September 9, 2003

BY OVERNIGHT MAIL

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Post Office Box 47250
Olympia, Washington 98504-7250

Docket No. UT-033025 Implementation of the FCC Triennial Review Order

Dear Ms. Washburn:

As requested in Eschelon's Comments filed on September 3, 2003 in this matter, enclosed for filing with your office are joint CLEC responses to the TRIP matrices addressing the various procedural and substantive issues for the nine-month proceedings raised by the Triennial Review Order. Also enclosed is a Certificate of Service.

Sincerely,

Kim K. Wagner
Senior Legal Secretary
Eschelon Telecom, Inc.

cc: UT-033025 Service List

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TRIP Task Force Decision Point List – Procedural Issues – Nine Month Case

Response Supplied by CompTel on Behalf of Itself and Individual CLECs – September 8, 2003

	CLEC Position
1A. Who/what prompts the start of the 9 month impairment analyses by the Commission?	Because the FCC has requested state commissions to conduct an additional review of impairment with respect to unbundled local switching used to provide service to mass-market customers within a limited timeframe, state commissions should initiate, on their own motion, proceedings to address the tasks outlined in the Triennial Review Decision. (See TRO ¶¶ 419 et seq.) In addition, states should separately determine procedures for subsequent impairment reviews regarding mass-market switching. In that context, states should establish prescribed filing windows for future ILEC petitions claiming changed circumstances, with the earliest window for such petitions opening no sooner than 2 years after the conclusion of the state's 9-month proceeding.
1b. Should the Commission open a generic investigation(s) applicable to a given ILEC if no party files a petition for that ILEC, or should the Commission wait for a petition?	See response to 1a.
1c. What factors might influence this decision?	See response to 1a.
1d. Who (which party) has/should have the burden of proof?	The burden of ultimate persuasion is on the party seeking to overturn the FCC finding.
2a. Should the UNE availability/necessary/ impair proceeding be a contested case, a generic investigation or a rulemaking?	States should be allowed to use any form of evidentiary proceeding that is permissible under applicable state law, provided that all proceedings should be conducted on the basis of an evidentiary record. Any evidentiary hearings must be conducted in accordance with the principles of procedural and substantive due process. In addition, since all carriers should have the opportunity to intervene and present and confront record evidence, the

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	CLEC Position
	commission's decision should ultimately be binding on all similarly situated carriers in the state.
2b. If a contested case, should the impairment proceeding be conducted as: (1) an arbitration under federal law[1], (2) a litigated proceeding under state law, or (3) some other type of proceeding? If the latter, please explain.	The exact form of the proceeding should be left to the states, subject to the criteria listed in 2a. above.
3a. If the proceeding is a generic investigation or contested case (as opposed to a rulemaking), should there be separate cases for each ILEC in the state for which an impairment analysis is being performed, or should the impairment analyses for all such ILECs be conducted in the same proceeding?	The proceeding should be designed so as to permit adoption of an order that is binding on all ILECs in the state.
3b. As an alternative to having separate docketed proceedings, could/should each affected ILEC be assigned to a separate subdocket to a single primary or main case?	The NARUC proposal should be adopted. Conducting multiple proceedings dealing with the same issue will only make the state decision making process less efficient. However different issues should be contained in separate proceedings (i.e. switching 9 month cases should not be consolidated with loop and transport 9 month cases.)
4. Are the entities that do not participate in a commission UNE availability/ necessary/impair proceeding bound by the results of that proceeding?	Yes
5. If the Commission holds a	The exact form of the proceeding should be left to the states,

[1] 47 U.S.C. 252(b), 252(e)(1).

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	CLEC Position
hearing, who should preside, a Commission ALJ or the Commissioners themselves?	subject to the criteria listed in 2a.above.
6. Should associations be allowed to participate in a contested case or proceeding?	Yes. Participation by associations and coalitions of parties allows for parties to reduce the burdens of participating in multiple simultaneous proceedings. The participation by an association should not limit the ability of any company, whether or not a member of the association, to represent its own interests in the proceeding.
7a. How much and what kind of discovery should the Commission allow?	The parties should be given an opportunity to conduct reasonable and material discovery. Discovery deadlines should permit parties to develop the facts within the time constraints mandated by the FCC. However, state commissions should take care to assure that discovery will not burden any party or prevent it from litigating the proceeding in a timely manner. In addition, the states must implement confidentiality provisions that protect proprietary and competitively sensitive information.
7b. In view of the 9 month time frame, how should the Commission sanction parties that fail to produce requested discovery?	The Commission may utilize all discovery sanctions available to it under state law and the Commission's procedural practice and rules. The type and severity of any sanctions should take into consideration the type and scope of information requested, the amount of information actually produced and the likely relevance of the non-produced information to the issue being decided.
7c. What issues might arise regarding alleged trade secrets or alleged proprietary information?	Common issues regarding access to and use of proprietary and competitively sensitive information are likely to arise in all jurisdictions and should be addressed in a comprehensive protective order applicable to the State impairment cases. In this regard, given the extremely sensitive nature of some of the information that may be requested, including both carrier proprietary and network security interests, additional protections may be required in addition to those that are typically used in state regulatory proceedings. In addition, in

	CLEC Position
	order to facilitate the use of information previously produced in other proceedings, States should require carriers to allow confidential information produced in one case to be used in any other impairment case, provided the information is made subject to the terms of the protective order in the case in which it is to be used.
7d. Is the information for which a party is requesting confidential treatment already publicly available?	The NARUC proposal should be adopted. In particular, however, it should be noted that there are certain data sources, such as the Local Exchange Routing Guide (LERG), that may provide an initial source of information, provided that any carrier should be permitted to supplement and correct any information obtained from a source other than itself. The use of the LERG as a tool is limited by the fact that the LERG is not designed to provide information on the number of switches in a market or how the switches are being used. Rather, it is an industry-wide guide for how telecommunications traffic should be routed through interconnected networks. The LERG only incidentally provides any information on switch locations, and the data it does provide requires validation by the entities identified in the LERG. CLECs are willing to work with the industry and state Commissions to formulate such validation procedures. If the Commission seeks to validate information in the LERG, its questions to the companies listed in the LERG should be concise and specifically directed to the issues relevant to ULS impairment.
7e. What procedures should the Commission adopt to handle requests for confidential treatment of this information?	See response to 7c. above
8a. Should the Commission import evidence from other dockets?	While each state commission must in the end make state-specific findings on the basis of data applicable to their states, given the short timeline, it may be useful to this fact-finding

	CLEC Position
	mission to utilize information and discovery obtained in other dockets. The FCC has turned to state commissions for these impairment proceedings in part because of the superior fact-finding tools state commissions have at their disposal. As a result, state commissions should, subject to due process, permit parties to offer into evidence in an impairment case documents, testimony, or materials obtained in discovery that are obtained in other proceedings in the same state. In addition, it may also be useful to allow parties to proffer data from other state impairment proceedings, provided that the use of such information is also subject to due process. Cross-state use of materials of common import could be an efficient means of minimizing the burdens of discovery on the parties while advancing the goal of having as broad and complete a record as possible. To this end, state commissions (particularly those in historical RBOC regions) should explore creating a common protective order process that will protect confidential information that is utilized in state impairment proceedings.
8b. If so, should the parties be required to update the evidence? In which proceeding?	The answer to this question is state and situation specific.
9a. To the extent that the Commission findings in the UNE avail-ability/necessary/ impair proceeding change any of the assumptions in prior pricing and/or costing dockets, should the Commission conduct a review of the relevant UNE prices?	Pricing issues should be addressed on a state-by-state basis. The UNE availability/necessary/impair cases are not an appropriate forum in which to determine TELRIC rates. Accordingly, TELRIC rates established in other state proceedings must be binding in the UNE availability/necessary/impair cases. The "de-listing" of a switching UNE would, however, require the Commission to timely consider the pricing of the formerly TELRIC-priced element, since the element still must be provided pursuant to Section 271 of the federal Telecommunications Act and state law (this issue is discussed in detail below in response to Questions 9.d. and 13 below).

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	CLEC Position
9b. What is the status of the prior pricing and/or costing docket; is it final?	[intentionally left blank]
9c. If the Commission does conduct a review of the relevant UNE prices, should the parties be required to update the prior pricing/costing evidence?	See response to 9a.
9d. If the Commission does conduct a review of the relevant UNE prices, should that review include the necessity of transitional pricing?	Under the FCC's TRO, the concept of "transitional" pricing only comes into play for line sharing. If an element maintains the status of a TELRIC priced UNE under Section 252 of the federal Telecommunications Act, "transitional" pricing is not applicable. Thus, TELRIC rates should apply during ay transition. If an element is de-listed, the state commission's next step must be consideration of the "just and reasonable" pricing of the element. The "transition" state Commissions must consider for "de-listed" elements that must be provided under Section 271 or state law (such as unbundled local switching) is the transition from the current TELRIC rate to a regulated rate established by the state Commission. State commissions will be responsible for determining the price of "de-listed" network elements because UNEs are fundamentally intrastate services. Although the federal Telecommunications Act authorizes the FCC to issue rules giving greater definition to the Section 252 cost-based pricing standard, that Act does *not* support federal jurisdiction over UNEs where Section 252 does not apply. Thus, it is up to each individual state to develop the pricing policies that will apply to any "de-listed" UNE. Establishing such rates becomes immediately necessary if a state de-lists switching in the impairment proceedings.
11. What is the immediate effect,	The effect of any regulatory order will vary by carrier, as each

	CLEC Position
Checklist Item Nos. 4, 5, 6, and 10)?	access to loops, transport, switching and signaling to remain in compliance with checklist items (iv), (v), (vi) and (x). For those states where the BOC has not received Section 271 authority, the BOC must demonstrate this compliance with the checklist in order to fulfill the requirements of the Act. In either event, if the state commission determines in any instances not to require unbundling of these elements pursuant to Section 251, the state commission must conduct a subsequent evidentiary proceeding in order to ensure the continued availability of the network element on an unbundled basis sufficient to satisfy Section 271's requirements for the BOC provision of long distance services. The state commissions, as the primary fact finding bodies of the 271 process, have an obligation under Section 271 to ensure that the BOC provides – or continues to provide— unbundled access to these elements. Moreover, due to the state commissions' unquestioned authority over the pricing and availability of intrastate services, they have an obligation to consider the rates, terms and conditions upon which loops, transport, switching and signaling are made available to competitors. Accordingly, a state commission proceeding should examine, at a minimum, the appropriate rates for such elements and the terms and conditions of unbundled access. Until such an evidentiary proceeding can be completed, interconnection rates, terms and conditions determined pursuant to a Section 252 approved interconnection agreement should apply as a proxy for just, reasonable and nondiscriminatory rates, terms and conditions. Finally, however, it should be recognized by the states that TELRIC rates are necessarily "just and reasonable" under Sections 201 and 202 because they have already been adjudged "just and reasonable" under Section 252(d)(1). Thus, no state is *compelled* to initiate a new proceeding if it

	CLEC Position
	decides to leave in place the existing TELRIC rates for the element, because what is "just and reasonable" under one part of the statute is, as a matter of law, "just and reasonable" under another part of the same statute.
13b. Does the type of proceeding depend upon whether the FCC has granted 271 authority to the RBOC in that state?	No. The type of proceeding required does not depend upon the status of a BOC's Section 271 authority in the state. In all cases, the substantive requirements of Section 271 to unbundle these elements will apply as a precondition to the BOC offering or continuing to offer interLATA services.

TRIP Task Force Decision Point List – Substantive Issues – Miscellaneous

Response Supplied by CompTel on Behalf of Itself and Individual CLECs – September 8, 2003

Issue	Legal Standard from TRO or State Law	CLECs' Positions	Questions or Factors for State Commissions to Consider
I. Packet Switching			
I.A. Is the ILEC required to unbundled packet switching?	National finding of no impairment; states don't appear to have flexibility to override finding, so appears to require no further action of states: ILECs "are not required to unbundled packet switching, including routers and DSLAMs, as a stand-alone network element. The order eliminates the current limited requirement for unbundling of packet switching."	The FCC's decision in this regard is without substantial legal or factual basis. Further, it is incorrect for NARUC to conclude that States may not require the unbundling of packet switching or any other network element. First, under Section 271 of the federal Act, the Bell Operating Companies are required, as a condition of their offering in-region interLATA service, to offer "local switching" unbundled from transport and loop transmission. There is nothing in this provision that would limit switching to a particular technology or form of digital organization. The TRO expressly affirms the independence of §271 access obligations. Second, states retain the right pursuant to independent state law to require that incumbents unbundle their networks, provided the states exercise that authority in a manner that is consistent with section 251. (¶ 193) The FCC expressly rejected the ILECs' argument that states are prohibited from regulating in this area. (¶192) Consequently, while the FCC has not chosen to include packet switching in its national minimum list of network elements, states have the authority (under Section 271, the responsibility) to require the unbundling of packet switching. States should not prejudge this issue, but should be prepared for future requests to adjudicate this issue. Local competition remains in its infancy, and states should not foreclose their ability to respond to future requirements that cannot be predicted with precision today.	

TRIP Task Force Decision Point List – Substantive Issues – Miscellaneous

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II. Signaling Network						
II.A. Is the ILEC required to unbundle its signaling network?	ILECs "are only required to offer unbundled access to their signaling network when a carrier is purchasing unbundled switching. The signaling network element, when available, includes, but is not limited to, signaling links and signaling transfer points."		Under Section 271 of the federal Act, the Bell Operating Companies are required, as a condition of their offering in-region interLATA service, to offer non-discriminatory access to databases and associated signaling for call routing and completion. In addition, states have the independent authority under state law to require that incumbents unbundle their networks. Consequently, while the FCC has apparently not chosen to include signaling in its national minimum list of network elements when service is offered using a non-ILEC switch, states should not prejudge the issue, and should be prepared to address future requests for access to the incumbent's signaling networks			
III. Call Related Databases						
III.A. Is the ILEC required to unbundle call-related databases?	"When a requesting carrier purchasing unbundled access to the [ILEC's] switching, the [ILEC] must also offer unbundled access to their call-related databases."		It is unclear from the FCC's Triennial Review Order whether states will have the opportunity to review the availability of databases such as Caller Name (CNAM) or the Line Information Database (LIDB) as a UNE under either federal or state law when a competitive carrier provides its own switch. Under Section 271 of the federal Act, the Bell Operating Companies are required, as a condition of their offering in-region interLATA service, to offer non-discriminatory access to databases and associated signaling for call routing and completion. In addition, states have independent authority under state law to require that incumbents unbundle their networks. Consequently, while the FCC may not have chosen to include call-related databases in all cases in its national minimum list of network elements, states should not prejudge the issue, and should be prepared to address future requests for access to the incumbent's call related databases. Moreover, to the extent that costs for these databases are higher for a competitor using its own switch, those costs will increase the economic impairment resulting from the			

			use of non-ILEC switches to serve the mass market.			
IV. OSS Functions						
IV.A. Is the ILEC required to unbundle OSS functions?	ILECs "must offer unbundled access to their [OSS] for qualifying services."		Access to OSS appears unchanged by the FCC's Order.			
IV.B. What is a qualifying service?			Nondiscriminatory OSS access must be available for all network elements, whether or not they are required to be offered on an unbundled basis at TELRIC rates. Otherwise, ILECs could operationally disadvantage CLECs that need to access these functionalities. Therefore, qualifying services must include all elements and services to which CLECs have access pursuant to the Telecom Act or state law, including but not limited to, all existing UNEs, all previous UNEs such as line sharing, and arrangements such as line splitting.			
V. Loops						
V.A. Voice-Grade Copper Loops						
V.A.1. Is the ILEC required to unbundle copper loops and subloops?	National finding of impairment? (Seems almost presumptive with addition of last sentence). If so, what further action required by states? ILECs "must continue to provide unbundled access to copper loops and copper subloops. ILECs may not retire any copper loops or subloops without first receiving approval from the relevant state		Since there is a national finding of impairment for copper loops and subloops, no further action by the states is required except as necessary to enforce the unbundling requirements. ILECs must continue to provide access to copper loops and subloops consistent with performance standards established by the state. Additional action may be necessary to ensure that the copper plant is not allowed to deteriorate. States should provide competitors with assurance that they will be able to effectively and cost efficiently provide voice services over any replacement facilities. Moreover, states should provide competitors with the maximum opportunity to use copper facilities to provide advanced data services, both on a standalone and line splitting basis.		Are the ILECs complying with their unbundling obligations? What are the most effective tools to ensure compliance? Are there alternative, superior hot cut methods available?	

	commission."				
V.A.2. Is the ILEC required to unbundle the high frequency portion of a copper loop (HFPL)?	National finding of no impairment; states don't appear to have flexibility to override finding, so no further action required by states: The HFPL "is not an unbundled network element. Although the Order finds general impairment in providing broadband services without access to local loops, access to the entire stand-alone copper loop is sufficient to overcome impairment."		See Answer to Question 1.A. The RBOCs obligation to provide nondiscriminatory access to all local loop transmission that they make available to themselves. This statutory requirement of section 271 includes the requirement to provide nondiscriminatory access to loop transmission via the HFPL. In particular, the FCC has consistently analyzed checklist compliance with respect to the HFPL as part of the RBOC's compliance with checklist item #4 (local loop transmission). Thus, for RBOCs, the statutory obligation to provide nondiscriminatory access to HFPL loop transmission capability exists independently of ILEC obligations under section 251(c)(3). The TRO expressly affirms the independence of §271 access obligations (¶652). Accordingly, regardless of the FCC's disposition of the linesharing UNE (the HFPL), and regardless of whether the HFPL is unbundled under independent state law authority, states must consider the terms of nondiscriminatory access to the HFPL and how to price that access, given the RBOCs' ongoing statutory obligation to provide that access wherever they seek or have obtained section 271 authority. Consequently, while the FCC has not chosen to include the high frequency portion of the loop in its national minimum list of network elements, states have the authority (and under Section 271, the responsibility) to require the unbundling of the high frequency portion of the loop. States concerned about residential DSL competition should immediately initiate proceedings to unbundle the high frequency portion of the loop under independent state law authority.		Are CLECs economically impaired without access to the high frequency portion of the loop because of the difference between the cost of entire loop and the cost of the high frequency portion? Does that impairment render CLECs unable to compete in the residential market for DSL customers? Are CLECs impaired without access to the high frequency portion of the loop because of the amount of time it takes an ILEC to provision a stand alone loop versus the time it takes to provision the HFPL? Does that impairment render CLECs unable to compete for customers using a stand alone loop while the ILECs compete using the HFPL? Are CLECs impaired without access to the high frequency portion of the loop because of operational difficulties in

					provisioning a stand alone loop as opposed to the HFPL, including the ILECs requirement of a truck role to provision the stand alone loop when none is needed for the HFPL? Where spare copper is not available, especially in rural or underserved areas, should CLECs retain access to the HFPL? What is the appropriate rate for access to the HFPL pursuant to section 271 or section 201/202 or the Act?	
V.A.3. What is the timing and process for transitioning CLEC customers off HFPL?	"During a three-year period, [CLECs] must transition their existing customers served via the HFPL to new arrangements. New customers may be acquired only during the first year of this transition." In addition, during each year of the transition, the price for the high-frequency portion of the loop will increase incrementally towards the cost of a loop in		The FCC Order indicates that CLECs may continue to serve line sharing customers recruited before the effective date of the Order at existing rates, terms and conditions until those customers disconnect service. CLECs are permitted to add additional line sharing customers for an entire year following the effective date of the Order. The FCC Order phasing out line sharing is premised on the existence and adequacy of line splitting as a substitute for line sharing. Before any phase out of line sharing begins, states must insure that adequate processes exist to support line splitting arrangements. See response to VA.6 Further, states concerned about preserving residential DSL competition should exercise their independent authority to establish line sharing under state law and to recognize CLECs' right to access the HFPL pursuant to section 271.		Are all ILEC processes for moving new or existing customers to a line splitting arrangement mechanized? Are all ILEC processes for making changes to an existing line splitting arrangement (i.e. change in voice provider, change in data provider, dropping the data service) mechanized? Can these changes be achieved with a single service order? Are the	

	the relevant market."				intervals for provisioning a line splitting arrangement at parity with intervals at which ILECs add DSL to existing voice customers? Are the nonrecurring charges for moving customers from UNE P to line splitting equivalent to charges for provisioning a line sharing arrangement? As customers move to and from line splitting arrangements, do they experience seamless transitions like when the ILECs add or remove DSL services from existing voice customers? As customers move to and from line splitting arrangements, do ILEC processes insure minimal customer down time, mandatory retention of telephone numbers, reliable updates of E911 and white pages databases, and correct billing.	
V.A.3. What is the appropriate price for HFPL during the	"[D]uring each year of the transition, the price for the high frequency portion of		The FCC's order provides guidance on the pricing of the HFPL during the transition period. However, the relationship between CLECs and ILECs is governed by their interconnection agreements, the vast majority of which contain extensive guidance about how to address and incorporate changes of law into those agreements. Thus, the			

transition period?	the loop will increase incrementally towards the cost of a loop in the relevant market?		FCC's Order may provide guidance, but the implementation of any changes of law must conform to the parties' contractual provisions governing those changes of law. States retain authority to interpret and approve interconnection agreements, including the authority to resolve disputes over contract language implementing changes in law. No change in the legal relationship between the parties occurs until they reach agreement over or states arbitrate resolution of contract language implementing changes in law. Thus, until parties reach agreement over or states arbitrate resolution of contract language implementing changes in law regarding the HFPL, existing interconnection agreement rates, terms and conditions for access to the HFPL should remain in effect. Furthermore, states retain independent authority to unbundle the high frequency portion of the loop pursuant to state law. State proceedings to require access to the HFPL as a matter of state law should include in their final determinations the rates, terms and conditions for such access under state law. During any proceedings examining the unbundling of the HFPL under state law, existing interconnection agreement rates, terms and conditions for access to the HFPL should remain in effect.			
V.A.5. Under what circumstances may an ILEC retire copper loops or subloops?			See response to VA.1. The FCC permits the states to insure that copper plant retired by the ILECs does not destroy competition. States should not permit LECs to retire copper in the absence of a state commission review to address the end user and competitive impacts of such retirement. Retirement of copper provides the ILECs with a simple way to eliminate competition now and to insure their monopolies over customers and services are not threatened in the future. States must be vigilant in monitoring this inherently anti-competitive activity by evaluating the customer impacts as well as the impact on CLECs resulting from such activities. Obviously, states also must address the prices, terms and conditions under which competing firms will continue to enjoy access to the features and functionalities provided by the retiring plant. Until such terms and conditions are in place, states should not allow ILECs to retire copper plant. Therefore, ILECs should only be allowed to retire copper loops and subloops after they demonstrate that they have already made equivalent access available through alternative loop facilities that permit all carriers to obtain the same features and functionality (including, but not limited to line splitting) and provide the same types of		Before states allow ILECs to retire copper loops being used by CLECs to serve customers, states must consider the following: (1) the type of service being provided over the facility; (2) the availability of replacement facilities to provide identical service the customer; (3) the price of the alternative facilities in comparison to the price of the current facilities; (4) the charges	

			services that are possible through access to the copper loop or subloop. The states must adopt procedures to require ILECs to file any plans they have to retire any copper loops or subloops. Under such procedures, the ILEC would first file a petition with the state commission containing appropriate supporting information, setting forth the factual basis for its request and proof that it has satisfied each of the commission-set substantive standards. Interested parties would then join the state commission in evaluating the ILEC submission in an evidentiary proceeding.		by the ILEC for migration to new facilities including all service order, migration, provisioning or related charges; (5) the impact on the CLEC of paying the charges associated with moving the customer to another facility and that CLECs ability to make a profit on the line subsequent to incurring such expenses; and (6) the impact on competition that results from retirement of copper, including an assessment of what competitive alternatives exist for the customer once the copper is retired. Before states allow ILECs to retire copper not currently being used by CLECs to provide service to customers, states should consider: (1) the impact on competition that results from retirement of copper, including an assessment of what competitive alternatives

				exist for customer once the copper is retired; and (2) the amount of CLEC investment in a particular CO that may be stranded based on the retirement of copper loops from that CO	
V.A.6. Are CLECs impaired by existing line splitting processes, rates and OSS currently available from ILECs?	The TRO indicated that CLECs are not impaired without line sharing because they have access to the entire loop, including arrangements such as line splitting.		The FCC's Order addressing line sharing relies extensively on the existence of line splitting as substitute for line sharing. However, ILEC processes, rates and OSS for line splitting are inadequate to allow CLECs to scale their businesses by offering customers a package of both voice and data services. Before line sharing is transitioned out, state commissions should determine that the processes, rates and OSS for line splitting provide competitors with a meaningful opportunity to compete. Recognizing the importance of line splitting to competition , the FCC explicitly ordered the ILECs to modify their OSS to facilitate line splitting. (¶ 252) Moreover, the FCC delegated to the states the responsibility of insuring the adequacy of those systems. (¶ 252) Line splitting is a simple arrangement that provides two services on a single customer loop, similar to the arrangement used when the ILECs add data services to an existing voice customer. Until the processes and systems that enable line splitting are as seamless and customer friendly as when ILECs add data services, CLECs' ability to compete in offering packages of voice and data service will be severely restricted. Significant obstacles stand in the way of scalable line splitting at this time. First, each ILEC has a morass of system and process limitations that make line splitting migrations difficult, expensive and, in some cases, service interrupting. For example, the systems and processes for adding UNE -P to a data line or adding data to a UNE-P line often require multiple orders, manual orders, or a combination of both, and some threaten service interruption or unreasonably high nonrecurring charges for such migrations. Second, systems and processes that maximize the customer's ability to choose from a wide variety of service providers are simply nonexistent. Customers may wish to change voice providers, change data providers, and drop voice or data service at some time. Existing ILEC line splitting systems and processes do not support these customer choices. State commissions must therefore evaluate ILEC systems and processes to insure that these migrations are timely, seamless to the		(1) Are the ILEC's pre-order, order, provisioning, and billing processes and OSS needed to provide line splitting electronic or manual? (2) Regardless of whether electronic or manual, do these processes and OSS enable(s) customers to switch easily and quickly between carriers (both voice and data) without undue service disruption on the scale required for mass market services? (3) If manual, are those processes and OSS adequate, or should electronic processes and OSS be developed? (4) Have all migration scenarios for line	

			customer, result in minimal (if any) service interruption, and occur without any negative effects on 911 databases, telephone number retention and other customer impacting aspects of service. Additionally, there are virtually no systems or processes in place to enable line splitting in a UNE-L environment. These examples illustrate some, but not all, of the issues that must be addressed by state commissions to facilitate line splitting as a truly available competitive alternative.		splitting customers been identified? Do the answers to any of the questions in this section vary based upon the specific customer migration scenarios involved? (5) Are the customer migration processes, hardware, software, and interfaces in place for both ILECs and CLECs? Are they functional? Are they scalable? How should the migration functionality, capacity and scalability be measured? How can/ should the ILEC demonstrate or "prove" that there is sufficient and/or adequate functionality, capacity, and scalability? (6) How should the timeliness of the migration process(es) be measured? How can can/should the ILEC demonstrate or "prove" that it can perform migrations on a timely basis? What standards

				should be used? (7) Does the RBOC have FCC- or state-approved performance measures for customer line splitting migrations that could be used – at least on an interim basis? What do those migration metrics and business rules measure? Functionality? Timeliness? Other? Are those performance measures and business rules sufficient and appropriate on a long-term basis? (8) What process, hardware, software, or interface upgrades or modifications need to be made to better enable seamless, timely, accurate customer migrations between carriers, without undue service disruption on the scale required for mass market services? What are the testing and implementation schedules for those upgrades or	

				modifications? (9) Are there 911 implications for the migration processes to residential mass market customers?	
V.B. Hybrid Loops					
V.B.1. Is the ILEC required to unbundled hybrid loops?	National finding of no impairment, except as specifically set forth relating to voice grade equivalents; states don't appear to have flexibility to override finding: "There are no unbundling requirements for the packet-switching features, functions, and capabilities of [ILEC] loops. Thus, [ILECs] will *not* have to provide unbundled access to a transmission path over hybrid loops utilizing the packet-switching capabilities of their DLC systems in remote terminals. [ILECs] must provide, however, unbundled access to a voice-		See Answer to Question 1.A. In addition to the requirement that ILECs provide access on a UNE basis to a voice-grade equivalent channel and high capacity loops utilizing TDM technology, UNE access to hybrid loops should be made available where there continues to be impairment, utilizing market-specific, granular findings. The FCC's finding of non-impairment may not preclude a state from finding that impairment exists on the basis of a granular analysis in a given market or on a given route. An FCC ruling also may not preclude a state from ordering unbundling pursuant to state law. ILECs must not be permitted to utilize the hybrid loop criteria (utilizing the packet-switching capabilities of their DLC systems in remote terminals) to frustrate competitors' access to otherwise qualifying UNE loops or to interfere with the pro-competitive goals of the States. States must ensure that alternative loops are available in all geographic locations where hybrid loops are deemed to be unavailable. To the extent that alternate loops are unavailable, hybrid loops must be made available on an unbundled basis at TELRIC-based rates. To qualify hybrid loops from removal of unbundling obligations, under federal law, the ILEC must prove that: - the deployment of the packet-switching capabilities of their DLC systems in remote terminals was made in the most narrow possible fashion, and - alternative loops or voice-grade channels are or have been made available for CLEC access to the same customer location(s).		

	grade equivalent channel and high capacity loops utilizing TDM technology, such as DS1s and DS3s."		The states must adopt procedures to require the ILECs to file any plans they have to restrict access to any hybrid loops. Under such procedures, the ILEC would first file a petition with the state commission that identifies the hybrid loops to which it proposes to limit access, and contains appropriate supporting information, setting forth the factual basis for its request and proof that it has satisfied each of the commission-set substantive standards. Interested parties would then join the state commission in evaluating the ILEC submission in an evidentiary proceeding.			
V.C. Fiber Loops						
V.C.1. Is the ILEC required to unbundled fiber-to-the-home loops?	National finding of no impairment, except as specifically set forth relating to voice grade equivalents; states don't appear to have flexibility to override finding: "There is no unbundling requirement for new build/Greenfield FTTH loops for both broadband and narrowband services. There is no unbundling requirement for overbuild/brownfield FTTH loops for broadband services. [ILECs] must continue to provide access to a transmission path suitable for providing		See Answer to Section 1.A. Unbundled access to fiber loops should be made available where there continues to be impairment, utilizing market-specific, granular findings. The FCC's finding of non-impairment may not preclude a state from finding that, on the basis of a granular analysis in a given market or on a given route, that impairment exists. The FCC ruling also may not preclude a state from ordering unbundling pursuant to state law, as states retain the right to unbundle network elements pursuant to independent state law authority. States must ensure that alternative loops are available in all geographic locations where the state commission determines that fiber loops are not available as UNEs. To the extent that alternate loops are unavailable, fiber loops must be made available on an unbundled basis at TELRIC-based rates. States must construe the term "Fiber-To-The-Home" narrowly in order to encompass only single-family residential dwellings. In other words, the states should not construe the term so broadly as to exclude any customer premise—including commercial buildings, and multi-tenant dwellings, where the incumbent is already likely to have deployed "home run" fiber. ILECs must not be permitted to utilize the FTTH loop limitation to frustrate competitors' access to otherwise qualifying loops.		When was the loop actually placed in service? Under what circumstances was the fiber deployed? What portion of each loop is actually fiber?	

	narrowband service if the copper loop is retired."		A loop that is less than 100% fiber, over its entire length, may not be excluded from the Act's unbundling requirements. For overbuild/brownfield loops to qualify for an exemption from unbundling obligations for broadband services, under federal law, the ILEC must prove that: - the deployment of fiber was not done with the purpose of eliminating existing competition, - alternative loops or voice-grade channels have been made available for CLEC access to the same customer location(s), and - each loop to be excluded is 100% fiber. The states must adopt procedures to require ILECs to file filing any plans they have to restrict access to any fiber loops. Under such procedures, the ILEC would first file a petition with the state commission that identifies the fiber loops to which it proposes to limit access, and contains appropriate supporting information, setting forth the factual basis for its request and proof that it has satisfied each of the commission-set substantive standards. Interested parties would then join the state commission in evaluating the ILEC submission in an evidentiary proceeding.			
V.D. Enterprise Market Loops						
V.D.1. Is the ILEC required to unbundled OCn capacity loops?	National finding of no impairment; no further action required by states? "The Commission makes a national finding of no impairment for OCn capacity loops."		See Answer to Question 1.A. States will still have an important responsibility to assure that ILECs provide access to dark fiber on a nondiscriminatory basis, and that competitors are able to place their own transmission electronics on such fiber so that they can provide OCn capacity functionality where it is necessary to meet customer demand. (See TRO ¶ 318; see also TRO ¶ 385 (states may establish technical parameters for dark fiber unbundling).			
V.D.2. Is the ILEC required to unbundle DS1, DS3, and dark fiber loops?	Presumptive finding of impairment that can be removed on a customer location-specific analysis applying a wholesale competitive alternative trigger.		ILECs are required to provide access to DS1, DS3 and dark fiber loops absent a state commission determination that specific FCC-identified "wholesale facilities" or "self-provisioned deployment" triggers are met. However, a particular CLEC may not obtain more than 2 DS3 UNE loops to serve the same customer location. The FCC triggers are designed to ensure that loops will be unbundled unless there is clear evidence that the myriad operational and economic barriers facing competitors have been overcome and that real competition therefore is possible in specific locations.			

			In applying such triggers, the TRO provides the state commissions with significant guidance regarding the factors to be considered, but some issues still need resolution, as described below. Moreover, in making its decisions, a state commission should not rely solely on ILEC provided data, because ILECs have significant incentives to overstate the availability of alternative facilities. Thus, state commissions will need to fully define the relevant triggers and to implement a process for collecting necessary information relevant to implementing the triggers that is reliable and minimally invasive to the affected carriers. See ¶410. Procedural Rules: The FCC makes it clear that, in its initial review under the TRO, the state commission "need only address specific customer locations for which there is relevant evidence....that the customer location satisfies one of the triggers.,," TRO ¶339. Until a final determination is made by the state commission, all types of high-capacity loops and dark fiber remain available as UNEs in all locations. CLECs recommend that state commissions develop a process that requires the ILECs to identify all customer addresses where they believe in good faith that two or more non-affiliated carriers have deployed fiber loop to a customer location. Then all the carriers serving those locations could be asked to provide information as to whether they have owned fiber that connects to those customer addresses. Finally, in order to determine whether there are wholesale alternatives that serve any such customer addresses, the state commission could ask carriers that have deployed their own fiber on such routes whether they have excess capacity available for purchase by other carriers and hold themselves out to make such capacity "widely available". However, carriers should not be required to provide confidential business information (including, for self-providers, whether they serve specific buildings) unless there are appropriate confidentiality arrangements in place. If the state commission finds non-impairment based on application of these triggers, states must establish an "appropriate period for competitive LECs to transition from any unbundled loops that the state finds should not longer be unbundled". TRO ¶330. Transition issues should be addressed in a proceeding immediately after any finding of non-impairment. Certification Process: The TRO recognizes that there may be situations where the FCC triggers may be satisfied but a particular CLEC still may be impaired without access to			

			ILEC loops due to factors unique to a carrier's ability to serve a loop route or to changed factual circumstances, such as a barrier to entry imposed on the particular locations by a local government. A state commission could account for such circumstances by establishing a certification process that enables a CLEC to demonstrate that the FCC triggers were not satisfied in this instance. States should evaluate the form, content, and manner of such certifications. In addition, in cases where the impediment affects a more substantial number of CLECs, the state commission could utilize the waiver process specified in ¶336 for the Order. Substantive Rules for Loop Impairment triggers: The CLECs propose that each state commission adopt the following substantive definitions applicable to the FCC's triggers. **Wholesale Facilities Trigger (applicable to DS1, DS3 and dark fiber loops):** All loop routes must be unbundled unless two or more competing wholesale providers not affiliated with each other or the ILEC have deployed their own facilities on a route, have access to all customers within the entire customer location and provide the relevant capacity on a widely available wholesale basis. **A. Loop Route.** A Loop "Route" is not defined in the TRO. In order to be a comparable facility to the ILEC's loop, an alternative loop must be defined as the connection between the relevant (serving) Central Office and the NID or equivalent point or points of demarcation that will provide access to the entire customer location, including each individual unit within that location or each individual building within a campus compound. TRO ¶ 337, fn 984 and ¶ 401. Loop routes are determined on a "specific customer location" basis, i.e. by the specific customer address. **B. Qualified Wholesale Provider.** A Qualified Wholesale Provider must meet the following criteria: - Be unaffiliated with the ILEC or any other wholesaler. TRO ¶¶329, 337; - Have equivalent access to the customer premises, including in multi-tenant buildings access to the same common space, house and riser and other intra-building wire as the ILEC. TRO ¶337; - Own (*i.e.* have legal title to) the Qualifying Facility on the entire Loop Route or have a long term IRU in ILEC dark fiber, if the fiber is lit by the wholesale carrier. TRO ¶ 337, 47 C.F.R. §51.319 (a)(4)(ii)(A); and			

			- Be "operationally capable" of providing wholesale loop capacity and have a reasonable expectation of being capable of continuing to do so. TRO ¶338, fn 989. In order to be "operational capable" of providing wholesale service, for example, a qualifying wholesale provider must have additional, currently-installed capacity to provide reasonable access to DS1, DS3 and dark fiber loops served out of the Central Office **C. Qualifying Facilities** must meet the following criteria: - Must provide access to the entire customer location, including each individual unit within the location. TRO ¶ 337, 47 C.F.R. §51.319 (a)(4)(ii)(B); - Provide a DS1 or DS3 level transmission path, as requested by the CLEC, TRO ¶337 (wholesale loops must be provided "for that type of high capacity loop"); - For dark fiber, provide each competitor with the ability to attach electronics that permit it to provide service at the level of its choosing. 47 C.F.R. §51.319 (a)(4)(ii)(A); and - If the facility is not a fiber-fed loop, the non-fiber facility must provide "service comparable in quality to that of the incumbent LEC." 47 C.F.R. §51.319 (a)(4)(ii). **D. ILEC Obligations.** An ILEC requesting a finding of non-impairment must: - Permit competitors to order circuits/loops to terminate in all Qualified Wholesale Providers' collocation space (*i.e.* no ILEC host-type limitations); and - Provide adequate cross-connect terminations, at cost-based rates as required by FCC and state rules, and enable sufficient capacity expansion. **Self- Provisioned Deployment Trigger (applicable to DS3 and dark fiber loops only):** DS3 and dark fiber loops must be unbundled unless two or more competing providers that are not affiliated with each other or the ILEC have deployed their own fiber facility at that specific customer location and are serving customers via those facilities. DS1 loops are not subject to this test and therefore must be unbundled (subject to the wholesale facilities trigger) regardless of the number of competing providers that may have self-deployed facilities. The definitions of Loop Route and Qualifying Facility should apply, as should the			

			ILEC Obligations, described above. In addition, to qualify as a **Self-Provisioning Carrier**, each carrier must: - Have equivalent access as the ILEC to the customer premises, including in multi-tenant buildings access to the same common space, house and riser and other intra-building wire; - Own (*i.e.* have legal title to) the Qualifying Facilities on the entire Loop Route. Self-provisioners must use "their **own facilities**" (emphasis added), 47 C.F. R. §51.319 (a)(5)(i)(A) and "not facilities owned or controlled by one of the other two providers on the premises, i.e., the incumbent LEC and the [second] competitive provider." TRO ¶ 333. Dark fiber purchased via a "long term IRU" and subsequently lit by the self-provisioner counts as a separate self-provisioned facility. *Id.*			
VI. What is the Appropriate "Market"? etc						
VI.A. What is the Product Market? VI.A.1. What products and technologies are available as a substitute for DS1, DS3 and dark fiber loops?			All substitutes for ILEC loop and transport facilities must be location specific, *i.e.*, they must have the same beginning and end points as the ILEC facilities they would replace and, in order to be useful as alternatives, competitors must be able to access the substitute facilities as easily as they can access ILEC loops and transport.			
VI.A.2. Can potential substitutes for ILEC owned DS1, DS3, and dark fiber loops be identified and if so what is the type and location			Although the TRO recognizes that intermodal facilities may be considered, fiber is the only transmission medium that is generally available, reliable and deployed to provide a complete range of telecommunications services to enterprise customers. Thus, the only substitutes "comparable in quality" to ILEC-provided DS1, DS3 and dark fiber loops are those facilities that have been deployed using CLEC-owned fiber. See, e.g., 47 C.F.R. §51.319 (c)(4)(ii).			

of potential substitutes?						
VI.B. What is the Appropriate Geographic Market? VI.B.1. What is the economic serving area of a substitute DS1, DS3, and dark fiber loops?			Loops are dedicated facilities that connect two points: a customer premise and an ILEC central office. Moreover, the TRO holds that the availability of substitute DS1, DS3 and dark fiber loops must be assessed on a customer location specific basis. Thus, the "economic serving area" for loops is the area defined by the endpoints of the ILEC's loop facility. If alternative facilities do not connect the same specific endpoints as ILEC facilities, a requesting carrier would not be able to provide competitive service to a customer at the identified premise, and would not be able to self-provision loops with other UNEs, as well as ILEC transport.			
VII. Economic impairment						
VII.A. Are there economic barriers to entry that are likely to make market entry uneconomic?			Yes. Because loop facilities are dedicated to the provision of individual customers (or small groups of customers) in a specific location, the costs of loop construction cannot be recouped if the carrier loses the business of the customers for which the facility was constructed. Similarly, the costs of transport facilities cannot be recouped if carriers cannot acquire sufficient demand to operate those facilities at unit costs comparable to the ILEC's efficient costs. In addition, both loop and transport facilities exhibit very substantial economies of scale and scope, and there are practical and operational barriers that may also prevent a competitor from deploying facilities to serve customers, such as building access and rights of way issues. Given the FCC's national finding of impairment with respect to all ordinary copper loops and to DS1 and DS3 capacity loops, transport and dark fiber except where there are identifiable alternative facilities already in place, the inference must be drawn that the FCC has already found the existence of sunk cost, scale economies and other economic barriers.			
VII.B. What are the impediments to access capital? Is capital available to competitors?			Given the sunk costs and scale and scope economies inherent in the construction of loop and transport facilities, as well as other barriers to entry using alternatively constructed facilities, there are significant impediments to any competitive carrier's access to capital for such facilities, whether external or internal. This problem has been repeatedly acknowledged both by carriers and financial analysts, and is readily apparent from the large number of bankruptcies filed by carriers that have constructed their own facilities. Further, there is a general consensus that competitive carriers			

			cannot use a "build it and they will come" approach to capital formation necessary to support facilities construction. Rather, the only scenario in which carriers can expect to be able to raise capital for such construction is one in which they have already obtained long-term commitments from retail customers for substantial demand that emanates from (or for transport is collected at) identified locations before construction financing is available and construction can be begun. There are huge disparities in access to capital markets by incumbents and entrants. Incumbents generally have free cash flows from which to draw: in effect, some incumbents *are* a capital market. In contrast, capital markets are substantially closed to competitive entrants. As a practical matter, the only source of financial capital easily available to CLECs is the internal cash generated from operations, which is scarce and desperately needed for a number of costs, including costs of market expansion and customer acquisition.			
VII.C. Are there sunk costs that deter entry?			See answer to question VIIA. relative to overall economic impairment.			
VII.D. Are there first-mover advantages?			Yes. ILECs have at least two different types of first mover advantages for loop facilities. First, ILECs have already deployed fiber facilities in nearly all buildings where there is likely to be sufficient demand for high capacity loop facilities. As a result, the ILEC can usually provide all customer demand from the building, including new demand, using only its existing facilities. And even if additional capacity is necessary, the ILEC can typically increase its capacity by merely changing out its transmission electronics rather than by constructing new facilities. And in the rare case where new facilities may be needed, the ILEC can typically use existing building rights from the landlord and existing external conduit and rights of way to facilitate its construction. Second, ILECs typically have preferential access to buildings and rights of way compared to competitive providers. This applies to necessary arrangements with both landlords and municipalities. These entities have always recognized the need for at least one telecommunications provider – the incumbent monopolists. However, landlords frequently subject new entrants to more limited, more expensive and less ubiquitous facilities arrangements for serving customers in their buildings, and negotiations between landlords and new entrants are often very protracted. In fact, a large portion of competitive loop facilities have only a "fiber to the floor" (FTTF) arrangement, which only allows a competitive carrier to serve an individual customer			

			or floor in a building, not to common space in the building that would enable it to serve all the building's tenants. Thus, a new entrant with an FTTF arrangement cannot serve other building tenants unless it completes a new round of negotiations with the landlord. In addition, new entrants often face delays and extra costs in their efforts to obtain necessary approvals from municipalities. These come in the form of municipal efforts to impose discriminatory fees on new entrants as well as limitations on the entrants' ability to obtain permits to use municipal rights of way to construct new facilities. Carriers face similar ILEC first mover advantages with respect to transport facilities, because the ILECs' construction costs for such facilities are also sunk. Moreover, transport facilities have significant scale and scope economies, and the ILECs already have incurred the sunk costs to construct extensive fiber transport networks capable of handling virtually all the demand in an area. Thus, unless a carrier can obtain and hold sufficient demand to enable it to operate at unit costs equivalent to the ILEC's economic cost, it cannot consider constructing additional transport facilities. Further, construction of transport facilities is also often subject to delays and additional costs resulting from the need to obtain access to municipal rights of way.			
VII.E. Are there other economic barriers to entry?			Yes. In addition to those barriers described in VII.D above, it is extremely costly and difficult for CLECs to build operational systems that can support multiple loop vendors. Only if an alternative vendor has a ubiquitous deployment of loop facilities, does it make sense for a CLEC to develop operational systems to interface with that vendor.			
VIII. Operational Impairment						
VIII.A. Are there operational barriers to entry?						
VIII.B. Do competitive wholesale alternatives exist			Even though competitors would often prefer to use non-ILEC suppliers of such facilities, such alternatives can rarely be found.			

for DS1, DS3, and dark fiber loops?						
VIII.C. Has the CLEC self-deployed loops facilities?	"Dark fiber and DS3 loops also each are subject to a customer location-specific review by the states to identify where loop facilities have been self-deployed."		There are limited circumstances in which competitive providers have self-deployed loop facilities to the largest commercial buildings. The CLECs' proposed test to determine if CLECs have self-deployed facilities is explained in response to V.D.2 above.			
IX. Subloops						
IX.A. Is the ILEC required to unbundle access to subloops?	National finding of impairment, so no further action required by States? ILECs "must offer unbundled access to subloops necessary to access to wiring at or near a multiunit customer premises, including the Inside Wire Subloop, regardless of the capacity level or type of loop the requesting carrier will provision to its customer."		Since there is a national finding of impairment for subloops, no further action by the states is required except as necessary to enforce the unbundling requirements.			
X. Transport						
X.A. Is the ILEC required to unbundle OCn level transport?	"The Commission finds that requesting carriers are not impaired without access to unbundled OCn level transport."		Under the FCC's Triennial Review Order, states will still have an important responsibility to assure that ILECs provide access to dark fiber on a nondiscriminatory basis, and that competitors are able to place their own transmission electronics on such fiber so that they can provide OCn capacity functionality where it is necessary to meet customer demand. In addition, states have the opportunity to review the availability of such facilities as a UNE under state law.			

			As with switching and loops, discussed above, Section 271 of the federal act creates an independent obligation to offer transport on an unbundled basis. Nothing in section 271 limits the obligation to provide access to transport to any particular technology or capacity.		
X.B. Is the ILEC required to unbundle dark fiber, DS3 and DS1 transport?	"The Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 transport, except where wholesale facilities triggers are met as applied in state proceedings and route-specific review. Dark fiber and DS3 transport also each are subject to a granular route-specific review by the states to identify where transport facilities have been self-deployed."		Yes. ILECs are required to provide access to transport absent a state commission determination that specific FCC-identified "wholesale facilities" or "self-provisioned deployment" triggers are met. However, a particular CLEC may not obtain more than 12 DS3s of transport from the ILEC on a single route. 47 C.F.R. §51.319(e)(2)(iii). The FCC triggers are designed to ensure that transport will be unbundled unless there is clear evidence that the myriad operational and economic barriers facing competitors have been overcome and that real competition therefore is possible. In applying such triggers, the FCC has provided the state commissions with guidance regarding the factors to be considered, but it has not fully defined the "wholesale facilities" or "self-provisioned deployment" triggers. In addition state commissions should not rely solely on ILEC provided data, because ILECs have significant incentives to overstate the availability of alternative facilities. Thus, state commissions will need to define the relevant triggers and to implement a process for collecting necessary information relevant to the triggers that is reliable and minimally invasive to the affected carriers. Procedural Rules: The FCC makes it clear that in its initial review, the state commission "need only address specific route for which there is relevant evidence…that the route satisfies one of the triggers." TRO ¶417. Until the state commission makes a final determination, transport remains available as UNE in all locations. The CLECs recommend that a process could be developed by having the ILECs identify all central office pairs in a local area in which the *same* two or more carriers maintain fiber-based collocations. Then, all of the carriers identified by the ILEC as having facilities on some of these routes could be asked to provide information to whether they have owned fiber that connects any of the office pairs identified by the ILEC. Finally, in order to determine whether there are wholesale alternatives on any		

			such office-pair route, the state commission could ask carriers that have deployed their own fiber on such routes whether they have excess capacity available for purchase by other carriers and hold themselves out to make such capacity "widely available". However, carriers should not be required to provide confidential business information (including the specific routes they provide with self-provisioning) unless there are appropriate confidentiality arrangements in place. If the state commission finds non-impairment based on application of these triggers, states must establish "an appropriate period for competitive LECs to transition from any unbundled transport that the states finds should no longer be unbundled." TRO ¶417. Transition issues should be addressed in a proceeding immediately after any finding of non-impairment. Certification Process: The TRO recognizes that there may be situations where the FCC triggers may be satisfied but a particular CLEC still may be impaired without access to ILEC transport due to factors unique to a carrier's ability to serve a transport route or to changed factual circumstances. For example, a barrier to entry imposed on the particular locations by a local government. A state commission could account for these circumstances by establishing a certification process which enables the CLEC to demonstrate that the FCC triggers were not satisfied in this instance. States should evaluate the form, content and manner of such a certification. In addition, in cases where the impediment affects a more substantial number of CLECs, the state commission could utilize the waiver process specified in ¶ 411 of the Order. Substantive Rules: for Transport Impairment triggers: The CLECs propose that each state commission adopt the following substantive definitions applicable to the FCC's triggers. **Wholesale Facilities Trigger (applicable to DS1, DS3 and dark fiber transport):** All transport routes must be unbundled unless two or more competing wholesale providers not affiliated with each other or the ILEC have deployed their own facilities over a transport route, are collocated in both ILEC end offices comprising the route, and are willing immediately to provide transport on a "widely available" basis. **A. Transport Route.** A Transport Route must be defined as the path between two ILEC Central Offices or Wire Centers. Each Central Office pair is a distinct route for these purposes; routes are not to be balkanized into multiple segments for purposes of		

			an impairment analysis. TRO ¶ 405. The Order define routes as complete connections between points A and Z; the FCC order does not require carriers to "daisy chain" individual "links" (the FCC's term for shorter paths between intervening COs) from multiple carriers. The routes must begin and end in a collocation in an ILEC CO. TRO ¶¶ 406, 414. **B. Qualified Wholesale Provider.** A Qualified Wholesale Provider must meet the following criteria: - Be unaffiliated with the ILEC in any way or with each other. TRO ¶414 ; - Be physically collocated in both of the Central Offices defining the Transport Route. TRO ¶414.; - Be collocated within a location and be operationally ready and willing to provide the particular capacity transport on a wholesale basis along the specific route. TRO ¶414.; - Have sufficient interconnection capacity for the exchange of traffic. TRO ¶414 (provider must be operationally ready); - Be able to access cross connects at non-discriminatory cost-based rates; - Be "operationally ready" to provide wholesale service, including having a reasonable amount of additional, currently-installed capacity and have appropriate processes for receiving, processing and provisioning orders. TRO ¶414; - Have the ability to extend its network to CLEC premises. TRO ¶415. ; - Offer circuits on generally available and nondiscriminatory rates, terms and conditions (*e.g.*, on a tariffed or similar basis), not on the basis of individual rate quotes. TRO ¶414. (wholesale provider must make the specific capacity services "widely available"); and Be currently offering and likely to be able to continue to provide service. TRO ¶415. **C. Qualifying Facilities** must meet the following criteria: - Must terminate in the provider's physical collocation space in each relevant Central Office. TRO ¶414; - Provide a DS1 or DS3 level transmission path, as requested by the CLEC. TRO ¶414; - If the facility is not fiber transport, the non-fiber facility must provider "service comparable in quality to that of the incumbent LEC," See 47 C.F.R. § 51.319 (e)(1)(ii)			

			and - For dark fiber, provide each competitor with the ability to attach electronics. See 47 C. F. R. §51.319 (a)(5)(i)(B)(1).. **D. ILEC Obligations.** The ILEC requesting a finding of non-impairment must: - Permit competitors to order circuits/loops to terminate in all Qualified Wholesale Providers' collocation space (*i.e.* no ILEC host-type limitations), and - Provide adequate cross-connect terminations at cost-based rates as required by the FCC and state rules, and enable sufficient capacity expansion. TRO ¶ 414. **Self- Provisioned Deployment Trigger (applicable to DS3 and dark fiber transport only):** The definitions of Transport Route and Qualifying Facility should apply, as should the ILEC Obligations, described above. In addition, to qualify as a **Self-Provisioning Carrier**, each carrier must - Not be affiliated with the ILEC in any way or with each other. TRO ¶408; - Be collocated within the Central Offices at each end of the Transport Route. TRO ¶¶ 406, 408; and - Be "operational ready to provide transport into or out of" the relevant end offices. TRO ¶406.			
X.C. Is the ILEC required to provide shared transport?	The ILEC is "required to provide shared transport to the extent that [it] is required to provide unbundled local circuit switching."		Yes. However, state commissions should also assure that carriers can use shared transport to originate or terminate calls routed to non-ILEC switches, *i.e.*, where the CLEC only uses ILEC tandem switching. Failure to provide access to shared transport for this purpose would increase competitors' costs and would discourage competitive LECs from attempting to compete with the ILECs through the use of non-ILEC switches.			
XI. EELs						
XI.A. Is the ILEC required to	"[CLECs] may order new combinations of		The EEL is an efficient network configuration that lowers barriers to entry, expands the geographic scope of CLEC service (particularly to lower-density areas) and			

provide UNE combinations?	UNEs, including [EEL], to the extent that the requested network element is unbundled."		broadens the profile of customers that may take advantage of innovative offerings like the integrated T-1. EELs also expand the geographic availability of competitive alternatives to a wider customer base (particularly in low density zones) preserve collocation space and avoid unnecessary duplication of ILEC transport. The TRO requires ILECs to provide EELs subject to the eligibility rules specified therein. Since these rules are not included within the impairment proceedings mandated by the TRO, it appears that state commissions need not take any actions at this time with respect to EELs. It may be necessary in the future, however, for state commissions to intervene to prevent ILEC gaming of the rules or harassment of carriers purchasing EELs. States should stand ready to address issues as they arise.			
XI.B. What is the service eligibility criteria applicable to requests for newly-provisioned high-capacity EELs and for requests to convert existing circuits of combination of high-capacity special access channel termination and transport services?	"Each carrier must certify in writing to the [ILEC] that is satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit."		As discussed above, it does not appear that these issues need to be addressed in the impairment proceedings mandated by the TRO. Nevertheless, state commissions may be required in the future to intervene to ensure that ILECs accept CLEC certifications without the improper pre-conversion auditing that prevailed under the old rules and that ILECs follow the audit procedures specified in the TRO. State commissions are free to expand the availability of EELs pursuant to state law to the extent appropriate to promote competition.			
XII. NID						
XII.A. Is the ILEC required to offer unbundled access to the NID?	The NID "is defined as any means of interconnecting the incumbent LEC's loop distribution plant to		Access to the NID appears unchanged by the FCC's Order.			

	the wiring at the customer premises."				

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case

Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
Must ILECs unbundle local circuit switching for mass market customers?	ILEC circuit switching for mass market customers must be unbundled (TRO ¶¶ 419, 459). "A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic."	Yes. The FCC has made a national finding of impairment (TRO ¶¶ 419, 459) with regard to unbundled local switching used to serve mass-market customers, subject to a more granular review by the states. This threshold national finding was based principally on the operational and economic impediments that CLECs face from the hot cuts that they require when they attempt to use a non-ILEC switch. However, the FCC also recognized that CLECs face additional significant impediments that may make switch-based entry into the local mass market uneconomic. TRO ¶ 476. In order to eliminate the availability of local circuit switching as an unbundled network element (UNE) for mass-market customers at TELRIC rates, an ILEC must either demonstrate that certain FCC-defined "triggers" have been met (which the FCC finds sufficient to show that CLECs' barriers to entry have been removed in a geographic market) or show that all material economic and operational barriers to entry into the mass market through the use of non-UNE switching have been eliminated. Economic barriers the FCC recognizes include, among other things, sunk costs, scale economies, scope economies, absolute cost advantages, capital requirements, ILEC strategic behavior, product differentiation, long term contracts and network externalities. TRO ¶ 75. Such barriers create impairment if, taken as a whole, they are likely to make market entry uneconomic in the absence of the use of an unbundled network element at cost-based TELRIC rates.	For the relevant product market in each geographic market, can ILEC overcome presumptive finding of impairment by showing that economic and operational barriers to entry have been removed? Economic barriers may include the need for access to capital, lack of first-mover advantage, and other entry and exit barriers. Operational barriers may include lack of access to high capacity loops delivered in an accurate and timely way, lack of an accurate and timely loop migration process (including software, hardware, and other aspects of a "coordinated hot cut," for example), and lack of accurate and timely information regarding, for example, loop availability and loop migration.

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		Operational impairment is also significant in the mass market, in which customers are served by voice-grade loops. Such impairment includes, but is not limited to, the ILECs' failure to unbundle the IDLC network, lack of a scalable, dynamic or efficient hot cut process, lack of pre-order processes to handle large scale dynamic coordinated ordering processes, and lack of processes to ensure repair/maintenance, customer reconciliation, and related issues that ensure that customers can switch seamlessly between providers. CLECs also suffer additional operational barriers, including the fact that voice competitors' ability to engage in line-splitting with non-affiliated data service providers is significantly more limited if they are forced to use a UNE-Loop (UNE-L) arrangement instead of one that is based on the use of ILEC switching, *i.e.*, in the same manner that ILECs provide bundled voice and data services today. Further, with regard to Bell operating companies, unbundled switching is a section 271 "competitive checklist" item. The effects of these requirements are discussed below in Procedural Question 13.	
I. Definition of Market			
IA. Product Market			
IA.1. What products and technologies are available as a substitute for ILEC local circuit switching?		The product market defined by the FCC is voice service provided to mass-market customers, which today is served virtually entirely by local circuit switching. There are few available substitutes for ILEC local circuit switching. The lack of	Factors to consider: • Switch capacity, scalability, and upgradeability • Availability and functionality of features • Vendor constraints - hardware manufacturing schedule and capacity

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		substitutes results in large part from the additional economic and operational disadvantages competitors face in attempting to *combine* ILEC loops and non-ILEC switches (of any type) to provide a complete retail service. Given the integrated nature of the circuit-switched network architecture currently deployed by incumbent LECs, only ILECs have cost-efficient and operationally simple access to their monopoly loops. As a result, there are effectively no products or technologies that provide competitors with a viable substitute for ILEC local circuit switching to serve mass-market customers. Indeed, if these barriers did not exist, significant facilities-based competition and/or wholesale sources of supply would develop – but market experience shows that such sources do not exist today. Accordingly, a simple inventory of the non-ILEC supplied switching hardware and software that a competitive carrier would need in order to provide switch-based service to mass-market customers is at best of minimal value in assessing economic and operational impairment. Rather, the FCC recognizes that the best evidence regarding impairment is the actual use of alternative facilities to provide service to identified customer groups. TRO ¶ 461. Thus, the lack of significant use of alternative switches to serve mass-market customers is particularly indicative of impairment. TRO n.1365 (CLECs' failure to use already-deployed switches to serve mass-market customers "bolsters our findings that significant barriers caused by hot cuts and other factors make entry	constraints - software programming schedule and capacity constraints - vendor budgetary and fiscal constraints Is it appropriate to consider switches other than traditional local circuit switches, such as "soft switches"? If so, what economic and operational barriers are presented by the use of "soft switches"?

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		uneconomic"). Non-ILEC switches are not substitutes for mass-market ILEC switching because when they interface with an ILEC network using traditional analog network architecture and technology, CLECs, unlike ILECs, must manually connect and *extend* the loop of every customer they serve to a *different location* than the ILEC switch using economically and operationally inefficient facility arrangements. ILEC switches are already connected to their customers' loops at the central office, typically with nothing more complex than a short cross-connect wire (or "jumper") that, once connected, is generally never moved again. As a result, the existing ILEC networks have an "integrated" network architecture that allows them -- and them alone -- to maximize the joint economic and operational efficiencies of using loops and switching to provide service to mass-market customers. Because of the ILECs' integrated network architecture, CLECs cannot connect their customers' loops to their switches without incurring significant additional costs and operational impairments. These include, but are not limited to, the costs of (1) collocation, (2) collocated equipment needed to digitize, concentrate and multiplex the signals carried by their customers' loops, (3) transport backhaul, and (4) manual hot cuts required to transfer ILEC loops to a CLEC's network. In addition, (5) CLECs also face additional costs vis-à-vis ILECs because they cannot terminate calls as efficiently as ILECs. Indeed, if ILEC local switching were	

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		not available as a UNE, ILEC networks would need to be redesigned to respond to the consequences of shifting traffic from efficient shared transport facilities to less efficient, tandem-dependent interconnection trunks. In addition, there is no doubt that CLECs also must suffer the operational disadvantages described above. These barriers are not only faced by CLECs that seek to self-provide their own switching, but they are also faced by any carrier that seeks to use wholesale alternatives or to deploy alternative wholesale switching for other CLECs. These additional costs and operational impairments apply with respect to *every* customer a competitive carrier seeks to serve, and they are the principal reason why there is such limited use of alternative switches to serve mass-market customers. Further, cable providers, whose ability to offer service is based on their ability to leverage off their cable monopolies, do not offer their services or facilities to others carriers for resale. TRO ¶ 446. Thus, the existence of a facilities-based cable provider in a geographic market is not especially probative of whether a non-cable competitor could economically serve the mass market without access to unbundled ILEC switching. TRO n.1560. Moreover, cable companies that offer voice telephony (or providers that utilize cable plant for distribution) generally do not serve the entire "mass market" in an area, as their service is limited to franchise areas where their facilities exist, and they typically serve only residential customers. Therefore, cable operators that offer telephony	

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		generally would not qualify under the "trigger" criteria in the TRO. Moreover, the TRO (¶ 445 & n.1549) correctly finds that wireless "is not yet a suitable substitute for local circuit switching," because wireless does not provide service that is equal in quality, ubiquity and broadband/data functionality. "Soft switches" (packet switches) may at some point serve as a substitute for circuit switches, but not today, because nearly all of the operational issues associated with the use of circuit switches are also applicable to soft switches. Today, CLECs achieve virtually nothing in the way of increased efficiency and reduced impairment by converting their networks to packet switching, even if such technologies were sufficiently reliable and feature-rich to operate as carrier-class, end office switches. For example, even if a CLEC had a full-featured soft switch collocated in an ILEC central office, it would have to (1) lease collocation space (possibly more than is necessary to house the DLC equipment needed to provide circuit switch-based service); (2) purchase and install equipment that would (a) packetize its customers' signals before entering the soft switch and (b) translate the signals coming out of the soft switch to traditional time division multiplexed digital format before they enter the public switched network; and (3) arrange and incur the costs for a hot cut to transfer each customer's loop to its collocation. Thus, deployment of soft switches in the ILECs' current network architecture would not have any meaningful effect on the economic and operational impairments that	

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		CLECs currently suffer with respect to mass-market customers.	
IA.2. Is there a stand-alone market for local circuit switching or switching functions?		The TRO (¶ 504) requires an examination of wholesale alternatives to ILEC circuit switching in the relevant market. However, market experience demonstrates that a true wholesale market for local switching that is structured to support dynamic competition for mass-market customers does not exist. (See TRO ¶ 504) This is because the entry barriers that self-provisioning CLECs face also block the development of vibrant wholesale sources of supply. Because of the integrated nature of the ILECs' existing network architecture, as described above, there is no wholesale market today for local circuit switching to serve mass-market customers. And critically, there is no prospect for the development of such a market as long as the ILECs maintain their current network architecture, which requires CLECs to extend each and every customer's loop to reach *any* non-ILEC switch and also to incur a hot cut on each of their customers' loops. Critically, it is not significantly less expensive for one CLEC to link its switch to unbundled ILEC loops than for another to do so – all must use the same hot cut, collocation, digitization, concentration and backhaul methodology. Indeed, the lack of a wholesale market for switching to serve mass-market loops directly demonstrates the effects of the integrated nature of the ILECs' networks and that a simplistic review of the existence of non-ILEC switches cannot be dispositive as to whether CLECs are impaired in the mass market without access to unbundled	Is it assumed that CLECs will provide UNE local switching to each other, or only that the installation of a switch(es) by one CLEC means that at least one other CLEC will also install at least one switch of its own?

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		ILEC circuit switching. Finally, the absence of a market for mass-market switching also means that carriers have not yet begun to address the OSS that would be needed to enable (1) one CLEC to offer mass-market switching to another CLEC and (2) an ILEC to process orders from one CLEC to implement a manual hot cut to a separate CLEC's switch. Thus, a mere "offer" to provide wholesale services to carriers seeking to serve mass market customers cannot be dispositive as to whether wholesaling is actually available in a market. Rather, a putative wholesaler must demonstrate that it is operationally ready to provide such services and that both it and the ILEC have procedures in place that enable a carrier purchasing an ILEC voice grade loop to provide service of equivalent quality using another carrier's switch.	
IB. Geographic Market		The TRO (¶ 495) requires state commissions to establish the geographic markets that they will use to make their review of impairment with respect to mass-market switching. The TRO lists a number of both demand-side and supply side factors that a state commission should assess in making that determination, including, (i) the locations (if any) where customers are actually being served by competitors; (ii) the variation in factors affecting competitors' ability to serve each group of customers; (iii) competitors' ability to target and serve specific markets economically and efficiently using available technologies; and (iv) how competitors' ability to use self-provisioned switches or wholesalers to serve various groups of customers varies geographically. States may not	Possible boundaries to consider: (1) LATA (2) Minimum or typical ILEC service area "unit" (*e.g.*, exchange, wire center, rate center) (3) Minimum or typical CLEC service area "unit," if any (4) MSA (5) Performance measurement geographic disaggregation area (6) Entire state Questions to Consider: • May some geographic markets be combined for certain impairment "sub-analyses" (for example, perhaps certain ILEC OSS availability issues could be addressed on a

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		define a market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market. Overall, states are given discretion in this regard, and the TRO does not require any particular result, except that the market may not include the entire state. The geographic markets the state commissions define are to be used for all of their analysis. TRO ¶ 495.	statewide market basis), while other impairment sub-analyses are conducted separately for each identified geographic market (for example, perhaps accuracy and timeliness of loop delivery varies for each geographic market in a given state) ? • How should the need for precise results in particular disaggregated geographic areas be balanced with the need for an expedited process to meet the FCC's 9 month deadline?
II. Inventory / Existing Product Availability		In order to conduct the threshold "trigger" analysis the FCC defines (TRO ¶¶ 498-505), state commissions will have to conduct an inventory of non-ILEC switches that are deployed in their jurisdictions. Data collected on switching should be collected from each switch provider, including the ILECs. In particular, state commissions should not rely solely on data provided by the incumbents because of their obvious incentives to overstate the amount of competitive switching that is deployed. However, application of the trigger analysis is not a simple task of merely counting CLEC switches. The state commissions will need to examine the uses of the CLEC switches to determine whether such switches are effectively providing service to "mass market" customers in the relevant geographic area. Specifically, the TRO (¶ 499) establishes the criteria that state commissions must use in determining whether any particular competitive switch provider qualifies as a "self-provider" or "wholesaler. " Each qualifying self-provider:	In order to more accurately determine impairment without access to a particular ILEC UNE, a State Commission may want to conduct an "inventory" to determine the availability of that ILEC UNE and of its substitutes. An inventory could include the following for each LEC in each geographic market: (1) number and location of LEC switches and switch substitutes; (2) capacity, utilization, and availability of each switch or switch substitute; (3) distance of each CLEC switch or switch substitute from its interconnected ILEC switch; (4) number of LEC lines provisioned/served by each switch/switch substitute; and (5) number of line and trunk ports on each LEC switch/switch substitute in that area – both actual and potential working ports. The inventory could be further disaggregated to separate stand-alone CLEC switches from physically or virtually collocated CLEC

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		Must be unaffiliated with the ILEC and any other provider; Must be using or offering its own separate switch; Must be actively providing voice service to mass market customers in the market; Must be operationally ready and willing to serve *all* customers in the designated market, which includes both residential and small business customers; and Must be capable of economically serving the *entire* market, thus excluding switch providers "that provide services that are desirable only to a particular segment of the market." Each qualifying wholesaler: Must actively be providing voice service used to serve the mass market; and Must be providing service at a cost and quality and geographic scope that allow resellers to serve the entire market. In sum, such providers must be currently offering and able to provide service, and likely to continue to do so. TRO ¶ 500. In order to meet these triggers, the state commission must find that there are at least 3 self-	switches/switch substitutes. Questions to consider: When should a switching inventory be conducted? If done periodically in the future, how often? Can/should all LECs be required to provide all relevant data? Is it sufficient to rely solely on data provided by the LECs? What other data sources are available? Is it sufficient to consider only publicly available data? Can/should LECs be required to obtain and provide data from third parties? States may also want to consider the following non-switch subjects for inventory: • Collocation (both physical and virtual) – availability, rates, terms and conditions • Alternative means of gaining access to loops – availability, rates, terms and conditions. • Interoffice transport.

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		provisioning carriers (TRO ¶ 501) or 2 wholesalers (TRO ¶ 504) that meet these qualifications in a geographic market. In analyzing whether either of the triggers are met, state commissions must be mindful of the FCC's requirement that to qualify, a triggering carrier must be ready, willing and able to serve the "entire" mass market. Switch-based carriers that only chose to serve a portion of the market (e.g., customers with voice and data lines or customers only within a particular neighborhood, apartment complex, or cable franchise boundary) do not qualify. That requirement is appropriate, because the purpose of the "trigger" inquiry is to assure that there are viable competitive alternatives to the ILEC's facilities in the entire defined market, from both a geographic and customer perspective. Unless the FCC-defined triggers are met, a simple review of non-ILEC switching is of little value in determining impairment in the mass market, because, as discussed above, the economic and operational impairments CLECs suffer will continue to exist regardless of whether or not there are non-ILEC switches in place. Moreover, certain information about how CLECs actually use their deployed switches will provide an indication of the impairments that CLECs suffer with respect to mass-market loops. However, any "inventory" need not be excessively detailed and in all events should not be burdensome on carriers. The relevant facts to collect must relate to the	

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		product that is being evaluated, i.e., "mass market services." Therefore, relevant inventory information would include: The number POTS lines equipped on the circuit switch for mass-market customers. The generic and feature software packages installed on each circuit switch. The number of unbundled analog loops connected to each out-of-region ILEC switch in the prior quarter and prior year. The percentage of ILEC analog loops connected to wholesale switch ports. The ongoing, continuing ability of the carriers owning each circuit switch to provide service to analog loops connected to that switch. The service mix (*i.e.*, analog loops, DS-1 end-user services, and digital connections to ISPs) of each CLEC switch. These data will show that CLEC switches are used predominantly to serve enterprise customers with the largest telecommunications needs. Finally, the state commissions should provide adequate and appropriate confidentiality protection for the carrier specific information it collects and also for collections of information that could affect network and/or homeland security.	
III. Economic impairment			

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IIIA. General methodology questions		The TRO establishes a multi-step process for the state commissions' review of impairment during the nine-month period provided in the FCC's Order. States must conduct the "trigger" analysis described in response to II. above. If either of the triggers is met, CLECs are to be deemed not impaired in the applicable geographic market. If the triggers are not met, states must conduct a holistic impairment analysis, as described in paragraphs 506-521 of the TRO. Those sections provide that state commissions review evidence of three types. First, they are to review actual competitive deployment of local circuit switches, including the deployment of switches used to serve enterprise and mass-market customers, and if the prescribed standards are met, to accord prescribed weight to such evidence in the overall analysis. However, such evidence is not dispositive. The remainder of the impairment analysis, i.e., whether entry without access to unbundled local switching is "uneconomic" requires states to examine operational barriers (TRO ¶¶ 511-514) and economic barriers (TRO ¶¶ 515-520) that competitors face in attempting to provide service using alternative switches. With respect to economic barriers, state commissions are to review the potential revenues available to, and the associated costs incurred by, competitive carriers in a given market if they do not have access to unbundled switching. TRO ¶¶ 519, 520. Notably, the TRO (¶ 520) states that state commissions "should pay particular attention to the impact of	Can/should economic impairment determinations be made on a CLEC-by-CLEC basis? That is, can one CLEC be economically impaired but another CLEC not be economically impaired? Does the answer change for particular types of UNEs (*e.g.*, switches, loops, transport) or for particular geographic markets? What costing methodology(ies) should be used to determine economic impairment for CLECs? What types of costs should be considered? What types of costs should not be considered? Should any LEC(s) be required to file a cost study to demonstrate that economic impairment or non-impairment exists? Yes or no? If yes, who/which LEC(s)? Cost study factors to consider: (1) Investment and financing costs (2) Cost of transport facilities (3) Relative CLEC and ILEC cost structures (4) Relative CLEC and ILEC (in)efficiency

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		migration and backhaul costs on competitors' ability to serve the market." These are the very costs described in the responses to I.A.1 and I.A.2 above. The analysis must be conducted on a "hypothetical" efficient CLEC basis, not on an individual CLEC basis. That analysis must also consider how sunk costs and competitive risks affect the likelihood of entry. TRO ¶ 517. In addition, states are required to take three other actions. First, because the FCC finds that the operational and economic barriers related to hot cuts are so significant, it asks the states to define a "batch hot cut" process that *might* improve the performance and reduce the costs of hot cuts. TRO ¶¶ 487-490. Because the physical processes used to perform hot cuts are typically developed by ILECs on a company-wide (or at least multi-state regional) basis, this may be an area in which some state commission collaboration would be appropriate, whether formal or informal. However, the establishment of TELRIC rates for the batch process and the testing of the ILEC's performance in each state should remain within the province of each state commission. Second, if, at the conclusion of the impairment analysis described above, a state commission determines that CLECs remain impaired, the state must consider whether the impairments are alleviated by the use of a "rolling" use of UNE-P for customer acquisition purposes. TR ¶¶ 521-	

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		524. Finally, states are asked within the context of the nine-month review to establish a line limit for the number of voice-grade lines per location that define the mass market. TRO ¶ 497 State commissions should also be mindful of the fact that they will be making the "potential self-provisioning" analysis *after* finding that significant actual competition does not exist. Moreover, the TRO requires state commissions, by definition, to analyze a "hypothetical" state of competition that does not exist in the state, but state regulators will be making decisions that impact real-world services and existing customers. Further, it is reasonable to assume that if operational and economic barriers to switch-based entry were in fact removed, such entry would occur. Thus, although such evidence is not fully dispositive, the absence of actual entry is a strong indication that substantial barriers to entry still remain in the market. As a result, eliminating unbundled access to ILEC local switching will have the likely effect of denying competition to most, if not all, of the mass market consumers in the entire defined market.	
IIIB. To what extent are CLECs impaired due to the level of (or lack of) actual or potential switch deployment?		See response to IIIA. Although the FCC has required states to examine evidence of actual deployment of competitive local switching, the presence of some niche providers in small geographic areas offering some services only to subsets of mass-market customers does not	Is a finding of economic impairment (maintaining the presumption) mandated at or below a particular level of actual deployment of CLEC switches of a given capacity? Is a finding of no economic impairment (overcoming the presumption) mandated at or

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		constitute significant evidence of lack of impairment. Moreover, the presence of CLECs that provide service to enterprise customers using their own switching is not indicative that CLECs can operationally use that switching to provide service to the mass markets even with an effective "batch" hot cut process, unless and until the "batch" process can handle significant volumes of hot cut transactions seamlessly, between ILEC and CLEC and between CLEC and CLEC, with any type of ILEC loop. And the potentially lower hot cut charges relating to such a process affect only one of many factors in the economic analysis.	above some other particular level of actual deployment of CLEC switches of a given capacity? Should potential or prospective switch deployment be considered? If so, what are the criteria for considering the likelihood of any potential or prospective switch deployment – *e.g.*, proof of financing, proof of vendor contract(s)?
IIIC. Transport issues in an economic impairment analysis			
IIIC.1. What types of traffic do the CLECs need to be able to route between switches (either ILEC or non-ILEC)?		CLECs require the ability to route all intraLATA traffic on the incumbent's network when purchasing unbundled local switching, just as the ILEC does. The ILEC designs its interoffice network to achieve scale economies based on all traffic it handles including intraLATA traffic, and the nondiscrimination requirements of the Act require that CLECs that use unbundled local switching share these economies. Accordingly, CLECs are properly permitted to use ILEC shared transport when they are entitled to unbundled local switching. The TRO (¶ 534) directs state commissions to take shared transport costs into account in identifying impairment for unbundled switching. In addition, CLECs often face higher interoffice costs than the ILEC when they handle calls using their own switches. This is in part because ILEC switches have a much higher percentage of	What types of transport does the ILEC currently make available to CLECs (*e.g.*, dedicated, common, direct, shared, other)? Do the results of the impairment analysis vary depending upon the type of transport involved?

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		intraswitch calls (which require no transport at all) and because CLECs face higher costs when they must move calls from their switches to those of other carriers, including ILECs, wireless carriers and other CLECs. These are all higher costs that CLECs face when they provide service using their own switches and must be considered in the impairment analysis. In addition, the TRO has redefined local dedicated transport to exclude facilities between ILEC offices and CLEC offices. If CLECs are required to pay higher special access rates (which are substantially above cost) to route traffic from their customers to their switches, their backhaul costs to provide service will be greater and must be accounted for in any economic analysis. Moreover, as a general rule, special access services obtained from the incumbent are the only routinely available, ubiquitous transport facilities and, as such, should be used as the benchmark to determine whether transport costs impair carriers' ability to aggregate loops at remote locations in order to compete. In addition to the CLECs' cost of interoffice transport, the total cost of forcing traffic "off-switch" would also include the ILECs' additional costs to receive substantial amounts of local traffic through interconnection trunks, which are frequently switched through local tandem facilities. Moving traffic from efficiently designed shared transport facilities, which directly route traffic between end offices with high communities of interest, to less efficient interconnection trunks that require tandem routing reduces the overall	

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		efficiency of the local network and results in higher costs. These additional costs must also be considered in determining impairment. The FCC has recently determined that inefficiencies in tandem interconnection can competitively damage CLECs. *See* IV.A below.	
IIIC.2. What types of restrictions, if any, is the ILEC legally permitted to place on the availability of unbundled transport to CLECs or on the types of traffic that a CLEC is allowed to carry over UNE transport facilities obtained from the ILEC?		The TRO (¶ 579) eliminated the prior restrictions on commingling of UNEs and wholesale or other services. The Order also imposed a new set of service eligibility criteria for the use of EELs. TRO ¶¶ 590 et seq. The economic impact, if any, of these rule changes on the economics of serving mass-market customers has not been quantified. However, since all of the costs of using such facilities are part of the CLECs' backhaul costs, they will be part of the economic impairment analysis.	Does the ILEC currently place restrictions on what types of traffic a CLEC may carry over transport facilities obtained from the ILEC? If yes, could these restrictions affect the demand levels for UNE transport and/or the existence or level of impairment? Shared Transport – For example, in the context of **shared transport**, can/should/must the CLEC be allowed to send intraLATA traffic over ILEC-provided shared transport facilities?
IIIC.3.To what extent are CLECs impaired due to the availability, capacity, price, terms, and conditions (or lack thereof) of interoffice transport to economically allow CLECs to route traffic?		See responses to III.C.1&2 above.	Who owns/provides the transport? CLEC self-supply or provided by another carrier? If provided by another carrier (ILEC or other?), are there any relevant interconnection issues or disputes? What relationship, if any, exists between a CLEC's need for transport and the number, location, and capacity of its switches (whether collocated or not): How will that relationship affect the CLEC's ability to send and receive traffic? Factors to consider: • Availability, terms, conditions, and prices for transport, including all forms of EELs.

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IIID. To what extent are CLECs impaired due to a lack of access to capital?		Capital constraints are a significant concern for all competitive carriers. See TRO ¶¶ 86 ,88. The press is replete with references to the fact that capital markets for CLEC expansion have been extremely tight for the past several years and that capital (internal or external) is and will continue to be largely unavailable to competitive providers for the foreseeable future, unless they can demonstrate the likelihood of achieving profitability in the very short term. This requires that capital be reserved for only the highest revenue generating services, *i.e.*, services for enterprise customers and new broadband services. Thus, there is no reasonable prospect that, in today's marketplace, there is significant capital available to support new infrastructure for voice services, especially voice services for mass-market customers. Moreover, to the extent that such capital may exist (even hypothetically), CLECs' cost of capital (equity and debt) is substantially higher than that for the ILECs. This is because (1) the risks associated with such new businesses mean that the cost of equity/debt (if available at all) is higher for competitive carriers, (2) the raft of competitive carrier bankruptcies makes the likelihood of obtaining significant equity financing remote, and (3) CLEC capital is now limited to more expensive private, as opposed to public, equity markets. Consequently, there is no reason to believe that if access to unbundled switching for mass-market customers were no longer available that competitors would convert UNE-P customers to a UNE-L architecture. Rather, the most probable scenario would be that competitors would either exit the market or be forced to raise rates to a level	Factors to consider: • Type of financing (equity, debt, or other) • Cost of capital (CLEC vs. ILEC)

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		that would effectively generate the same result.	
IIIE. To what extent are CLECs impaired due to first-mover advantages?		The ILECs' "first-mover advantages" take several forms and include the "sunk cost" advantages of deploying a network as a monopoly protected by government regulations. The ILECs' first-mover advantages also include the benefit they obtained from inheriting their customer base without incurring customer acquisition costs or substantial advertising costs, and the brand recognition and preference the ILECs' monopoly status has generated. See TRO n.249. These advantages also include the continuing advantage of a legacy architecture in which loop facilities are integrated with switching plant. CLECs face substantial entry barriers because of the incumbents' first mover advantages. Because the ILECs' local networks were built as subsidized monopoles and were constructed with an integrated architecture (*i.e.*, one designed for a single carrier – the ILEC), only the ILECs have efficient and cost-effective connections between their loops and switches. Competitors cannot provide service using ILEC loops and non-ILEC switches in the same efficient way. These "natural monopoly characteristics" are at the root of all the CLEC impairments in serving mass-market loops. Moreover, incumbents inherited their customers from decades of monopoly privilege. This means that the incumbents effectively gained 100% share without any meaningful customer acquisition cost.	Can a particular geographic market ever become saturated with switches so that it cannot support more switches? If so, does this imply that the remaining CLECs are now impaired, even if a state commission originally upheld the FCC's initial determination of impairment?

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		Thus, from a comparative marketing cost perspective, the only customer acquisition cost the ILECs incur is to "winback" the small fraction of customers that they lose to CLECs. In contrast, CLECs must incur significant customer acquisition costs for each and every line they win and, given the ILECs' highly aggressive winback programs, (which often include substantially lower rates), the CLECs' costs must be recovered from the much smaller fraction of lines that CLECs retain. For instance, SBC has publicly announced that its winback rate is over 50%. This effectively doubles CLEC customer acquisition costs in those areas, while the ILEC can dilute its customer acquisition cost across the 90% of the market for which it incurred no cost at all. Customer acquisition costs thus present another substantial economic entry barrier. Sunk costs also create first-mover advantages by creating a chasm between the marginal cost of the incumbent, for which most of its network investment is sunk, and the marginal cost of the entrant, whose network investment are incremental. The difference allows the ILECs to strategically deter competitive entry through aggressive pricing (or by merely signaling to entrants that post-entry competitive pricing will be aggressive). See TRO ¶ 88 ("an entrant that knows that an incumbent has incurred substantial sunk cost may be disinclined to enter a market because the incumbent LEC is likely to drop its prices, possibly to levels below average cost, in response to entry.")	

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		The ILECs first-mover status also implies that it has been allowed to fully exploit its scale economies to a high degree. Entrants, however, must operate at inefficient scale for long periods of time, placing them at an additional cost disadvantage. See TRO ¶ 86. Market data show that the ILECs' first mover advantages, combined with their nearly ubiquitous ability to compete across all market segments including long distance services (which ILECs can purchase for resale at rates approaching incremental cost), means that there is no realistic opportunity for an individual CLEC to take a very significant share of a particular local market. Consequently, the only path to a competitive local market is one where the advantages of incumbency – the ILECs' integrated architecture and the inherited scale economies – are shared with entrants at rates reflecting their efficient cost.	
IIIF. To what extent are CLECs impaired due to other economic entry barriers, such as supply/demand ratios, that are likely to make market entry uneconomic – either generally or in a particular geographic market(s)?		See responses to IIID and E above and IIIG below. In addition, it is evident that there may be areas in which the total demand for local service is too low to support the deployment (or use) of new or existing switches to serve mass-market customers. Further, it is the natural tendency of a monopolist to restrict supply in order to bid up prices and earn higher profits. Thus, while supply in monopoly markets may fall short of demand and create a rich margin, a CLEC will not enter that market unless it is convinced that this margin will endure. See TRO ¶ 88. However, the ILEC's already deployed network can supply the full market demand (even	What levels of supply and demand must be demonstrated for both ILEC and CLEC switching and switching capacity to overcome a presumption of "impairment" in a particular geographic area? Can the demand in a particular geographic market be too low to support more switches?

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		the enlarged demand that would exist if it dropped its prices to combat the entrant), so that there will be no unserved high-priced demand left for the CLEC to acquire.	
IIIG. To what extent are CLECs impaired due to sunk costs?		Sunk costs and competitive risks play a key role in the economic impairment analysis. TRO ¶ 517. The construction of local networks requires the expenditure of substantial sunk investment. Moreover, all of the entrants' customer acquisition costs and migration costs and a significant portion of their backhaul costs are sunk. Although a significant portion of the costs of deploying switches is sunk, the economic impairment relating to switching for mass-market customers is only a part of the sunk cost analysis. The network architecture description above shows that CLECs must incur significant economic cost penalties compared to the ILEC even if a CLEC's unit costs for switching were the same as for the ILEC. And as described above, the ILECs have substantial sunk costs in their switching and interoffice networks, and thus have a very strong incentive drive out the CLECs through price cuts. Before a CLEC can offer UNE-L-based service, it must build out collocations in each ILEC central office where it wishes to collect customers. These collocation build-out costs are not fungible to other wire centers, and if demand does not materialize, these assets cannot be redeployed; rather, they are sunk. Similarly, the equipment that the CLEC puts into these collocations has substantial engineering and installation costs that cannot be recovered if the CLEC's entry at that central office turns out to be unsuccessful. The	Factor to consider: • Fungibility of CLEC facilities, plant and equipment

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		last, but also large, category of sunk costs is the non-recurring charges that the CLEC must incur to collect unbundled loops. These include the internal and external hot cut costs that are specific to collecting each customer's loop, as well as the nonrecurring fees required to establish backhaul transport, all of which are unrecoverable if the CLEC loses a customer to "churn" or cannot maintain enough unbundled loops to load these pre-bought facilities efficiently.	
IIIH. To what extent are CLECs impaired due to <u>other</u> economic entry or exit barriers?		CLECs using UNE-L face severe difficulties in providing their customers with service quality and installation intervals equivalent to what the ILECs can provide to their own customers (using, as they do, the internal equivalent of UNE-P). This is because of the manual nature of service connects and disconnects necessary to implement a UNE-L service architecture. It is these cost inefficiencies, imposed on UNE-L providers by the ILECs' existing architecture and procedures, that foreclose price competition for mass market providers on an equal cost basis with the incumbent absent UNE-P availability.	Given the total costs to a CLEC of providing service to mass market customers--without purchasing the ILEC's switch at TELRIC pricing--can the CLEC "compete on price" against the ILEC?
IV. Operational Impairment			
IVA. To what extent are CLECs operationally impaired due to impending <u>switch exhaust</u>?		To the extent that the question relates to ILEC tandem exhaust, the CLEC respondents note that such exhaust has in the past stunted the growth of facilities-based competition. Indeed, the FCC recently found in *Core v. Verizon*, EB-01-MD-007 (Apr. 23, 2003), that equipment exhaust at Verizon's Southwest Washington DC tandem "had	Factor to consider: • Switch capacity, utilization, scalability, upgradeability

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		serious consequences for competitive LECs in the Washington Metropolitan LATA.... Verizon had 54 carrier capacity requests in "hold" status because of the cross-connect exhaust" at the Southwest Washington DC tandem. *Id.*, ¶ 18. While facilities-based competition ground to a halt during this tandem capacity exhaust, Verizon's traffic "continued to flow freely, because Verizon did not route its own traffic through the congested Washington Hub, and because the portion of Verizon's network that did transport Verizon's traffic had capacity sufficient to allow Verizon to increase its end-user customer base." *Id.*, ¶ 19. Because UNE-P traffic flows over the same facilities as Verizon's traffic, UNE-P carriers were not affected by Verizon's Southwest DC tandem capacity exhaust. Rather, CLECs using UNE-P avoided unlawful ILEC discrimination by virtue of using the same facilities that the ILEC used for its traffic, rather than the "separate but equal" facilities allocated to CLECs that relied upon physical interconnection with the ILEC network. If CLECs were forced to migrate from UNE-P to a UNE-L strategy, CLECs would require many more points of interconnection at ILEC tandem switches, which would greatly exacerbate the scale and scope of ILEC facilities exhaust problems, like those identified by the FCC in *Core v. Verizon*. Moreover, the ILEC would incur increased costs if it were required to redesign its interoffice network to respond to a changing traffic pattern created by minutes moving from end-office trunk groups to tandem-switched facilities. To the extent that an ILEC is successful in causing such a network	

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		rearrangement, the ILEC should be required to absorb any additional costs created by such a change in traffic flow.	
IVB. To what extent are CLECs operationally impaired due to a lack of timely, accurate delivery of loops from the ILEC in sufficient volumes?		CLECs are operationally impaired in a UNE-L environment if the customer experience is not as good or better than the customer experience in a UNE-P world today. As a result of the ILECs' legacy monopoly and integrated network architecture, the voice-grade loops that serve mass-market customers are all physically connected, or "hard-wired" to the ILECs' facilities and switches. Therefore, irrespective of the economic impairments described above, CLECs cannot offer switch-based service to mass-market customers unless they have large–scale, dynamic and efficient pre-ordering, ordering, provisioning and repair/maintenance methods/processes to ensure that customers can switch seamlessly between providers. Existing processes are both economically and technically insufficient to meet these needs. CLECs are generally foreclosed from providing service to mass-market loops that are connected to integrated digital loop carrier ("IDLC") equipment, because ILECs are unwilling to unbundle IDLC (an issue does not exist in a UNE-P world because CLECs use all ILEC facilities). In instances where IDLC is present, ILECs will take the consumer off of the fiber/IDLC loop and place them on spare copper if available. But if spare copper is not available, the CLEC often cannot serve this customer at all. Thus, ILECs should be required to unbundle IDLC loops and	Factors to Consider: (1) Hot Cut process (2) Other OSS and process issues, if applicable.

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		allow CLECs to utilize the full functionality of the ILECs loop facilities. In addition, in a UNE-L environment without access to UNE-P, the CLEC must establish entrance facilities with the ILEC, build collocation cages, place DLC equipment and related transmission equipment in the cage, establish connections between its cages and its switch site and build/test the interconnection network. The long time frames associated with these processes impact the CLEC's ability to effectively and efficiently serve the mass market. Issues surrounding collocation and the ability to augment a collocation cage (i.e. space, power, terminations, etc.) must also be reviewed to ensure that CLECs can gain access to ILEC loop plant quickly and efficiently. Operational issues must be resolved and result in CLECs being able to gain commercially viable access to and utilize the full functionality of the unbundled loop plant of the ILECs. See discussion on loop hot cuts in response to IVC.	
IVC. To what extent are CLECs operationally impaired due to a lack of ILEC hot cut processes in place for mass market loops that provide CLECs with a meaningful opportunity to compete for residential and small business customers?		Scalability and reliability are key in assessing the efficiency and viability of loop hot cut processes. The current manual hot cut processes that are in place today are not capable of handling mass-market volumes. Among other things, current manual processes are not capable of servicing new customer acquisitions and the substantial churn that CLECs experience, largely as a result of ILEC	Questions and Factors to consider: Hot cut processes (1) What types of hot cuts are in place to migrate residential and mass market customers? (2) Are the processes manual or electronic?

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		winback activities. Although such customer acquisition and churn is readily and routinely managed in a UNE-P environment, it cannot be supported in a UNE-L only environment. Notably, even a 95% success rate on manual cut-overs would result in substantial customer outages: for example, a 95% "success" rate in cutting over one million lines potentially means 50,000 customer outages or premature disconnection of service. Today's hot cut procedures are inadequate for CLECs to serve the "mass market" due to the highly manual nature of the processes, the inability to scale the processes to meet competitive market demand, and the high risk of customer outage or other service problems. In general, ILECs offer both "coordinated" and "non-coordinated" hot cuts. Both varieties are fundamentally manual and require cumbersome steps to identify relevant facilities, pre-test both the ILEC and CLEC facilities and arrangements, and establish the necessary arrangements in the Number Portability Administration Center (NPAC) for number porting. The primary difference in the two scenarios is that in the case of a "coordinated" hot cut, the ILEC and the CLEC are in direct contact at the time the loop is moved from the ILEC switch to the CLEC's network, where in the "non-coordinated" scenario, the ILEC technician moves the loop within a pre-arranged window, and the CLEC completes the migration by activating the number port at the end of the window. Neither of these manual processes is sufficient to meet competitive needs for accuracy, timeliness and completeness at commercially competitive volumes. Today, consumers expect to be able to	(3) Regardless of whether electronic or manual, do the hot cut processes enable customers to switch easily and quickly between ILEC and CLEC facilities-based carriers and switches without undue service disruption on the scale required for mass market customers? (4) If manual, are those manual processes adequate, or should electronic processes be developed? (5) Have all hot cut migration scenarios for mass market customers been identified? Do the answers to any of the questions in this section vary based upon the specific hot cut scenario involved? (6) Are the hot cut processes (and, if applicable - hardware, software, and interfaces) in place for both ILECs and CLECs? Are they functional? Are they scalable? How should the hot cut functionality, capacity and scalability be measured? How can/ should the ILEC demonstrate or "prove" that the hot cut process functions properly? How can/ should the ILEC demonstrate or "prove" that there is sufficient capacity and scalability? (7) How should the timeliness of the ILEC's hot cut process(es) be measured? How can can/should the ILEC demonstrate or "prove" that it can perform hot cuts for mass market customers on a timely basis? What standards should be used? (8) Does the RBOC have FCC or state approved performance measures for hot cuts that could be

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		change their local provider as easily and effectively as they change their long distance provider (i.e. the PIC process). The hot cut process today, involving numerous manual steps, does not provide consumers with this ability. A fundamental limitation inherent in the hot cut processes is that current manual processes generally only address migrations between ILECs and CLECs, and do not provide for a means to facilitate CLEC to CLEC migrations. Migration scenarios involving provision of service by multiple parties, *e.g.* the ILEC, a CLEC and a DCLEC, are largely untried or inadequately defined. Indeed, essentially no OSS functionality exists for this type of migration. A few ILECs have begun to implement "bulk" manual hot cut processes which allow a CLEC to acquire customers through the use of UNE-P and then, when a sufficient number of customer lines are established in an individual central office, to migrate a larger number of customer lines to the CLEC switch. This process is of little value in a dynamic (mass) market, however. First, and foremost, the bulk migration process assumes that this is a UNE-P to UNE-L transition within one CLEC and that the customer base that is being "transitioned" is relatively static. As with the first two varieties of hot cuts, the bulk process is manual. Processes and time frames/intervals need to be negotiated. Problematic loops (i.e. loops provided over IDLC) are removed from the process upfront leaving them to be dealt with at a later date. Moreover, in the limited circumstances where bulk processes are available they are subject	used – at least on an interim basis? What do those hot cut metrics and business rules measure? Functionality? Timeliness? Other? Are those performance measures sufficient and appropriate on a long-term basis? Do they appropriately apply to mass market customers/entry? (9) What process, hardware, software, or interface upgrades or modifications need to be made for hot cuts for mass market customers? What are the testing and implementation schedules for those upgrades or modifications? (10) Are there 911 implications for the hot cut processes to residential mass market customers? <u>Non hot-cut migration process issues</u> (1) Are the ILEC's pre-order, order, provisioning, and billing processes and OSS needed to migrate customers electronic or manual? (2) Regardless of whether electronic or manual, do these processes and OSS enable(s) customers to switch easily and quickly between carriers without undue service disruption on the scale required for mass market services? (3) If manual, are those processes and OSS adequate, or should electronic processes and OSS be developed? (4) Have all migration scenarios for mass market customers been identified? Do the answers to any of the questions in this section vary based upon the specific customer migration scenarios involved?

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		to severe quantity restriction on the number of migrations that can be performed for all carriers in a given geographic area per day. This is in stark contrast to the virtually unlimited number of customers who can be migrated using UNE-P, and clearly points to the insufficiency of such a process to handle all competitive demand. Thus, even the best manual processes that could be implemented today cannot satisfy the requirements needed to eliminate the CLECs' operational impairment in attempting to compete for mass-market customers. Unless and until commercial volumes of customers can be moved as easily, effectively and reliably as they can be using UNEP or through a PIC change in long distance, operational impairment will continue to exist. Comparability to today's PIC process in terms of quality, efficiency and customer impact is also the appropriate standard to determine the adequacy of any loop migration process. In addition, migration processes between CLECs are not yet well-defined and are largely manual. Process improvements are needed to facilitate mass market migrations, and efforts are underway in several states and at the industry Ordering and Billing Forum (OBF) to develop the needed changes. Progression from manual to electronic processes between CLECs should occur over time as processes are sufficiently developed to allow mechanization and increased volume warrants the investment. Migration scenarios involving provision of service by multiple parties, *e.g.* the ILEC, a CLEC and a DCLEC, are largely untried	(5) Are the customer migration processes, hardware, software, and interfaces in place for both ILECs and CLECs? Are they functional? Are they scalable? How should the migration functionality, capacity and scalability be measured? How can/ should the ILEC demonstrate or "prove" that there is sufficient and/or adequate functionality, capacity, and scalability? (6) How should the timeliness of the migration process(es) be measured? How can can/should the ILEC demonstrate or "prove" that it can perform migrations on a timely basis? What standards should be used? (7) Does the RBOC have FCC- or state-approved performance measures for customer migrations that could be used – at least on an interim basis? What do those migration metrics and business rules measure? Functionality? Timeliness? Other? Are those performance measures and business rules sufficient and appropriate on a long-term basis? (8) What process, hardware, software, or interface upgrades or modifications need to be made to better enable seamless, timely, accurate customer migrations between carriers, without undue service disruption on the scale required for mass market services? What are the testing and implementation schedules for those upgrades or modifications? (9) Are there 911 implications for the migration processes to residential mass market customers?

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		or inadequately defined. Notably, the hot cut performance metrics currently included in most performance measurement plans are clearly inadequate to eliminate CLEC impairment, especially if CLECs are relegated to operate in a "UNE-L only" environment. Those measures fall far short of the service level required by mass-market customers who expect to be able to change local carriers as easily, quickly and cheaply as they can change long distance carriers. Existing state performance measurement plans and change management/control should also be reviewed and updated to re-address loop migration processes, including, but not limited to hot cuts. While resolution of the issues described above are important to CLECs' continued success in the marketplace, current UNE-P offerings generally address the needs of mass-market entry and ubiquity, and any process contemplated to replace UNE-P must necessarily include its characteristics of cost effectiveness, efficiency and customer impact. An additional level of analysis with respect to line sharing and line splitting must also be conducted. Current ILEC processes, rates and OSS for line splitting are inadequate to allow CLECs to scale their businesses by offering customers a package of both voice and data services. Before line sharing can be transitioned out, state commissions must determine that the processes, rates and OSS for line splitting provide competitors with a meaningful opportunity to compete.	An additional level of analysis must include: Have all of these questions 1-9 been answered as to processes that enable line splitting in the UNE L scenario? To the extent that processes exist today for line splitting, are those processes the same or different for line splitting with UNE L as opposed to UNE P? Do line splitting rates, OSS and processes today give CLECs a meaningful opportunity to compete with ILEC bundled offerings? Do line splitting rates, OSS and processes for line splitting with UNE L provide CLECs with a meaningful opportunity to compete?

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		Line splitting is a simple arrangement that provides two services on a single customer loop, similar to when the ILECs add data services to an existing voice customer. Until the processes and systems that enable line splitting are as seamless and customer friendly as when an ILECs add data services, CLECs' ability to compete in offering packages of voice and data service will be severely restricted. Significant obstacles stand in the way of scalable line splitting at this time. First, each ILEC has a morass of system and process limitations that make line splitting migrations difficult, expensive and, in some cases, service interrupting. For example, the systems and processes for adding UNE-P to a data line or adding data to a UNE-P line often require multiple orders, manual orders, or a combination of both and some threaten service interruption or unreasonably high nonrecurring charges for such migrations. Second, systems and processes that maximize the customer's ability to choose from a wide variety of service providers are simply nonexistent. Customers may wish to change voice providers, change data providers, and drop voice or data service at some time. These consumer choices are not supported by the existing ILEC line splitting systems and processes. Commissions must evaluate ILEC systems and processes to insure that these migrations are timely, seamless to the customer, result in minimal (if any) service interruption, and occur without any negative effects on 911 databases, telephone number retention and other customer impacting aspects of service. Additionally, there are virtually no systems or processes in place to enable line splitting in a UNE-L environment. These	

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		examples illustrate some, but not all, of the issues that must be addressed by state commission to facilitate line splitting as a truly available competitive alternative.	
IVD. To what extent are CLECs impaired due to a lack of timely, accurate Customer Service Records so as to allow uninterrupted service, including LNP and access to E-911?		Processes, procedures and OSS systems need to be amended or deployed to allow CLECs to communicate with each other on a real-time electronic basis and ensure the smooth migration of customers among different providers with different service delivery methods. Industry-wide systems and processes need to be altered to accommodate dynamic facilities-based competition, including but not limited the exchange of customer service records ("CSR") and service orders. If a CLEC does not receive a timely/accurate CSR, the CLEC is negatively impacted in its ability to provision the customer to its network in a timely manner. If the information is inaccurate, the customer may experience a service outage or may not be provisioned with the correct feature/function offerings. Examples include, but are not limited to, incorrect telephone number information, inaccurate directly listing/directory assistance data, and incomplete line hunting statistics. These inaccuracies can result in numbers not being ported, creating inbound/outbound calling problems, incorrect listings in the white and/or yellow pages and inbound call routing issues. This interruption in service will increase the CLEC's probability of churn and customer complaints.	Questions to Consider: Any CPNI issues? Privacy issues? Access to ILEC databases and records? ILEC-affiliate joint marketing restrictions, requirements, or issues (need to ensure non-discrimination)?

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		When a customer is served by UNE-P, the ILEC retains control of the CSR and CLECs generally get access to that CSR when winning a customer. A CLEC can issue an order to the ILEC in order to move the customer to its network. In contrast, when a customer is served by UNE-L, the ILEC generally no longer has access to a list of the customer's features, but the ILEC has access to the TXNU or circuit information, thus making it easier for an ILEC to winback a customer than for other CLECs. That is because the circuit information is the critical piece of information needed to migrate a customer back to the ILEC or between CLECs. How other CLECs gain non-discriminatory, real-time access to the CSR and other relevant loop information is an issue that must be addressed and resolved. Because the ILEC maintains information relating to the loop (not necessarily the CSR) even when a customer moves to a CLEC, the ILEC has additional information available in a winback situation. As noted above, the most critical piece of data is the TXNU or circuit information. Thus, ILECs are able to more quickly ensure a smooth transition back to their network versus a migration from one CLEC to another. Although the CSR provides the customer's service address, this data needs to be converted to a different format i.e. Master Street Address Guide (MSAG) in order to submit records to the ILEC for 911 call routing. In the UNE-P environment this validation is not required as the ILEC has the data. If the addressing data is not correct, the call may be routed to an incorrect 911 PSAP causing	

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		an additional delay in responding to the caller. With UNE-P today, there is no change to the DA/DL databases, and no need to contact the LNP administrator. Under UNE-L, all of these functions must be coordinated between and among the parties involved (ILEC, CLEC and third party database owners) to ensure the customer's service is not disrupted. In addition, CLECs will need real-time access to loop make up information from the ILECs. This is also an issue that must be addressed and resolved. With UNE-P, there is no need to establish interconnection facilities between the ILEC and the CLEC because all traffic is carried on the ILEC network. With UNE-L, interconnection facilities will need to be established to handle the flow of all traffic which includes, but is not limited to, local, toll, long distance, operator services, directory assistance and 911 traffic between networks ILECs require that an entrance facility is established prior to the ordering of any CLEC services, i.e., interconnection network, facilities to collocation cages and loops. This process can frequently take 6 to 9 months depending on the location of the CLEC's switch site. A CLEC can only utilize an alternate vendor if the alternate vendor is located in its site or is willing to build to its switch site. In some instances this may improve the CLEC's speed to market, but at best it is a 3 to 6 month process to establish the entrance facility.	

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		At times an ILEC is unable to provision interconnection facilities due to port capacity issues or facility issues. Port capacity and no facility issues can delay the CLEC's ability to offer UNE-L services for months. If a CLEC does not have adequate interconnection trunking established for both inbound and outbound calling customers will not be able to originate/complete calls. If a customer is unable to complete a call the customer views the CLEC's quality of service as compromised. It is the responsibility of both the CLEC and the ILEC to ensure adequate interconnection facilities exist. Obviously, Commissions will need to examine whether such interconnection facilities can be established (or augmented) in an efficient and reasonable manner. In addition, please see the answer to IV.A above for an example of the types of facilities-exhaust issues that harm CLECs.	
IVE. To what extent are CLECs impaired due to a lack of interconnection facilities (including, but not necessarily limited to, entrance facilities)?		If CLECs do not have access to interconnection facilities that are priced at efficient cost-based rates, they will have higher service costs than the ILECs and will thus be at a cost disadvantage. However, it appears that the FCC's order will address some of the baseless "lack of availability" arguments raised by the RBOCs in the past. The extent to which such issues are resolved cannot be fully understood until the order is available. Please see the answer to IV.A above for an example of the types of facilities-exhaust issues	Question to Consider: Will the ILEC need to construct facilities to allow timely, effective interconnection?

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		that harm CLECs. These exhaust problems would be exacerbated without UNE-P. Moreover, the existence of UNE-P serves to limit the ability of ILECs to discriminate against CLECs because UNE-P and ILEC traffic flows over the same physical transport facilities.	
Misc. Proc. Tickler Issue		These questions cannot be addressed until the FCC's order is available. However, it would not be advisable to require a constant review of these issues. Rather, the findings of impairment made in the individual state proceedings should be allowed to stand for at least two years after the conclusion of a state's 9 month proceeding before a party may seek to have them reviewed. (See CompTel response to IA. in the 9 Month Case – Procedural Issues DPL.) Otherwise, the market in the state will be in constant flux and no party will be able to develop market entry plans (or raise or invest capital) without facing significant additional risks, which in turn will deter any otherwise economic facilities construction.	Can/should/must there be some type of periodic review to evaluate whether to modify the original assumption or finding of either impairment or non-impairment? If so, who has jurisdiction and authority to conduct such a review – the FCC or the State Commission? If applicable, when should the first periodic review begin? What should trigger a periodic review? How often should periodic re-views be conducted? What processes or procedures should/ must be used for this periodic review? [Tickler question: Are there any legal restrictions or requirements governing whether and when a prior presumption or finding can change from non-impairment to impairment, or vice versa (*e.g.*, in a periodic review)?]