructed or otherwise procured.

(l) An incumbent LEC must offer to provide and provide all forms of physical collocation (*i.e.*, caged, cageless, shared, and adjacent) within the following deadlines, except to the extent a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

(1) Within ten days after receiving an application for physical collocation, an incumbent LEC must inform the requesting carrier whether the application meets each of the incumbent LEC's established collocation standards. A requesting carrier that resubmits a revised application curing any deficiencies in an application for physical collocation within ten days after being informed of them retains its position within any collocation queue that the incumbent LEC maintains pursuant to paragraph (f)(1) of this section.

(2) Except as stated in paragraphs (l)(3) and (l)(4) of this section, an incumbent LEC must complete provisioning of a requested physical collocation arrangement within 90 days after receiving an application that meets the incumbent LEC's established collocation application standards.

(3) An incumbent LEC need not meet the deadline set forth in paragraph (l)(2) of this section if, after receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed.

(4) If, within seven days of the requesting carrier's receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed, then the incumbent LEC need not complete provisioning of a requested physical collocation arrangement until 90 days after receiving such notification from the requesting telecommunications carrier.

[61 FR 45619, Aug. 28, 1996, as amended at 64 FR 23242, Apr. 30, 1999; 65 FR 54439, Sept. 8, 2000]

EFFECTIVE DATE NOTE: At 65 FR 54439, Sept. 8, 2000, § 51.323 was amended by revising paragraphs (b) introductory text, (f)(4), and (k)(3), and by adding paragraph (l), effective Oct. 10, 2000. For the convenience of the user, the superseded text is set forth to follow.

§ 51.323 Standards for physical collocation and virtual collocation.

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(b) An incumbent LEC shall permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements. Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with National Equipment and Building Specifications performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list

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of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

* * * *

(f) * * *

(4) An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

* * * *

(k) * * *

(3) *Adjacent space collocation.* An incumbent LEC must make available, where space is legitimately exhausted in a particular incumbent LEC premises, collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible. The incumbent LEC must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement. The incumbent LEC must permit the requesting carrier to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and telecommunications equipment, in adjacent facilities constructed by either the incumbent LEC or by the requesting carrier itself.

§ 51.325 Notice of network changes: Public notice requirement.

(a) An incumbent local exchange carrier ("LEC") must provide public notice regarding any network change that:

- (1) Will affect a competing service provider's performance or ability to provide service;
(2) Will affect the incumbent LEC's interoperability with other service providers; or
(3) Will affect the manner in which customer premises equipment is attached to the interstate network.

(b) For purposes of this section, interoperability means the ability of two or

more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

(c) Until public notice has been given in accordance with §§ 51.325 through 51.335, an incumbent LEC may not disclose to separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors), information about planned network changes that are subject to this section.

(d) For the purposes of §§ 51.325 through 51.335, the term services means telecommunications services or information services.

[61 FR 47351, Sept. 6, 1996, as amended at 64 FR 14148, Mar. 24, 1999]

§ 51.327 Notice of network changes: Content of notice.

(a) Public notice of planned network changes must, at a minimum, include:

- (1) The carrier's name and address;
(2) The name and telephone number of a contact person who can supply additional information regarding the planned changes;
(3) The implementation date of the planned changes;
(4) The location(s) at which the changes will occur;
(5) A description of the type of changes planned (Information provided to satisfy this requirement must include, as applicable, but is not limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and
(6) A description of the reasonably foreseeable impact of the planned changes.

(b) The incumbent LEC also shall follow, as necessary, procedures relating to confidential or proprietary information contained in § 51.335.

[61 FR 47351, Sept. 6, 1996]

§ 51.329 Notice of network changes: Methods for providing notice.

(a) In providing the required notice to the public of network changes, an

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incumbent LEC may use one of the following methods:

(1) Filing a public notice with the Commission; or

(2) Providing public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. If an incumbent LEC uses any of the methods specified in paragraph (a)(2) of this section, it also must file a certification with the Commission that includes:

(i) A statement that identifies the proposed changes;

(ii) A statement that public notice has been given in compliance with §§ 51.325 through 51.335; and

(iii) A statement identifying the location of the change information and describing how this information can be obtained.

(b) Until the planned change is implemented, an incumbent LEC must keep the notice available for public inspection, and amend the notice to keep the information complete, accurate and up-to-date.

(c) *Specific filing requirements.* Commission filings under this section must be made as follows:

(1) The public notice or certification must be labeled with one of the following titles, as appropriate: "Public Notice of Network Change Under Rule 51.329(a)," "Certification of Public Notice of Network Change Under Rule 51.329(a)," "Short Term Public Notice Under Rule 51.333(a)," or "Certification of Short Term Public Notice Under Rule 51.333(a)."

(2) Two paper copies of the incumbent LEC's public notice or certification, required under paragraph (a) of this section, must be sent to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which this filing is received by the Secretary is considered the official filing date.

(3) In addition, one paper copy and one diskette copy must be sent to the "Chief, Network Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554." The diskette copy must be on a standard 3½ inch diskette, formatted in IBM-compatible format to be readable by high-density floppy drives operating under MS DOS 5.X or later

compatible versions, and shall be in a word-processing format designated, from time-to-time, in public notices released by the Network Services Division. The diskette must be submitted in "read only" mode, and must be clearly labeled with the carrier's name, the filing date, and an identification of the diskette's contents.

[61 FR 47351, Sept. 6, 1996]

§ 51.331 Notice of network changes: Timing of notice.

(a) An incumbent LEC shall give public notice of planned changes at the make/buy point, as defined in paragraph (b) of this section, but at least 12 months before implementation, except as provided below:

(1) If the changes can be implemented within twelve months of the make/buy point, public notice must be given at the make/buy point, but at least six months before implementation.

(2) If the changes can be implemented within six months of the make/buy point, public notice may be given pursuant to the short term notice procedures provided in § 51.333.

(b) For purposes of this section, the *make/buy point* is the time at which an incumbent LEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an incumbent LEC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.

(1) For purposes of this section, a *product* is any hardware or software for use in an incumbent LEC's network or in conjunction with its facilities that, when installed, could affect the compatibility of an interconnected service provider's network, facilities or services with an incumbent LEC's existing telephone network, facilities or services, or with any of an incumbent carrier's services or capabilities.

(2) For purposes of this section a *definite decision* is reached when an incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and

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takes any action toward implementation of the change within its network.

[61 FR 47352, Sept. 6, 1996]

§ 51.333 Notice of network changes: Short term notice.

(a) *Certificate of service.* If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by § 51.327(a) or § 51.329(a)(2), as applicable. The certificate of service shall include:

(1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(2) The name and address of each such telephone exchange service provider upon which the notice was served.

(b) *Implementation date.* The Commission will release a public notice of such short term notice filings. Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed, pursuant to paragraph (c) of this section.

(c) *Objection procedures.* An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunication service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections to an incumbent LEC's short term notice must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

"I, (*name and title*), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (*objector*) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection."

(d) *Response to objections.* If an objection is filed, an incumbent LEC shall have until no later than the fourteenth business day following the release of the Commission's public notice to file with the Commission a response to the objection and to serve the response on all parties that filed objections. An incumbent LEC's response must:

(1) Provide information responsive to the allegations and concerns identified by the objectors;

(2) State whether the implementation date(s) proposed by the objector(s) are acceptable;

(3) Indicate any specific technical assistance that the incumbent LEC is willing to give to the objectors; and

(4) Provide any other relevant information.

(e) *Resolution.* If an objection is filed pursuant to paragraph (c) of this section, then the Chief, Network Services Division, Common Carrier Bureau, will

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issue an order determining a reasonable public notice period, *provided however*, that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to § 51.329(b).

[61 FR 47352, Sept. 6, 1996]

§ 51.335 Notice of network changes: Confidential or proprietary information.

(a) If an incumbent LEC claims that information otherwise required to be disclosed is confidential or proprietary, the incumbent LEC's public notice must include, in addition to the information identified in § 51.327(a), a statement that the incumbent LEC will make further information available to those signing a nondisclosure agreement.

(b) *Tolling the public notice period.* Upon receipt by an incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled until the parties agree on the terms of a nondisclosure agreement. An incumbent LEC receiving such a request must amend its public notice as follows:

(1) On the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and

(2) On the date the nondisclosure agreement is finalized, to specify a new implementation date.

[61 FR 47352, Sept. 6, 1996]

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Subpart E—Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act

§ 51.401 State authority.

A state commission shall determine whether a telephone company is entitled, pursuant to section 251(f) of the Act, to exemption from, or suspension or modification of, the requirements of section 251 of the Act. Such determinations shall be made on a case-by-case basis.

§ 51.403 Carriers eligible for suspension or modification under section 251(f)(2) of the Act.

A LEC is not eligible for a suspension or modification of the requirements of section 251(b) or section 251(c) of the Act pursuant to section 251(f)(2) of the Act if such LEC, at the holding company level, has two percent or more of the subscriber lines installed in the aggregate nationwide.

§ 51.405 Burden of proof.

(a) Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled, pursuant to section 251(f)(1) of the Act, to continued exemption from the requirements of section 251(c) of the Act.

(b) A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.

(c) In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act

would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

(d) In order to justify a suspension or modification under section 251(f)(2) of the Act, a LEC must offer evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

Subpart F—Pricing of Elements

§ 51.501 Scope.

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation.

(b) As used in this subpart, the term “element” includes network elements, interconnection, and methods of obtaining interconnection and access to unbundled elements.

§ 51.503 General pricing standard.

(a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) An incumbent LEC’s rates for each element it offers shall comply with the rate structure rules set forth in §§ 51.507 and 51.509, and shall be established, at the election of the state commission—

(1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in §§ 51.505 and 51.511; or

(2) Consistent with the proxy ceilings and ranges set forth in § 51.513.

(c) The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

§ 51.505 Forward-looking economic cost.

(a) *In general.* The forward-looking economic cost of an element equals the sum of:

(1) The total element long-run incremental cost of the element, as described in paragraph (b); and

(2) A reasonable allocation of forward-looking common costs, as described in paragraph (c).

(b) *Total element long-run incremental cost.* The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC’s provision of other elements.

(1) *Efficient network configuration.* The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC’s wire centers.

(2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.

(3) *Depreciation rates.* The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

(c) *Reasonable allocation of forward-looking common costs—*(1) *Forward-looking common costs.* Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.

(2) *Reasonable allocation.* (i) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.

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(ii) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(d) *Factors that may not be considered.* The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:

(1) *Embedded costs.* Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts;

(2) *Retail costs.* Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609;

(3) *Opportunity costs.* Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements; and

(4) *Revenues to subsidize other services.* Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

(e) *Cost study requirements.* An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511.

(1) A state commission may set a rate outside the proxy ranges or above the proxy ceilings described in § 51.513 only if that commission has given full and fair effect to the economic cost based pricing methodology described in this section and § 51.511 in a state proceeding that meets the requirements of paragraph (e)(2) of this section.

(2) Any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record

that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

§ 51.507 General rate structure standard.

(a) Element rates shall be structured consistently with the manner in which the costs of providing the elements are incurred.

(b) The costs of dedicated facilities shall be recovered through flat-rated charges.

(c) The costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users. Costs of shared facilities may be apportioned either through usage-sensitive charges or capacity-based flat-rated charges, if the state commission finds that such rates reasonably reflect the costs imposed by the various users.

(d) Recurring costs shall be recovered through recurring charges, unless an incumbent LEC proves to a state commission that such recurring costs are de minimis. Recurring costs shall be considered de minimis when the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs.

(e) State commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.

(f) State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.

(1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans described in § 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.

(2) In states not using such existing plans, state commissions must create a

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minimum of three cost-related rate zones.

[61 FR 45619, Aug. 29, 1996, as amended at 64 FR 32207, June 16, 1999; 64 FR 68637, Dec. 8, 1999]

§ 51.509 Rate structure standards for specific elements.

In addition to the general rules set forth in § 51.507, rates for specific elements shall comply with the following rate structure rules.

(a) *Local loops.* Loop costs shall be recovered through flat-rated charges.

(b) *Local switching.* Local switching costs shall be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-minute usage charges for the switching matrix and for trunk ports.

(c) *Dedicated transmission links.* Dedicated transmission link costs shall be recovered through flat-rated charges.

(d) *Shared transmission facilities between tandem switches and end offices.* The costs of shared transmission facilities between tandem switches and end offices may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.

(e) *Tandem switching.* Tandem switching costs may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.

(f) *Signaling and call-related database services.* Signaling and call-related database service costs shall be usage-sensitive, based on either the number of queries or the number of messages, with the exception of the dedicated circuits known as signaling links, the cost of which shall be recovered through flat-rated charges.

(g) *Collocation.* Collocation costs shall be recovered consistent with the rate structure policies established in the *Expanded Interconnection* proceeding, CC Docket No. 91-141.

§ 51.511 Forward-looking economic cost per unit.

(a) The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in § 51.505, divided

by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.

(b)(1) With respect to elements that an incumbent LEC offers on a flat-rate basis, the number of units is defined as the discrete number of elements (*e.g.*, local loops or local switch ports) that the incumbent LEC uses or provides.

(2) With respect to elements that an incumbent LEC offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (*e.g.*, minutes of use or call-related database queries) of the element.

§ 51.513 Proxies for forward-looking economic cost.

(a) A state commission may determine that the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in §§ 51.505 and 51.511. In that event, the state commission may establish a rate for an element that is consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies shall be superseded once the state commission has completed review of a cost study that complies with the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, and has concluded that such study is a reasonable basis for establishing element rates; and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular rate for the element.

(b) The constraints on proxy-based rates described in this section apply on a geographically averaged basis. For purposes of determining whether geographically deaveraged rates for elements comply with the provisions of this section, a geographically averaged proxy-based rate shall be computed based on the weighted average of the actual, geographically deaveraged

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rates that apply in separate geographic areas in a state.

(c) *Proxies for specific elements*—(1) *Local loops.* For each state listed below, the proxy-based monthly rate for unbundled local loops, on a statewide weighted average basis, shall be no greater than the figures listed in the table below. (The Commission has not established a default proxy ceiling for loop rates in Alaska.)

TABLE

State	Proxy ceiling
Alabama	\$17.25
Arizona	12.85
Arkansas	21.18
California	11.10
Colorado	14.97
Connecticut	13.23
Delaware	13.24
District of Columbia	10.81
Florida	13.68
Georgia	16.09
Hawaii	15.27
Idaho	20.16
Illinois	13.12
Indiana	13.29
Iowa	15.94
Kansas	19.85
Kentucky	16.70
Louisiana	16.98
Maine	18.69
Maryland	13.36
Massachusetts	9.83
Michigan	15.27
Minnesota	14.81
Mississippi	21.97
Missouri	18.32
Montana	25.18
Nebraska	18.05
Nevada	18.95
New Hampshire	16.00
New Jersey	12.47
New Mexico	18.66
New York	11.75
North Carolina	16.71
North Dakota	25.36
Ohio	15.73
Oklahoma	17.63
Oregon	15.44
Pennsylvania	12.30
Puerto Rico	12.47
Rhode Island	11.48
South Carolina	17.07
South Dakota	25.33
Tennessee	17.41
Texas	15.49
Utah	15.12
Vermont	20.13
Virginia	14.13
Washington	13.37
West Virginia	19.25
Wisconsin	15.94
Wyoming	25.11

(2) *Local switching.* (i) The blended proxy-based rate for the usage-sensitive component of the unbundled

local switching element, including the switching matrix, the functionalities used to provide vertical features, and the trunk ports, shall be no greater than 0.4 cents (\$0.004) per minute, and no less than 0.2 cents (\$0.002) per minute, except that, where a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents (\$0.005) per minute, that rate may be retained pending completion of a forward-looking economic cost study. If a flat-rated charge is established for these components, it shall be converted to a per-minute rate by dividing the projected average minutes of use per flat-rated subelement, for purposes of assessing compliance with this proxy. A weighted average of such flat-rate or usage-sensitive charges shall be used in appropriate circumstances, such as when peak and off-peak charges are used.

(ii) The blended proxy-based rate for the line port component of the local switching element shall be no less than \$1.10, and no more than \$2.00, per line port per month for ports used in the delivery of basic residential and business exchange services.

(3) *Dedicated transmission links.* The proxy-based rates for dedicated transmission links shall be no greater than the incumbent LEC's tariffed interstate charges for comparable entrance facilities or direct-trunked transport offerings, as described in §§69.110 and 69.112 of this chapter.

(4) *Shared transmission facilities between tandem switches and end offices.* The proxy-based rates for shared transmission facilities between tandem switches and end offices shall be no greater than the weighted per-minute equivalent of DS1 and DS3 interoffice dedicated transmission link rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using a loading factor of 9,000 minutes per month per voice-grade circuit, as described in §69.112 of this chapter.

(5) *Tandem switching.* The proxy-based rate for tandem switching shall be no greater than 0.15 cents (\$0.0015) per minute of use.

(6) *Collocation.* To the extent that the incumbent LEC offers a comparable form of collocation in its interstate expanded interconnection tariffs, as described in §§ 64.1401 and 69.121 of this chapter, the proxy-based rates for collocation shall be no greater than the effective rates for equivalent services in the interstate expanded interconnection tariff. To the extent that the incumbent LEC does not offer a comparable form of collocation in its interstate expanded interconnection tariffs, a state commission may, in its discretion, establish a proxy-based rate, provided that the state commission sets forth in writing a reasonable basis for concluding that its rate would approximate the result of a forward-looking economic cost study, as described in § 51.505.

(7) *Signaling, call-related database, and other elements.* To the extent that the incumbent LEC has established rates for offerings comparable to other elements in its interstate access tariffs, and has provided cost support for those rates pursuant to § 61.49(h) of this chapter, the proxy-based rates for those elements shall be no greater than the effective rates for equivalent services in the interstate access tariffs. In other cases, the proxy-based rate shall be no greater than a rate based on direct costs plus a reasonable allocation of overhead loadings, pursuant to § 61.49(h) of this chapter.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 52709, Oct. 8, 1996]

§ 51.515 Application of access charges.

(a) Neither the interstate access charges described in part 69 of this chapter nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchasers of elements that offer telephone exchange or exchange access services.

(b) Notwithstanding §§ 51.505, 51.511, and 51.513(d)(2) and paragraph (a) of this section, an incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in § 51.319(c)(1), for interstate minutes of use traversing such unbundled local switching elements, the carrier common line charge described in § 69.105 of this chapter, and a charge equal to 75%

of the interconnection charge described in § 69.124 of this chapter, only until the earliest of the following, and not thereafter:

(1) June 30, 1997;

(2) The later of the effective date of a final Commission decision in CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*, or the effective date of a final Commission decision in a proceeding to consider reform of the interstate access charges described in part 69; or

(3) With respect to a Bell operating company only, the date on which that company is authorized to offer in-region interLATA service in a state pursuant to section 271 of the Act. The end date for Bell operating companies that are authorized to offer interLATA service shall apply only to the recovery of access charges in those states in which the Bell operating company is authorized to offer such service.

(c) Notwithstanding §§ 51.505, 51.511, and 51.513(d)(2) and paragraph (a) of this section, an incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in § 51.319(c)(1), for intrastate toll minutes of use traversing such unbundled local switching elements, intrastate access charges comparable to those listed in paragraph (b) and any explicit intrastate universal service mechanism based on access charges, only until the earliest of the following, and not thereafter:

(1) June 30, 1997;

(2) The effective date of a state commission decision that an incumbent LEC may not assess such charges; or

(3) With respect to a Bell operating company only, the date on which that company is authorized to offer in-region interLATA service in the state pursuant to section 271 of the Act. The end date for Bell operating companies that are authorized to offer interLATA service shall apply only to the recovery of access charges in those states in which the Bell operating company is authorized to offer such service.

(d) Interstate access charges described in part 69 shall not be assessed by incumbent LECs on each element

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purchased by requesting carriers providing both telephone exchange and exchange access services to such requesting carriers' end users.

[61 FR 45619, Aug. 29, 1996, as amended at 62 FR 45587, Aug. 28, 1997]

Subpart G—Resale

§ 51.601 Scope of resale rules.

The provisions of this subpart govern the terms and conditions under which LECs offer telecommunications services to requesting telecommunications carriers for resale.

§ 51.603 Resale obligation of all local exchange carriers.

(a) A LEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.

(b) A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.

§ 51.605 Additional obligations of incumbent local exchange carriers.

(a) An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates that are, at the election of the state commission—

(1) Consistent with the avoided cost methodology described in §§ 51.607 and 51.609; or

(2) Interim wholesale rates, pursuant to § 51.611.

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(c) For purposes of this subpart, advanced telecommunications services sold to Internet Service Providers as

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an input component to the Internet Service Providers' retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(d) Notwithstanding paragraph (b) of this section, advanced telecommunications services that are classified as exchange access services are subject to the obligations of paragraph (a) of this section if such services are sold on a retail basis to residential and business end-users that are not telecommunications carriers.

(e) Except as provided in § 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

[61 FR 45619, Aug. 29, 1996, as amended at 65 FR 6915, Feb. 11, 2000]

§ 51.607 Wholesale pricing standard.

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609. For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

[65 FR 6915, Feb. 11, 2000]

§ 51.609 Determination of avoided retail costs.

(a) Except as provided in § 51.611, the amount of avoided retail costs shall be determined on the basis of a cost study that complies with the requirements of this section.

(b) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier.

(c) For incumbent LECs that are designated as Class A companies under

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§ 32.11 of this chapter, except as provided in paragraph (d) of this section, avoided retail costs shall:

(1) Include, as direct costs, the costs recorded in USOA accounts 6611 (product management), 6612 (sales), 6613 (product advertising), 6621 (call completion services), 6622 (number services), and 6623 (customer services) (§§ 32.6611, 32.6612, 32.6613, 32.6621, 32.6622, and 32.6623 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121-6124 (general support expenses), 6711, 6712, 6721-6728 (corporate operations expenses), and 5301 (telecommunications uncollectibles) (§§ 32.6121-32.6124, 32.6711, 32.6712, 32.6721-32.6728, and 32.5301 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (§§ 32.6110-32.6116, 32.6210-32.6565 of this chapter).

(d) Costs included in accounts 6611-6613 and 6621-6623 described in paragraph (c) of this section (§§ 32.6611-32.6613 and 32.6621-32.6623 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6110-6116 and 6210-6565 described in paragraph (c) of this section (§§ 32.6110-32.6116, 32.6210-32.6565 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

(e) For incumbent LECs that are designated as Class B companies under § 32.11 of this chapter and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of the specific USOA accounts listed in paragraphs (c) and (d) of this section.

§ 51.611 Interim wholesale rates.

(a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in § 51.609, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.

(b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(c) A state commission that establishes interim wholesale rates shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with § 51.609.

§ 51.613 Restrictions on resale.

(a) Notwithstanding § 51.605(b), the following types of restrictions on resale may be imposed:

(1) *Cross-class selling.* A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

(2) *Short term promotions.* An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(i) Such promotions involve rates that will be in effect for no more than 90 days; and

(ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

(b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to

the state commission that the restriction is reasonable and nondiscriminatory.

(c) *Branding.* Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.

(1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

(2) For purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

§51.615 Withdrawal of services.

When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the incumbent LEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past.

§51.617 Assessment of end user common line charge on resellers.

(a) Notwithstanding the provision in §69.104(a) of this chapter that the end user common line charge be assessed upon end users, an incumbent LEC shall assess this charge, and the charge for changing the designated primary interexchange carrier, upon requesting carriers that purchase telephone exchange service for resale. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access charges provided in part 69 of this chapter, other than the end user common line charge, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services to the interexchange carriers' subscribers.

Subpart H—Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic

§51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

(b) *Local telecommunications traffic.* For purposes of this subpart, local telecommunications traffic means:

(1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

(2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) of this chapter.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of local telecommunications traffic at the terminating carrier's end office

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switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

§ 51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

§ 51.705 Incumbent LECs' rates for transport and termination.

(a) An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

(2) Default proxies, as provided in § 51.707; or

(3) A bill-and-keep arrangement, as provided in § 51.713.

(b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

§ 51.707 Default proxies for incumbent LECs' transport and termination rates.

(a) A state commission may determine that the cost information available to it with respect to transport and termination of local telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511.

In that event, the state commission may establish rates for transport and termination of local telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of local telecommunications traffic, or for specific components included within transport and termination.

(b) If a state commission establishes rates for transport and termination of local telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:

(1) *Termination.* The incumbent LEC's rates for the termination of local telecommunications traffic shall be no greater than 0.4 cents (\$0.004) per minute, and no less than 0.2 cents (\$0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents (\$0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.

(2) *Transport.* The incumbent LEC's rates for the transport of local telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(c) (3), (4), and (5) of this part that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 52709, Oct. 8, 1996]

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, a state commission shall establish rates for the transport and termination of local telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

§51.711 Symmetrical reciprocal compensation.

(a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

(2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(b) A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, con-

sequently, that such that a higher rate is justified.

(c) Pending further proceedings before the Commission, a state commission shall establish the rates that licensees in the Paging and Radiotelephone Service (defined in part 22, subpart E of this chapter), Narrowband Personal Communications Services (defined in part 24, subpart D of this chapter), and Paging Operations in the Private Land Mobile Radio Services (defined in part 90, subpart P of this chapter) may assess upon other carriers for the transport and termination of local telecommunications traffic based on the forward-looking costs that such licensees incur in providing such services, pursuant to §§51.505 and 51.511. Such licensees' rates shall not be set based on the default proxies described in §51.707.

§51.713 Bill-and-keep arrangements for reciprocal compensation.

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to §51.711(b).

(c) Nothing in this section precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

§51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent

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LEC shall provide transport and termination of local telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of local telecommunications traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of local telecommunications traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

(2) In a state in which the state commission has established transport and termination rates consistent with the default price ranges and ceilings described in § 51.707, an incumbent LEC shall use these state-determined rates as interim rates.

(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in § 51.707, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in § 51.707(b)(2)).

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of local telecommunications traffic subject to the interim arrangement:

(1) A voluntary agreement has been negotiated and approved by a state commission;

(2) An agreement has been arbitrated and approved by a state commission; or

(3) The period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of local telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equalled the rates later established by the state commission pursuant to § 51.705.

§ 51.717 Renegotiation of existing non-reciprocal arrangements.

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) of this section until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

Subpart I—Procedures for Implementation of Section 252 of the Act

§51.801 Commission action upon a state commission’s failure to act to carry out its responsibility under section 252 of the Act.

(a) If a state commission fails to act to carry out its responsibility under section 252 of the Act in any proceeding or other matter under section 252 of the Act, the Commission shall issue an order preempting the state commission’s jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter and shall act for the state commission.

(b) For purposes of this part, a state commission fails to act if the state commission fails to respond, within a reasonable time, to a request for mediation, as provided for in section 252(a)(2) of the Act, or for a request for arbitration, as provided for in section 252(b) of the Act, or fails to complete an arbitration within the time limits established in section 252(b)(4)(C) of the Act.

(c) A state shall not be deemed to have failed to act for purposes of section 252(e)(5) of the Act if an agreement is deemed approved under section 252(e)(4) of the Act.

§51.803 Procedures for Commission notification of a state commission’s failure to act.

(a) Any party seeking preemption of a state commission’s jurisdiction, based on the state commission’s failure to act, shall notify the Commission in accordance with following procedures:

(1) Such party shall file with the Secretary of the Commission a petition, supported by an affidavit, that states with specificity the basis for the petition and any information that supports the claim that the state has failed to act, including, but not limited to, the applicable provisions of the Act and the factual circumstances supporting a finding that the state commission has failed to act;

(2) Such party shall ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition required in paragraph (a)(1) of this section on the same date that the petitioning party serves the petition on the Commission; and

(3) Within fifteen days from the date of service of the petition required in paragraph (a)(1) of this section, the applicable state commission and parties to the proceeding may file with the Commission a response to the petition.

(b) The party seeking preemption must prove that the state has failed to act to carry out its responsibilities under section 252 of the Act.

(c) The Commission, pursuant to section 252(e)(5) of the Act, may take notice upon its own motion that a state commission has failed to act. In such a case, the Commission shall issue a public notice that the Commission has taken notice of a state commission’s failure to act. The applicable state commission and the parties to a proceeding or matter in which the Commission has taken notice of the state commission’s failure to act may file, within fifteen days of the issuance of the public notice, comments on whether the Commission is required to assume the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter.

(d) The Commission shall issue an order determining whether it is required to preempt the state commission’s jurisdiction of a proceeding or matter within 90 days after being notified under paragraph (a) of this section or taking notice under paragraph (c) of this section of a state commission’s failure to carry out its responsibilities under section 252 of the Act.

§51.805 The Commission’s authority over proceedings and matters.

(a) If the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, the Commission shall retain jurisdiction over such proceeding or matter. At a minimum, the Commission shall approve or reject any interconnection agreement adopted by negotiation, mediation or arbitration for which the

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Commission, pursuant to section 252(e)(5) of the Act, has assumed the state's commission's responsibilities.

(b) Agreements reached pursuant to mediation or arbitration by the Commission pursuant to section 252(e)(5) of the Act are not required to be submitted to the state commission for approval or rejection.

§ 51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.

(a) The rules established in this section shall apply only to instances in which the Commission assumes jurisdiction under section 252(e)(5) of the Act.

(b) When the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, it shall not be bound by state laws and standards that would have applied to the state commission in such proceeding or matter.

(c) In resolving, by arbitration under section 252(b) of the Act, any open issues and in imposing conditions upon the parties to the agreement, the Commission shall:

(1) Ensure that such resolution and conditions meet the requirements of section 251 of the Act, including the rules prescribed by the Commission pursuant to that section;

(2) Establish any rates for interconnection, services, or network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) An arbitrator, acting pursuant to the Commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(1) At the discretion of the arbitrator, final offer arbitration may take the form of either entire package final offer arbitration or issue-by-issue final offer arbitration.

(2) Negotiations among the parties may continue, with or without the assistance of the arbitrator, after final

arbitration offers are submitted. Parties may submit subsequent final offers following such negotiations.

(3) To provide an opportunity for final post-offer negotiations, the arbitrator will not issue a decision for at least fifteen days after submission to the arbitrator of the final offers by the parties.

(e) Final offers submitted by the parties to the arbitrator shall be consistent with section 251 of the Act, including the rules prescribed by the Commission pursuant to that section.

(f) Each final offer shall:

(1) Meet the requirements of section 251, including the rules prescribed by the Commission pursuant to that section;

(2) Establish rates for interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement. If a final offer submitted by one or more parties fails to comply with the requirements of this section, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the Commission pursuant to that section.

(g) Participation in the arbitration proceeding will be limited to the requesting telecommunications carrier and the incumbent LEC, except that the Commission will consider requests by third parties to file written pleadings.

(h) Absent mutual consent of the parties to change any terms and conditions adopted by the arbitrator, the decision of the arbitrator shall be binding on the parties.

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§ 51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or inter-exchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

(c) Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act.

- 52.12 North American Numbering Plan Administrator and B&C Agent.
- 52.13 North American Numbering Plan Administrator.
- 52.15 Central office code administration.
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- 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.
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- 52.101 General definitions.
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APPENDIX TO PART 52—DEPLOYMENT SCHEDULE FOR LONG-TERM DATABASE METHODS FOR LOCAL NUMBER PORTABILITY

AUTHORITY: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

SOURCE: 61 FR 38637, July 25, 1996, unless otherwise noted.

Subpart A—Scope and Authority

SOURCE: 61 FR 47353, Sept. 6, 1996, unless otherwise noted.

§ 52.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et. seq.*

PART 52—NUMBERING

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- 52.11 North American Numbering Council.