

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of)
)
Review of the Federal Communications)
Commission's Triennial Review Order) Case No. 2003-00379
Regarding Unbundling Requirements)
For Individual Network Elements)
_____)

**DIRECT TESTIMONY
OF
GARY J. BALL
ON BEHALF OF
COMPETITIVE CARRIERS OF THE SOUTH**

1 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Gary J. Ball. I am an independent consultant providing analysis of
4 regulatory issues and testimony for telecommunications companies. My business
5 address is 47 Peaceable Street, Ridgefield, Connecticut 06877.

6

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **PROFESSIONAL EXPERIENCE.**

9 A. I graduated from the University of Michigan in 1986 with a Bachelor of Science
10 degree in Electrical Engineering. I received a Masters in Business Administration
11 from the University of North Carolina – Chapel Hill in 1991, with a concentration
12 in economic and financial coursework. I have worked in the telecommunications
13 industry for the past twelve years, and I have extensive experience in developing
14 and analyzing financial and costing models associated with telecommunications
15 networks and services, as well as the design, implementation, and operation of
16 such networks and services.

17

18 From 1991 through 1993, I was employed by the Rochester Telephone
19 Corporation (now part of Citizens Communications), where I served in various
20 engineering, financial, and regulatory roles. From 1993 to 1994, I was the
21 manager of Regulatory Affairs for Teleport Communications Group.

22

1 Beginning in 1994, I served initially as the Regional Director of Regulatory
2 Affairs for MFS Communications Company for the Northeast, and subsequently
3 was promoted to Assistant Vice President of Regulatory Affairs. In 1996,
4 WorldCom acquired MFS, after which I was promoted to Vice President of
5 Regulatory Policy Development. In that capacity, I was responsible for
6 coordinating and developing the Company's regulatory positions on issues such as
7 access charges, interconnection, intercarrier compensation, unbundled network
8 elements, and new service technologies. I remained at WorldCom until beginning
9 my own consulting practice in 2002.

10

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

12 A. I am testifying on behalf of the Competitive Carriers of the South ("CompSouth").
13 CompSouth is a coalition of competitive carriers operating in the Southeast,
14 including in Kentucky, that are committed to the advancement of policies that
15 encourage local and long distance competition in the state. The jobs, services and
16 customer savings that these companies provide are a product of the competitive
17 policies of both the federal Telecommunications Act of 1996 and Kentucky's
18 KRS Chapter 278.

19

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. In its Triennial Review Order ("TRO"), the Federal Communications Commission
22 ("FCC") conducted a comprehensive analysis that resulted in the determination
23 that competitive local exchange carriers ("CLECs") are impaired without access

1 to high capacity loops and dedicated transport at the national level. As a result,
2 incumbent local exchange carriers (“ILECs”) must continue to provide CLECs
3 with access to unbundled loops and dedicated transport at the DS1, DS3, and dark
4 fiber capacity levels on a widespread basis. Recognizing that there may be
5 individual customer locations or transport routes where competitively provisioned
6 loops and transport have been deployed to such an extent that the national finding
7 does not apply and CLECs may not be impaired, the FCC developed a procedure
8 known as the trigger analysis (“triggers”). The triggers are designed to give
9 ILECs an opportunity to rebut the national finding at specific customer locations
10 or on specific transport routes where actual deployment demonstrates non-
11 impairment at that location or on a particular transport route.

12
13 The purpose of my testimony is to provide the Kentucky Public Service
14 Commission ("Commission") with a workable framework for evaluating ILEC
15 claims of non-impairment that is faithful to the principles and requirements set
16 forth in the *TRO*. As I demonstrate, the ILECs face a significant burden in
17 satisfying the rigorous granular analysis of the triggers, and the Commission
18 should cast a suspicious view upon any ILEC claims that the triggers have been
19 satisfied on a large scale.

20
21 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

22 A. My testimony is divided into six parts. In part one, I discuss the FCC’s
23 impairment analysis and how it relates to the unbundled loop and transport

1 services necessary for a facilities-based CLEC to compete effectively with the
2 ILECs. In part two, I explain the self-provisioning triggers that the FCC devised
3 for high capacity loops and dedicated transport at the DS3 and dark fiber capacity
4 levels, and I provide the proper framework for interpreting an ILEC's claim that
5 the triggers have been met. In part three, I explain the wholesale triggers for high
6 capacity loops and transport, and I discuss the additional requirements needed to
7 define a carrier as a wholesale provider. In part four, I discuss situations where
8 competitive providers still may be impaired for a customer location or route even
9 if the trigger has been met. In part five, I discuss the concept of potential
10 deployment claims, including the fact that DS1-level loops and transport are not
11 eligible for potential deployment claims. Lastly, in part six, I describe the
12 transitional issues that the Commission should consider in order to protect CLECs
13 and their customers from unanticipated disruption to their services and rates if the
14 Commission de-lists any loops or transport routes.

15
16 **I. THE FCC'S IMPAIRMENT ANALYSIS**

17 **Q. PLEASE DESCRIBE THE FCC'S POLICY OBJECTIVES THAT**
18 **PROVIDE THE FRAMEWORK FOR THE TRIENNIAL REVIEW**
19 **IMPLEMENTATION.**

20 A. When applying the rigorous standards for the granular analysis, it is imperative
21 that the Commission keep the *TRO*'s three policy objectives at the forefront.
22 First, the *TRO* continues the Commission's implementation and enforcement of
23 the federal Act's market-opening requirements. This objective is critical because

1 it recognizes the importance of providing a regulatory environment that is
2 conducive to competition. Second, the *TRO* applies unbundling as Congress
3 intended: with a recognition of the market barriers new entrants encounter as well
4 as the societal benefit of unbundling. This is critical because it recognizes the
5 balance that is required to ensure that consumers are able to realize the benefits of
6 competition through better telecommunications options at lower costs. This
7 objective further recognizes the consumer’s investment in the ILEC’s monopoly
8 network and the objective of delivering better services and lower costs to
9 consumers through competition. Finally, the *TRO* establishes a regulatory
10 foundation that seeks to ensure that investment in telecommunications
11 infrastructure will generate substantial, long-term benefits for all consumers.

12

13 **Q. PLEASE DESCRIBE THE FCC’S APPROACH TO DETERMINING**
14 **IMPAIRMENT FOR UNBUNDLED NETWORK ELEMENTS.**

15 A. The FCC based its impairment findings upon a determination that “[a] requesting
16 carrier is impaired when lack of access to an incumbent LEC network element
17 poses a barrier or barriers to entry, including operational and economic barriers,
18 that are likely to make entry into a market uneconomic.” *TRO* ¶ 7. The FCC also
19 found that “[a]ctual marketplace evidence is the most persuasive and useful
20 evidence to determine whether impairment exists.” The FCC elaborated that it is
21 particularly “interested in the relevant market using non incumbent LEC
22 facilities.” *Id.*

23

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

3 A. The FCC concluded that competing carriers are impaired on a national level
4 without access to unbundled high capacity loops (DS1, DS3, and dark fiber) and
5 transport (DS1, DS3, and dark fiber). *See TRO ¶ 202* (stating that “requesting
6 carriers are impaired on a location-by-location basis without access to incumbent
7 LEC loops nationwide.”); *see also TRO ¶ 359* (stating that it finds “on a national
8 level that requesting carriers are impaired without access to unbundled dark fiber
9 transport facilities ... [DS3 transport and DS1 transport]).” As a result, the FCC
10 rules require that competing carriers have access to unbundled loops and transport
11 everywhere unless a specific location or route has been found to lack impairment.

12
13 **Q. DID THE FCC’S IMPAIRMENT ANALYSIS DISTINGUISH BETWEEN**
14 **DIFFERENT TYPES OF UNBUNDLED LOOPS AND TRANSPORT?**

15 A. Yes. The FCC defined two distinct loop types: Mass Market Loops, representing
16 voice-grade DS0-level loops, and Enterprise Market Loops, representing higher
17 capacity loops, which typically are used by business customers. The FCC defined
18 Enterprise Market Loops as loops at a capacity level of DS1 or above; the FCC
19 analyzed these loops separately at the following capacity levels: OC(n), dark
20 fiber, DS3, and DS1. For the purposes of my testimony, Enterprise Market Loops
21 are equivalent to high capacity loops.

22

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

7
8 **Q. WHAT WAS THE FCC’S BASIS FOR FINDING THAT COMPETING**
9 **CARRIERS ARE IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY**
10 **LOOPS AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?**

11 A. The FCC’s impairment analysis places substantial emphasis on two factors:
12 whether carriers can economically self-provision high capacity loops, and whether
13 competitive alternatives exist. The FCC based its finding that competing carriers
14 are impaired without Enterprise Market Loops at the dark fiber, DS3, and DS1
15 capacity levels largely on the fact that the costs to construct loops and transport
16 are fixed and sunk. The FCC stated that “[b]ecause the distribution portion of the
17 loop serves a specific location, and installing and rewiring that loop is very
18 expensive, most of the costs of constructing loops are sunk costs.” *TRO* ¶ 205.
19 The FCC concluded that it would be extremely difficult to recover these
20 construction costs and be a viable competitor in the marketplace.

21
22 The FCC found that there are substantial economic and operational barriers to
23 deploying loops. For example, the FCC found that “the cost to self-deploy local

1 loops at any capacity is great . . . and that a competitive LEC that plans to self-
2 deploy its facilities must target customer locations where there is sufficient
3 demand from a potential customer base, usually a multi-tenant premises location,
4 to generate a revenue stream that could recover sunk construction costs of the
5 underlying loop transmission facility” *TRO* ¶ 303. The FCC emphasized,
6 however, that other obstacles to deploying high capacity loops exist even if the
7 carrier can overcome the cost issues. For example, carriers encounter barriers in
8 obtaining reasonable and timely access to the customer’s premises and in
9 “convincing customers to accept the delays and uncertainty associated with
10 deployment of alternative loop facilities.” *Id.* (citations omitted).

11

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

16 A. The FCC stated that its impairment findings with respect to DS1, DS3, and dark
17 fiber transport facilities “recognize that competing carriers face substantial sunk
18 costs and other barriers to self-deploy facilities and that competitive facilities are
19 not available in a majority of locations, especially non-urban areas.” *TRO* ¶ 360
20 (citations omitted). The FCC concluded that it would be extremely difficult to
21 recover these costs and to be a viable competitor in the marketplace. Indeed, the
22 FCC concluded that “[d]eploying transport facilities is an expensive and time-
23 consuming process for competitors, requiring substantial fixed and sunk costs.”

1 *Id.* ¶ 371 (citations omitted). The FCC elaborated that the costs of self-
2 deployment include collocation costs, fiber costs, costs to physically deploy the
3 fiber, and costs to light the fiber. *Id.* CLECs also encounter delays in
4 constructing dedicated transport due to having to obtain rights-of-way and other
5 permits. *Id.*

6
7 **Q. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF NON-**
8 **IMPAIRMENT FOR ENTERPRISE MARKET LOOPS AND DEDICATED**
9 **TRANSPORT AT THE DARK FIBER, DS3, AND DS1 LEVELS?**

10 A. In making a national finding of impairment for loops and transport, the FCC
11 found that evidence of non-impairment was isolated and minimal. For example,
12 the FCC found little evidence of self-deployment for DS1 loops, *TRO* ¶ 298, and
13 found "scant evidence of wholesale alternatives" for DS1 loops. *TRO* ¶ 325.

14
15 For transport, the FCC found that "alternative facilities are not available to
16 competing carriers in a majority of areas." *TRO* ¶ 387. Indeed, even relying on
17 ILEC data, which was not subject to cross-examination in the FCC proceeding, at
18 most 13% of BOC wire centers have even a single competing carrier collocated
19 using non-ILEC transport facilities. *TRO* at note 1198. Depending upon the
20 trigger, there must be two or three such competitors (also satisfying additional
21 criteria) on each route. Therefore, based on this analysis, one would expect that
22 there will be only a small number of loops and transport routes at issue in this
23 proceeding.

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**Q. ARE THE FCC’S FINDINGS ON IMPAIRMENT CONSISTENT WITH
THE TYPICAL FACILITIES-BASED CLEC’S NETWORK?**

A. Yes. CompSouth's members use a variety of entry strategies to provide services to their customers. CompSouth members that provide facilities-based local services rely on UNE loops to serve the majority of their customers. CompSouth members also use loop and transport UNEs in a combination commonly referred to as an "enhanced extended link" or "EEL." EELs are a predominant reason facilities-based CLECs need access to unbundled dedicated transport, as they allow CLECs to access customers in central offices where they are not collocated, greatly expanding the scope of customers they can serve.

Generally, facilities-based CLECs have constructed one or more fiber rings of varying scope, and connect customers to their network using those fiber rings whenever practical. Multiple fiber rings exist for a variety of reasons, including, for example, construction funding limitations, unanticipated capacity requirements, building issues, such as right of way access or construction moratoriums that precluded a comprehensive and cohesive build-out strategy, and acquisitions. These CLECs serve customers using their fiber rings when possible, although in a majority of instances, they will need access to unbundled loops and loop/transport combinations (EELs) to provide service to customers.

1 In a majority of instances, however, CLECs still need access to unbundled loops
2 and loop/transport combinations. Facilities-based CLEC networks typically rely
3 on UNE loops to serve the majority of their customers, as the fixed and sunk costs
4 associated with building out loop facilities, as well as the delays in constructing
5 such facilities, would place the CLECs at a disadvantage such that they would not
6 be able to compete with the ILECs' already deployed networks. Regardless of
7 how they are configured, loop and transport facilities are critical to serving
8 customers.

9
10 **Q. HOW DOES THIS NETWORK ARCHITECTURE IMPACT THE**
11 **TRIGGER ANALYSIS?**

12 A. Fundamentally, CLEC networks do not replicate the ILEC network either in scale
13 or in network architecture. The primary function of a CLEC fiber ring is to move
14 traffic from an aggregation point to the CLEC's switching or hub site. This
15 architecture allows the CLEC to purchase unbundled local loops dedicated to
16 specific customers, aggregate the traffic onto a large capacity facility, and carry
17 the traffic to its switch for call processing purposes. In other words, CLEC
18 networks typically are built to utilize unbundled network elements – principally
19 loops and transport – not to substitute for them entirely.

20
21 As a result, the existence of fiber facilities does not by itself mean that the CLEC
22 provides transport between ILEC wire centers. First, as I explain in Part Two of
23 my testimony (at pp. 21-23), although a typical CLEC network will have multiple

1 “on-net” aggregation points, it would be a misinterpretation of the FCC’s triggers
2 to conclude that each pair of these aggregation points has CLEC-owned transport
3 facilities between them. Assume, for example, that a CLEC has an “on-net”
4 presence at aggregation points A and B. The typical CLEC network will be
5 configured to carry traffic from point A to the switch, and, similarly, from point B
6 to the switch. It does not carry traffic from point A to point B. (Most often, these
7 two connections will travel on separate fiber strands within the ring.) The
8 configuration is not unlike the design of some elevators in very tall buildings.
9 One elevator may provide access to the 40th floor, while a separate elevator
10 operating in a separate shaft accesses the 12th floor. Even though a person in the
11 lobby can reach either floor, it is not the case that a person on the 40th floor can
12 stop his elevator on the 12th floor.

13
14 Second, in many situations, a CLEC will serve two ILEC central offices that are
15 not on the same fiber ring. Although it is theoretically possible to connect central
16 offices on different fiber rings, transport routes linking the two central offices are
17 not ordinarily provisioned in this manner. Applying an elevator analogy, this is
18 like going from the 40th floor in one building to the 12th floor in another. Once in
19 a while, one could get there by going down to the lobby, exiting the building,
20 walking to the other building and using the elevator to reach the 12th floor in the
21 second building. It is possible and maybe even tolerable if no other solution is
22 available, but one would not want to do this every day.

23

1 A. The self-provisioning triggers only apply to DS3 and dark fiber loops and
2 transport. *TRO* ¶¶ 334, 409. DS1 loops and transport are not included under
3 these triggers. In other words, regardless of how much self-provisioned
4 deployment may exist at a customer location or on a route, a DS1 UNE will
5 continue to be available to a requesting CLEC.

6

7 **Q. WHO HAS THE BURDEN OF PERSUASION FOR DEMONSTRATING A**
8 **LACK OF IMPAIRMENT AT A CUSTOMER LOCATION OR ON A**
9 **TRANSPORT ROUTE?**

10 A. Under the *TRO*, the ILEC has the burden of producing evidence that the trigger
11 has been satisfied at the particular locations or routes and for each capacity level.
12 The Commission is required to make a demonstration only for those routes for
13 which the ILEC has presented "relevant evidence" that competing carriers would
14 not be impaired without access to UNE loops and transport. Since it is the ILECs
15 that are challenging the FCC's finding of impairment, then it is the ILECs that
16 bear the burden of proving that the triggers have been satisfied.

17

18 **Q. WHAT MUST AN ILEC DEMONSTRATE TO THE COMMISSION TO**
19 **SATISFY THE SELF-PROVISIONING TRIGGERS AT THE RELEVANT**
20 **CAPACITY LEVEL?**

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

1 transport, the ILEC must demonstrate that there are *three or more* competing
2 providers that have deployed their own facilities at the specific capacity level
3 (DS3 or dark fiber), and are offering service using those facilities.

4

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

8 A. The ILEC must demonstrate that the two competitive providers:

- 9
- 10 • Are not affiliated with each other or the ILEC;
 - 11 • Use their own facilities and not facilities owned or controlled by the other
12 competitive provider or the ILEC; and
 - 13 • Are serving customers using their own facilities at that location over the
14 relevant capacity level.

14 The ILEC must make this demonstration for each location for and for each
15 capacity level for which it challenges the FCC's finding of impairment.

16

17 **Q. WHAT MUST AN ILEC DEMONSTRATE TO PROVE THAT THE SELF-**
18 **PROVISIONING TRIGGERS ARE SATISFIED FOR DEDICATED**
19 **TRANSPORT BETWEEN TWO ILEC WIRE CENTERS?**

20 A. For each of the three competitive providers, the ILEC must demonstrate that:

- 21
- 22 • They not affiliated with each other or the ILEC;
 - 23 • Each qualifying self-provisioned facility along a route is operationally
24 ready to provide transport into or out of an incumbent LEC central office;
25 and
 - 26 • Each qualifying self-provisioned facility terminates in a collocation
arrangement.

1 The ILEC must make this demonstration for each transport route and at each
2 capacity level for which it challenges the FCC's finding of impairment.

3

4 **Q. FOR THE SELF-PROVISIONING TRIGGERS TO BE SATISFIED, MUST**
5 **A CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN**
6 **QUESTION?**

7 A. Yes. The *TRO* contemplates that the self-provisioning triggers apply when a
8 CLEC self-provisions the particular capacity level in question.

9

10 **Q. IS THE FACT THAT A CARRIER HAS OCN EQUIPMENT IN A**
11 **BUILDING OR ON A ROUTE INDICATIVE OF WHETHER ANOTHER**
12 **CARRIER CAN ECONOMICALLY PROVIDE STANDALONE DS3 OR**
13 **DARK FIBER SERVICES?**

14 A. No. The FCC concluded that locations and routes served by OC(n) and multiple
15 (3 and above) DS3 facilities have significantly different economic characteristics
16 from those served by stand alone dark fiber, DS1, and individual DS3 services.
17 The FCC concluded that CLECs can generally receive enough revenue for OC(n)
18 and multiple DS3 service locations and routes to offset their costs of network
19 construction and installation, and made a national finding of non-impairment for
20 those services. For locations and routes that only require standalone DS1 or DS3
21 services, the FCC concluded that CLECs cannot receive enough revenue to
22 recover their costs of construction, and made a national finding of impairment that
23 can be overcome on a location or route specific basis by the triggers. If the FCC

1 had intended for any OC(n) level service to count towards the DS1, DS3, and dark
2 fiber triggers it would not have made such a distinction, and would have simply
3 declared no impairment wherever any type of OC(n) service is provided instead of
4 developing the capacity-specific triggers.

5
6 **Q. WHAT ARE THE KEY CRITERIA THAT A STATE COMMISSION**
7 **MUST APPLY TO ENSURE THAT THE ILECS ARE USING THE**
8 **APPROPRIATE INTERPRETATION OF THE SELF-PROVISIONING**
9 **TRIGGERS?**

10 A. The first key issue is to ensure that the ILEC is defining loops and transport routes
11 in a manner consistent with the FCC, and is applying those definitions
12 appropriately. For loops, the FCC's definition is "the connection between the
13 relevant service central office and the network interface device ('NID') or
14 equivalent point of demarcation at a specific customer premises." In addition, the
15 loop must permit the CLEC to access all units within a customer location, such as
16 all tenants in a multi-tenant building or all buildings in a campus environment.

17
18 The FCC defined a transport route as "a connection between wire center or switch
19 'A' and wire center or switch 'Z'." *TRO* ¶ 401. The FCC elaborated that "even
20 if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes
21 through an intermediate wire center 'X,' the competitive providers must *offer*
22 *service* connecting wire centers 'A' and 'Z,' but do not have to mirror the network
23 path of the incumbent LEC through wire center 'X.'" *Id.* (emphasis added).

1 Thus, the FCC requires that transport service must be offered between the two
2 wire centers in question, and that, regardless of how the facility is physically
3 routed, there are points of entry and exit for traffic at both of the two offices under
4 consideration.

5

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

9 A. Yes. In a multi-tenant building, two CLECs may have provisioned fiber-optic
10 facilities to serve one customer each, while the rest of the building is being served
11 solely by the ILEC. Even though there are two competing loop facilities into the
12 building, an ILEC request that the trigger is satisfied for the entire building, or
13 even the two customers served by the CLECs, would be incorrect, as no customer
14 location within the building is being served by the facilities of two or more
15 competing providers. The key distinction in this example is that the customer
16 location, which is the endpoint of the loop per the FCC, is a subset of a building
17 location in a multi-tenant environment.

18

19 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE DEFINITION OF A**
20 **TRANSPORT ROUTE COULD BE MISINTERPRETED BY AN ILEC**
21 **FOR THE PURPOSES OF THE SELF-PROVISIONING TRIGGER?**

22 A. Yes. An ILEC may have performed a primitive counting exercise, in which it
23 simply identifies all of the collocation arrangements for a given CLEC, confirms

1 that fiber optic facilities are present in the collocation arrangement, and then
2 declares that transport routes exist between each collocation arrangement. This
3 approach would be deficient, in that it presents no evidence that the CLEC in
4 question is providing transport service between the two ILEC wire centers, which
5 is the FCC requirement. The “evidence” does not identify the capacity levels at
6 which the service is provided (in order to apply the trigger to each level of
7 capacity), nor does it demonstrate that the CLEC is operationally ready to provide
8 transport “into or out of” the two end points of the route. As I explained earlier in
9 my testimony, CLECs generally use collocation arrangements to aggregate
10 unbundled loops, so there is a high probability that the equipment and fiber optics
11 installed in a collocation arrangement are not being used to provide transport
12 between two ILEC wire centers. For example, a CLEC may have deployed
13 equipment to concentrate voice-grade loops, such as a digital loop carrier system,
14 or equipment to provide DSL service, such as a DSLAM, in a given central office.
15 In these instances, the CLEC would have equipment installed in its collocation
16 but would *not* be able to provide transport at either a DS3 or a Dark Fiber level
17 between wire centers. To support a trigger claim, the ILEC must produce
18 evidence that shows that the CLEC self-provisions transport service at the specific
19 capacity level (DS3 or dark fiber) between the two wire centers and that each
20 collocation arrangement in question is being used as an endpoint for a transport
21 route at the specific capacity level between two wire centers.

22

1 **Q. WHAT EVIDENCE MUST AN ILEC SUBMIT TO MEET THE FCC'S**
2 **REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-**
3 **PROVISIONING TRIGGER?**

4 A. While the existence of CLEC facilities obviously is a prerequisite to the provision
5 of service, that alone does not reflect whether the equipment can be used to
6 provide the service to satisfy the trigger, whether the CLEC can provide service at
7 the requisite capacity level, or whether CLEC has performed the necessary
8 engineering, provisioning, and administrative tasks to ensure that service can be
9 provided. The only reliable way of demonstrating that a CLEC is operationally
10 ready under the self-provisioning trigger is to produce evidence that the CLEC is
11 actually providing service at the customer location or on the given transport route.
12 If the CLEC facilities are in use providing the requisite capacity of service and if
13 the CLEC is able to provision additional circuits using existing equipment and
14 facilities, then it is operationally ready to provide the service. This is consistent
15 with the FCC's requirement that evidence be provided that CLECs are *servicing*
16 customers using self-provisioned loop facilities, and that CLECs *offer service*
17 between two wire centers on a given transport route. *See, e.g., 47 C.F.R. §§*
18 *51.319(a)(5)(1)(A), 51.319(e)(2)(i)(A).*

19
20 **Q. FOR PURPOSES OF APPLYING THE TRIGGERS, WHICH FACILITIES**
21 **COUNT AS "OWNED FACILITIES"?**

22 A. There are two ways that a carrier can have ownership over the facilities: (1) the
23 carrier can have legal title to the facilities, or (2) the carrier can have a "long-

1 term" (*i.e.*, 10 years or more) dark fiber IRU, provided the carrier has attached the
2 optronics (to which it has legal title) necessary to provide service or to light the
3 fiber. If the carrier does not use its own facilities, then the carrier cannot count
4 for purposes of the self-provisioning trigger.

5
6 **Q. WHICH FACILITIES DO NOT COUNT AS "OWNED FACILITIES"?**

7 A. Facilities obtained from other sources such as through special access
8 arrangements, UNEs, capacity leases (unless they are long term IRUs), and all
9 third-party provided facilities fail to qualify as "owned facilities." The FCC
10 specifically emphasized that a CLEC "using the special access facilities of the
11 incumbent LEC or the transmission facilities of the other competitive provider ...
12 would *not* satisfy the definition of a self-provisioning competitor for purposes of
13 the trigger." *TRO* ¶ 333.

14
15 In addition, the triggers are designed to prevent double counting of facilities.
16 Therefore, for purposes of the self-provisioning test, a carrier may not be using
17 "facilities owned or controlled by one of the other two providers" *TRO* ¶ 333.
18 For example, if Carrier A has deployed facilities to a building or on a transport
19 route and Carrier B purchases service from Carrier A, only one self-provisioner is
20 present on the route. Carrier B does not own the facilities it uses to provide
21 service to its customers.

22

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

5 A. No. The FCC emphasized that the triggers are separate and distinct. The purpose
6 of the self-provisioning trigger is to determine through actual experience whether
7 similarly situated CLECs can deploy their own facilities in order to serve their
8 own customers. In contrast, the wholesale facilities trigger examines whether the
9 provider makes its facilities available to other carriers on a widely available basis.
10 Self-provisioners that do not provide service to other carriers do not qualify under
11 the wholesale trigger. *See TRO ¶ 414* (wholesale test does not count facilities
12 owned by a competitor unwilling to offer capacity on a wholesale basis).
13 Similarly, although some wholesale carriers also may self-provide facilities to
14 serve their own customers, others may not provide any end user service and thus
15 cannot be self-provisioners under the triggers. *See TRO ¶ 406 & n.1256* (self-
16 provisioner must be operationally ready to provide transport; carrier must “remain
17 in operation” on the route). For example, an entity that operates only as a
18 “carrier’s carrier” does not qualify as a self-provisioner under the FCC’s triggers.

19
20 **III. WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND**
21 **TRANSPORT**

22 **Q. WHAT IS THE PURPOSE OF THE FCC’S WHOLESALE TRIGGERS**
23 **FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?**

1 A. The wholesale triggers provide the ILECs an opportunity to demonstrate that
2 there is no impairment for a specific customer location or route by identifying
3 locations and routes for which there are a sufficient number of alternative
4 providers offering wholesale loop and transport services, respectively, using their
5 own facilities. The underlying premise of the wholesale triggers is that when a
6 working wholesale market with multiple alternative sources of supply exists for
7 loops or transport, then CLECs would not be reliant on receiving the element
8 from the ILEC as a UNE.

9
10 **Q. WOULD A WORKING WHOLESALE MARKET BE BENEFICIAL TO**
11 **CLECS?**

12 A. Yes, if the alternative facilities were available as more than a theoretical
13 possibility. For a viable competitive wholesale market to exist, not only must
14 competitive facilities be deployed, but also the requesting carrier must be able to
15 use these facilities to replace ILEC UNEs in ordinary applications. It is for this
16 reason that the FCC emphasized in the context of loops that alternative providers
17 must “offer an equivalent wholesale loop product at a comparable level of
18 capacity, quality and reliability.” *TRO* ¶ 337. Equally important, the alternative
19 facilities must work seamlessly with other components of a CLEC network,
20 including ILEC-supplied UNEs. Because loops and transport must be examined
21 separately, there will be many instances where a CLEC will purchase a UNE loop
22 and competitive transport, or will purchase a competitively supplied loop in
23 conjunction with UNE transport. Moreover, CLECs may face situations where

1 DS1 loops and transport are ordered as UNEs, but DS3 loops or transport to the
2 same location or along the same route are ordered through competitive suppliers.
3 These permutations make it imperative that all barriers to a competitive wholesale
4 market be eliminated before any finding can be made that the wholesale trigger's
5 requirements are satisfied. At a minimum, a working wholesale market requires
6 reasonable and nondiscriminatory cross connects from the ILEC, UNE and
7 special access ordering procedures that accommodate a multi-vendor
8 environment, and billing processes for combinations of UNE and non-UNE
9 arrangements.

10

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

13 A. Wholesale loops and transport at both the DS1 and DS3 level are subject to the
14 wholesale triggers. Dark fiber loops are not subject to the trigger, but dark fiber
15 transport is subject to the trigger.

16

17 **Q. WHAT MUST AN ILEC DEMONSTRATE TO ITS STATE COMMISSION**
18 **TO SATISFY THE WHOLESALE PROVISIONING TRIGGERS FOR**
19 **HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?**

20 A. The wholesale facilities trigger examines whether there are competing providers
21 offering a bona fide product on the specific route. To satisfy the wholesale
22 facilities trigger, the Commission must find that there are *two or more* competing
23 providers that have deployed their own high capacity loop or dedicated transport

1 facilities, that are operationally ready to use those loops or transport facilities and
2 are willing to provide loops or transport over those facilities on a widely available
3 wholesale basis to other carriers.

4
5 In addition to evidence provided under the self-provisioning trigger, the ILECs
6 also must demonstrate that the alternative provider is actually offering wholesale
7 service for the specific route or location at the requisite capacity level, has
8 equipped its network to facilitate numerous wholesale customers, and has
9 developed the appropriate systems and procedures to manage a wholesale
10 business.

11
12 **Q. WHAT MUST AN ILEC DEMONSTRATE TO SATISFY THE**
13 **WHOLESALE PROVISIONING TRIGGERS FOR HIGH CAPACITY**
14 **LOOPS?**

- 15 A. Specifically, under the FCC's rules, this trigger requires evidence that:
- 16 • Two or more competing providers not affiliated with each other or the
17 ILEC are present at the customer location;
 - 18 • Each provider has deployed its own facilities and is operationally ready to
19 use those facilities to provide wholesale loops at that location;
 - 20 • Each provider is willing to provide wholesale loops on a widely available
21 basis at that location; and
 - 22 • Each provider has access to the entire multiunit customer premises. *See*
23 47 C.F.R. § 51.319(a)(5)(i)(B).

24 The ILEC must make this demonstration for each customer location and at each
25 capacity level for which it challenges the FCC's finding of impairment.

1

2 **Q. WHAT MUST AN ILEC DEMONSTRATE TO SATISFY THE**
3 **WHOLESALE PROVISIONING TRIGGERS FOR DEDICATED**
4 **TRANSPORT?**

5 A. Specifically, the trigger requires evidence that:

- 6 • Two or more competing providers not affiliated with each other or with
7 the ILEC are present on the route;
- 8 • Each provider has deployed its own transport facilities "and is
9 operationally ready to use those facilities to provide dedicated ... transport
10 along the particular route;"
- 11 • Each provider "is willing immediately to provide, on a widely available
12 basis," dedicated transport to other carriers on that route;
- 13 • Each provider's facilities terminate in a collocation arrangement at each
14 end of the transport route; and
- 15 • Requesting telecommunications carriers are able to obtain reasonable and
16 nondiscriminatory access to the competing provider's facilities through a
17 cross-connect to the competing provider's collocation arrangement." 47
18 C.F.R. § 51.319(e)(1)(ii).

19 The ILEC must make this demonstration for each transport route and at each
20 capacity level for which it challenges the FCC's finding of impairment.

21

22 **Q. IN ADDITION TO THE ISSUES RAISED IN THE SELF-DEPLOYMENT**
23 **ANALYSIS, ARE THERE AREAS THE ILECS NEED TO ADDRESS IN**
24 **ORDER TO SATISFY THE WHOLESALE TRIGGERS?**

25 A. Yes. A significant issue is to properly identify the relevant wholesale providers of
26 loops and transport, and to ensure that the ILECs are not overly broad in their
27 identification of wholesale providers. Many carriers may provide some wholesale

1 services, but may not be in a position to offer the specific loop or transport
2 services necessary to satisfy the trigger. For example, a carrier may offer
3 wholesale long distance voice services, and also may have established collocation
4 arrangements for the self-provision of a data service for a specific retail customer.
5 The fact that the carrier is a wholesale provider of an unrelated service is not
6 relevant to the trigger analysis if the carrier is not offering wholesale services
7 specific to its collocation arrangements. The FCC also requires evidence of
8 wholesale availability to be presented for each level of capacity.

9
10 **Q. HOW IS A ROUTE DEFINED FOR PURPOSES OF APPLYING THE**
11 **WHOLESALE FACILITIES TRIGGER TO HIGH CAPACITY LOOPS?**

12 A. First, as with the self-provisioning trigger, the “customer location” side of each
13 wholesale loop must terminate at a location that affords alternative providers
14 access to the entire customer premises, including in multi-tenant buildings, access
15 to the same common space, house and riser and other intra-building wire as the
16 ILEC. If a loop does not provide alternative providers with access to the entire
17 customer premises, then the carrier providing the loop should not be counted for
18 purposes of either the wholesale or the self-provisioning trigger. This
19 requirement is particularly important in the context of the wholesale trigger
20 because the CLEC most often would be seeking to buy a wholesale loop in order
21 to serve tenants in the building that are not already served on a retail basis by the
22 wholesale provider. If the wholesale provider is not able to offer service to reach

1 customers other than its own, that carrier is not truly offering an alternative
2 wholesale service.

3
4 Second, in the wholesale context, the “central office” side of the loop is equally
5 important. As I explained previously, CLEC networks are designed to combine
6 loops at certain aggregation points so that they may be multiplexed and carried on
7 transport facilities back to the CLEC switch. In order to enable wholesale loops
8 to be aggregated in this manner, the wholesale loop must provide a connection
9 into the ILEC serving central office, so that competitors are able to connect a
10 wholesale loop with another carrier's transport with either their own collocated
11 facilities, or with ILEC UNE transport.

12

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

15 A. In addition to the requirements of the self-provisioning triggers, the ILECs must
16 demonstrate that the wholesale provider is operationally ready and willing to
17 provide transport to other carriers at each capacity level. At a minimum, the
18 ILEC must show that each wholesale carrier:

- 19
- 20 • Has sufficient systems, methods and procedures for pre-ordering,
ordering, provisioning, maintenance and repair, and billing;
 - 21 • Possesses the ability immediately to provision wholesale high capacity
22 loops to each specific customer location identified or dedicated transport
23 along the identified route;
 - 24 • For loops, has access to an entire multi-unit customer premises;

- 1 • Is capable of providing transport at a comparable level of capacity,
2 quality, and reliability as that provided by the ILEC;
- 3 • For transport, is collocated in each central office at the end point of each
4 transport route;
- 5 • Has the ability to provide wholesale high capacity loops and transport in
6 reasonably foreseeable quantities, including having reasonable quantities
7 of additional, currently installed capacity; and
- 8 • Reasonably can be expected to provide wholesale loop and transport
9 capacity on a going-forward basis.

10

11 **Q. WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE WHOLESALE**
12 **FACILITIES TRIGGER?**

13 A. To be widely available, service must be made available on a common carrier
14 basis, for example, through a tariff or standard contract. The fact that a carrier
15 may have provided service to only one or a few other carriers on a route is not
16 sufficient, unless the carrier also is willing to provide comparable service to other
17 carriers. *See TRO* ¶ 414 (trigger does not count competing carriers that are not
18 willing to offer capacity on their network on a wholesale basis). Moreover, an
19 offer to negotiate an individualized private carriage contract does not constitute
20 service being widely available. In addition, each carrier identified as a wholesale
21 provider must be able "immediately to provide" wholesale service. 47 C.F.R. §
22 51.319(e). If the carrier is required to construct facilities in order for the service
23 to be made available, then the service is not widely available. Similarly, a service
24 is not widely available if the carrier is unable to interconnect with its wholesale
25 customers because sufficient facilities have not been terminated in the relevant

1 central office or if insufficient collocation space is present to accommodate new
2 CLECs in the central office.

3

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

6 A. Requesting carriers must be able to access cross-connects at nondiscriminatory
7 rates, terms, and conditions in accordance with FCC and Commission rules. In
8 addition, ILECs must provide requesting carriers with adequate cross-connect
9 terminations at cost-based rates, and must enable sufficient capacity expansion. If
10 carriers are not able to cross connect at the ILEC central office, then they cannot
11 obtain access to the wholesale providers' facilities.

12

13 As I stated above, for a competitive wholesale market to be in place, there must
14 be proper systems and processes for ordering and provisioning. In addition,
15 carriers must be able to obtain the service at nondiscriminatory rates and on
16 nondiscriminatory intervals. Requesting carriers also must be able to order
17 circuits to terminate in all qualified wholesale providers' collocation space. The
18 Commission should inquire whether the ILEC's OSS is capable of handling LSRs
19 that are provisioned to a wholesale provider's facilities.

20

21 **Q. WHAT ARE THE REMAINING STEPS?**

22 A. Once the Commission has determined the appropriate application of the triggers,
23 then it must gather the evidence for each route. As I stated above, the ILEC is

1 responsible for challenging the national finding of impairment and must provide
2 demonstrative evidence that the trigger is satisfied for each route and for each
3 capacity level for which it challenges the FCC's national finding. The ILEC then
4 has the burden of proving that the competing carriers that it has identified indeed
5 satisfy the trigger for the particular loop/transport route at issue. The ILEC's
6 evidence must be differentiated among each capacity type and for each loop/route.

7
8 The Commission must evaluate whether the carriers that the ILEC has identified
9 as satisfying the trigger for each loop and route meet the qualifying criteria. The
10 Commission then must classify the loop or route as impaired or not impaired
11 based on all of evidence that the parties have submitted.

12
13 **IV. CONTINUED IMPAIRMENT AFTER TRIGGERS HAVE BEEN MET**

14 **Q. IF A STATE FINDS THAT A TRIGGER IS SATISFIED BUT**
15 **NEVERTHELESS FINDS EVIDENCE THAT IMPAIRMENT REMAINS,**
16 **IS IT REQUIRED TO “DE-LIST” A PARTICULAR LOOP OR**
17 **TRANSPORT ROUTE?**

18 **A.** No. If a state finds that a trigger is facially satisfied but believes that impairment
19 still exists, then the state may petition the FCC for a waiver of application of the
20 trigger until the barrier to deployment identified by the state no longer exists. For
21 example, in the *TRO*, the FCC explained that a state might find impairment if “a
22 municipality has imposed a long-term moratorium on obtaining the necessary
23 rights-of-way such that a competing carrier can not deploy new facilities.” *TRO* ¶

1 411. As another example, ILECs have claimed collocation exhaust in many
2 central offices throughout the state. If a CLEC cannot collocate in one or both of
3 the central offices on the transport route, then CLECs remain impaired on that
4 route, regardless of whether the trigger is facially satisfied.

5
6 **Q. SHOULD THE COMMISSION ESTABLISH AN EXCEPTION PROCESS**
7 **FOR LOCATIONS AND ROUTES WHERE THE TRIGGERS HAVE**
8 **BEEN MET?**

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

16
17 **V. POTENTIAL DEPLOYMENT**

18 **Q. PLEASE DESCRIBE WHAT YOU MEAN BY POTENTIAL**
19 **DEPLOYMENT.**

20 A. A “potential deployment” analysis refers to the State Analytical Flexibility
21 described in paragraphs 335 and 410 of the *TRO*. Under the Self-Provisioning
22 Trigger, these paragraphs permit an ILEC to attempt to demonstrate that no

1 impairment exists for customer locations or routes even though the self-
2 provisioning trigger has not been satisfied.

3

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

6 A. No. As this is an exception to the self-provisioning trigger, only DS3 and dark
7 fiber services are eligible for potential deployment claims. This is confirmed by
8 the omission of potential deployment rules in the DS1 triggers in Appendix B of
9 the *TRO*. Compare § 51.319(e)(1) (DS1 transport) with § 51.319(e)(2) (DS3
10 transport).

11

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

15 A. No. The FCC's language is clear that potential deployment claims must be
16 location- or route-specific. In paragraph 335, for example, the FCC states:

17 *[W]hen conducting its customer location specific analysis,*
18 *a state must consider and may also find non impairment at*
19 *a particular customer location ... if the state commission*
20 *finds that no material economic or operational barriers at a*
21 *customer location preclude a competitive LEC from*
22 *economically deploying loop transmission facilities to that*
23 *particular customer location at the relevant loop capacity*
24 *level.*

25 *TRO* ¶ 335 (emphasis added).

26

1 **Q. WHAT TYPE OF DEMONSTRATION WOULD THE ILECS NEED TO**
2 **MAKE IN ORDER TO SUCCESSFULLY PROVE NO IMPAIRMENT**
3 **EXISTS AT A LOCATION OR ROUTE EVEN THOUGH THE**
4 **TRIGGERS HAVE NOT BEEN MET?**

5 A. The potential deployment test posits a situation that is extremely unlikely to
6 occur. By definition, in order for the potential deployment analysis to be relevant,
7 the self-provisioning trigger must *not* be satisfied. This means that there will be
8 fewer than two carriers that have deployed loop facilities to a customer location or
9 fewer than three carriers that have deployed transport facilities on a particular
10 route. Importantly, since the FCC considered actual deployment to be the best
11 evidence of impairment or non-impairment, *TRO ¶¶* 335, 410, the failure to
12 satisfy the trigger is strong evidence that CLECs are impaired.

13
14 If the self-provisioning trigger has not been satisfied, then absent other evidence
15 to rebut the FCC's finding, the FCC's nationwide finding of impairment in the
16 *TRO* would apply. Thus, the ILEC's task under a potential deployment analysis is
17 to show that, despite the characteristics of loop or transport routes that were
18 analyzed by the FCC, some other characteristic *on that route* overrides the
19 barriers that created impairment in the first instance. In other words, the ILEC
20 must demonstrate that something unique to this particular customer location or
21 this transport route rebuts the national finding of impairment. The FCC offers no
22 factual examples of what circumstances would satisfy this requirement, but this

1 theoretical set of facts is extremely unlikely to exist if the FCC triggers are
2 applied consistent with the impairment analysis.

3

4 **VI. TRANSITIONAL ISSUES**

5 **Q. IF A STATE COMMISSION FINDS THAT A TRIGGER IS SATISFIED,**
6 **WHAT HAPPENS NEXT?**

7 A. If the Commission finds that requesting carriers are not impaired without access
8 to unbundled transport and/or loops on any particular route or at any customer
9 location, then the Commission must establish an "appropriate period for
10 competitive LECs to transition from any unbundled [loops or transport] that the
11 state finds should no longer be unbundled." *TRO ¶¶ 339, 417.*

12

13 **Q. WHAT ISSUES ARE INVOLVED IN ESTABLISHING AN**
14 **APPROPRIATE TRANSITION PERIOD?**

15 A. A transition period is required for two reasons. First, CLECs made specific
16 business decisions to serve or not serve customers in reliance on the availability
17 of UNE loops or UNE transport to the customer location or on the relevant
18 transport route. CLECs must be able to continue to offer service to these
19 customers after a finding of non-impairment. This consideration is essential
20 because services to enterprise customers are contract-based and generally do not
21 allow the provider to terminate or modify the contract based upon sudden cost
22 increases. Without a transition period, CLECs and their customers would face
23 significant disruptions to their services if access to unbundled loops were

1 disconnected or migrated to other services. A transition is needed, therefore, to
2 prevent rate shock to customers receiving service using UNE arrangements.

3
4 Second, a CLEC cannot modify its network overnight. A litany of business
5 arrangements will have to be negotiated, modified and implemented if a state
6 commission determines that one of the triggers has been satisfied. For example, if
7 a state commission determines that two or more wholesale providers make their
8 facilities widely available to other CLECs, CLECs needing loops or transport (as
9 the case may be) will need time to consider the alternative sources of supply that
10 are available to them and to implement the solution that best fits each CLEC's
11 needs. The Commission cannot assume that a CLEC will desire to transition to an
12 ILEC-provided non-UNE service. Indeed, if the wholesale trigger is satisfied, it
13 is because other alternatives are equally viable and presumably equally attractive
14 to the CLEC. A transition period must build in sufficient time to enable the
15 CLEC to make use of the alternatives that underlie the finding of non-impairment.

16
17 **Q. ARE THERE ADDITIONAL TRANSITION ISSUES THE COMMISSION**
18 **SHOULD CONSIDER?**

19 A. Yes. The Commission should ensure that ILECs maintain an adequate process for
20 ordering combinations of loops and transport, in situations where one or both
21 network elements of the combination have been de-listed. In the *TRO*, over ILEC
22 objections, the FCC specifically stated that competing carriers are permitted to
23 continue to have access to combinations of loops and transport regardless of

1 whether one of the items has been de-listed. *See TRO ¶ 584.* Similarly, the
2 Commission should ensure that ILECs have adequate billing processes and
3 procedures in place for CLECs to purchase de-listed network elements, whether
4 individually or in combination.

5
6 **Q. HOW SHOULD TRANSITION ISSUES BE ADDRESSED?**

7 A. Establishing an appropriate transition period is a complex task. Ideally, these
8 issues should be addressed in a phase of this proceeding that immediately follows
9 the finding of non-impairment. If the Commission follows such a procedure,
10 ILECs should be prohibited from billing special access rates to CLECs while the
11 Commission receives evidence on the elements necessary to protect customers
12 from rate shock and to enable CLECs to build replacement facilities and/or to
13 migrate to the network facilities of non-ILEC providers. In the event an interim
14 transition is desired, I recommend the minimum components described below.

15
16 **Q. WHAT IS YOUR RECOMMENDATION REGARDING THE MINIMUM**
17 **COMPONENTS OF A TRANSITION PROCESS?**

18 A. I recommend that the Commission develop a multi-tiered transition process such
19 as the one applicable to mass-market switching. First, there should be a transition
20 period during which CLECs may order new UNEs for locations and routes where
21 the Commission found a trigger is met. This period should be a minimum of nine
22 months in order to enable a CLEC to continue to offer competitive service to new
23 customers while it explores alternatives available to it. Second, CLECs should

1 have a transition period for existing customers similar to that applied to line
2 sharing and mass-market switching. The three year transition process established
3 for customers served by line sharing arrangements may provide a useful model,
4 with one-third of the customers to be transitioned within 13 months, and another
5 one-third transitioned within 20 months. All loop and transport UNEs made
6 available during these transition periods should continue to be made available at
7 TELRIC rates until migrated.

8

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A. Yes, it does.**

TABLE OF CONTENTS

	Page
I. THE FCC’S IMPAIRMENT ANALYSIS.....	5
II. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT	14
III. WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT.....	23
IV. CONTINUED IMPAIRMENT AFTER TRIGGERS HAVE BEEN MET	32
V. POTENTIAL DEPLOYMENT	33
VI. TRANSITIONAL ISSUES.....	36