

1 has determined that there are competitively supplied alternatives readily available.

2 While it is impossible to know in advance of the *Order* being released by the FCC
3 precisely what criteria the Commission will have to apply or how any transition
4 involving UNE-P will be handled, it is clear that the decision is this Commission's
5 to make. The process the FCC is expected to establish will leave existing UNEs
6 (including UNE-P) in place during the pendency of the various state proceedings.

7 As the FCC's Press Release describes it:

8 **Unbundled Network Element Platform (UNE-P) Issue** – The
9 Commission finds that switching – a key UNE-P element – for
10 business customers served by high-capacity loops such as DS-1
11 will no longer be unbundled based on a presumptive finding of no
12 impairment. Under this framework, states will have 90 days to
13 rebut the national finding. For mass market customers, the
14 Commission sets out specific criteria that states shall apply to
15 determine, on a granular basis, whether economic and operational
16 impairment exists in a particular market. State Commissions must
17 complete such proceedings within 9 months. Upon a state finding
18 of no impairment, the Commission sets forth a 3 year period for
19 carriers to transition off of UNE-P.¹⁶

20 A finding of “no impairment” by the Commission would presumably be predicated
21 on evidence that alternatives are readily available and that competition will not be
22 harmed if CLECs have to rely upon them. And even if this Commission were to
23 remove UNE-P from the list of required unbundled network elements for business
24 customers, the CLECs that rely on UNE-P will have a transition period during

¹⁶ “FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Exchange Carriers,” (FCC Press Release, February 20, 2003) at 1.