Paul E. Patton, Governor

Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

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PUBLIC SERVICE COMMISSION
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Martin J. Huelsmann
Chairman

Gary W. Gillis
Vice Chairman

Robert E. Spurlin
Commissioner

November 3, 2003

PARTIES OF RECORD

Re: Case No. 2003-00379

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact Amy Dougherty at 502/564-3940, Extension 257.

Sincerely,

Thomas M. Dorman
Executive Director

Attachment

INTRA-AGENCY MEMORANUDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File

FROM: Amy E. Dougherty

DATE: November 3, 2003

SUBJECT: Case No. 2003-00379

On October 14, 2003, those persons whose names appear on the attached sign-in sheet met to discuss procedural and substantive issues in this matter. The primary focus was on scheduling and other procedural issues.

BellSouth gave an overview of the triennial review leading up to its lengthy presentation of procedural matters. Other parties responded to BellSouth's presentation. The CLECs requested a time to make their own presentation on the substantive matters of this docket.

Detailed issues regarding electronic filing and serving of parties and the Commission were discussed. Parties agreed to filing dates and to dates for a public hearing. Through these discussions the Commission Staff formulated some procedural recommendations to the Commission.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS	)	
COMMISSION'S TRIENNIAL REVIEW ORDER	)	CASE NO.
REGARDING UNBUNDLING REQUIREMENTS	)	2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS	)	

INFORMAL CONFERENCE

SIGN IN

October 14, 2003

PERSON	REPRESENTING
Amy E Dougherty	PSC
Jim Stevens	PSC
JEFF JOHNSON	PSC
Eric Bowman	PSC
Talina Mathews	PSC
Andrew Shore	BellSouth
Dorothy Chambers	BellSouth
Joan Coleman	BellSouth
Tony Taylor	"
Kent Hatfield	CompSouth
Martha Ross-Bain	AT&T
Dr Bob Dow	

CASE NO. 2003-00379

October 14, 2003

PERSON	REPRESENTING
Doug Brent	CompSouth µ
Liz Thacker	SouthEast Telephone
Jonathan Amlung	SouthEast Telephone
Mike Hayden	BLS
Jim Tipton	BELLSOUTH
Pat Rupich	CBT
Jouett Kinney	CBT
Mark Romito	CBT
Stephen Rowell	Kentucky ALLTEC
Steve Byars	KY. ALLTEC

Triennial Review >>

Kentucky Overview
October 14, 2003

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Introduction

>>

- BellSouth Team

- Overview of the FCC's Triennial Review Order

- Agreed Motion for Proposed Procedural Guidelines

- Proposal for an Administrative Timeline

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- FCC Delegated to State Commissions the Determination of No Impairment for:

  - Mass Market Switching (DS0)

  - Transport

  - High Capacity Loops

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>>

What has to be done - 9 months

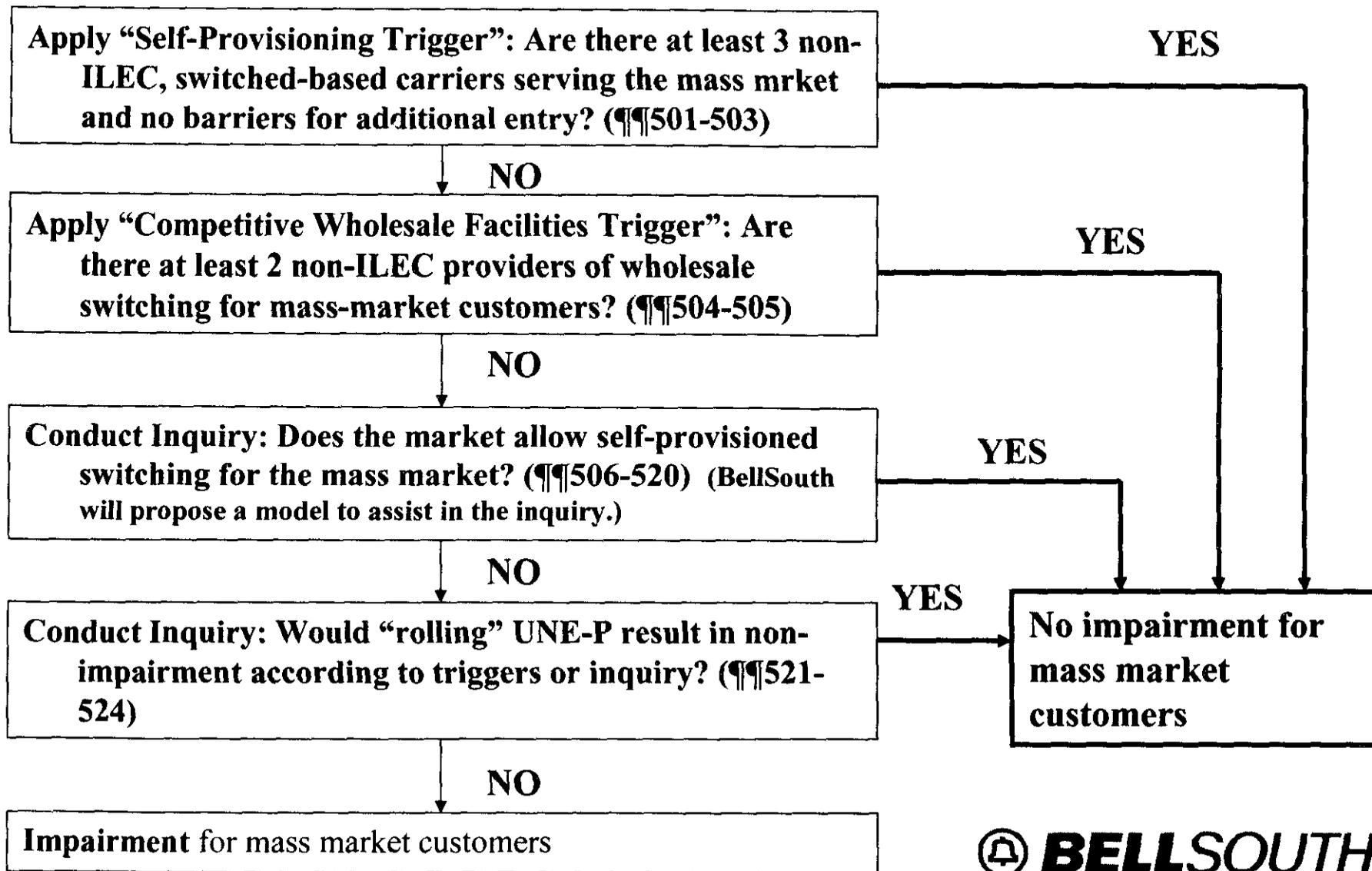## State Specific Determination of No Impairment

- Mass Market DS0 Switching using:

    ✓ Market Triggers, or assessment of other factors:
      (Business Case Models)

- Transport

    ✓ Market Triggers, or assessment of other factors:
      (Business Case Models)

- High Capacity Loops

    ✓ Market Triggers, or assessment of other factors:
      (Business Case Models)

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Mass Market Switching Impairment?

- What will be the factors assessed to determine if no impairment exists for switching?

    - There are two "triggers" that can be used to show that CLECs are not impaired in any given "market" without access to "mass market" switching.

        - If there are three CLECs in a given market that are operationally ready and willing to provide services to mass market customers using their own switches, CLECs are not impaired in that market without access to ILEC unbundled switching.
        - If there are two wholesale switching providers not affiliated with the ILEC in a given market that are offering switching to CLECs, CLECs are not Impaired without access to the ILEC's switches for mass market customers.

    - If neither "trigger" is met, the ILEC can use "modeling" to demonstrate that CLECs could self-provision switching for the mass market customers in that market on an economic basis.

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Process to Determine Switching Impairment

Apply "Self-Provisioning Trigger": Are there at least 3 non-ILEC, switched-based carriers serving the mass mrket and no barriers for additional entry? (¶¶501-503)

YES →

↓ **NO**

Apply "Competitive Wholesale Facilities Trigger": Are there at least 2 non-ILEC providers of wholesale switching for mass-market customers? (¶¶504-505)

YES →

↓ **NO**

Conduct Inquiry: Does the market allow self-provisioned switching for the mass market? (¶¶506-520) (BellSouth will propose a model to assist in the inquiry.)

YES →

↓ **NO**

Conduct Inquiry: Would "rolling" UNE-P result in non-impairment according to triggers or inquiry? (¶¶521-524)

YES → **No impairment for mass market customers**

↓ **NO**

Impairment for mass market customers

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FCC's Requirements of an Economic Model

•**Capable of granular analysis**	§472 …We find that technical shortcomings in each of these studies preclude us from relying on their results to evaluate impairment at the national level. These shortcomings include…(2) **insufficient granularity in their analyses.** §485 All of these studies…strongly support the need for a **more granular analysis of impairment.** We have insufficient evidence in the record, however, to conduct this granular analysis. **Such an analysis would require complete information about UNE rates, retail rates, other revenue opportunities, wire center sizes, equipment costs, and other overhead and marketing costs.**
•**Assumes efficient business model and network architecture**	§517 …Specifically, state commissions must determine whether entry is likely to be economic utilizing the **most efficient network architecture** available to an entrant…The analysis must be based on the **most efficient business model for entry rather than any particular carrier's business model.**
•**Provides a business case analysis**	n. 1581… to evaluate the feasibility of self-deploying a switch, states should perform a **business case analysis** of providing local exchange service…cost factors listed should not be considered in isolation, but only in the context of a **broad business case analysis that examines all likely potential costs and revenues.**
•**Incorporates all likely revenues and costs**	•§519…In determining the likely revenues available to a competing carrier in a given market, the state commission must consider *all* **revenues that will derive from service to the mass market, based on the most efficient business model for entry.** These potential revenues include those associated with providing voice services, **including (but not restricted to) the basic retail price charged to the customer, the sale of vertical features, universal service payments, access charges, subscriber line charges, and, if any, toll revenues.** The state must also consider the revenues a competitor is likely to obtain from using its facilities for providing **data and long distance services and from serving business customers.**
•**Uses NPV as the test of impairment**	§472 …We find that technical shortcomings in each of these studies preclude us from relying on their results to evaluate impairment at the national level. These shortcomings include (1) **failure to use the proper framework when determining impairment.** n 260 Stated in more technical terms, the condition [of a firm entering the market, and hence no-impairment] is **whether the net present value of the expected economic profit is positive.**
•**Has well-supported parameters**	§472 …We find that technical shortcomings in each of these studies preclude us from relying on their results to evaluate impairment at the national level. These shortcomings include…(4) **inadequate support for the parameters they employed.**

BellSouth Proposes a Model that Meets the FCC's Requirements

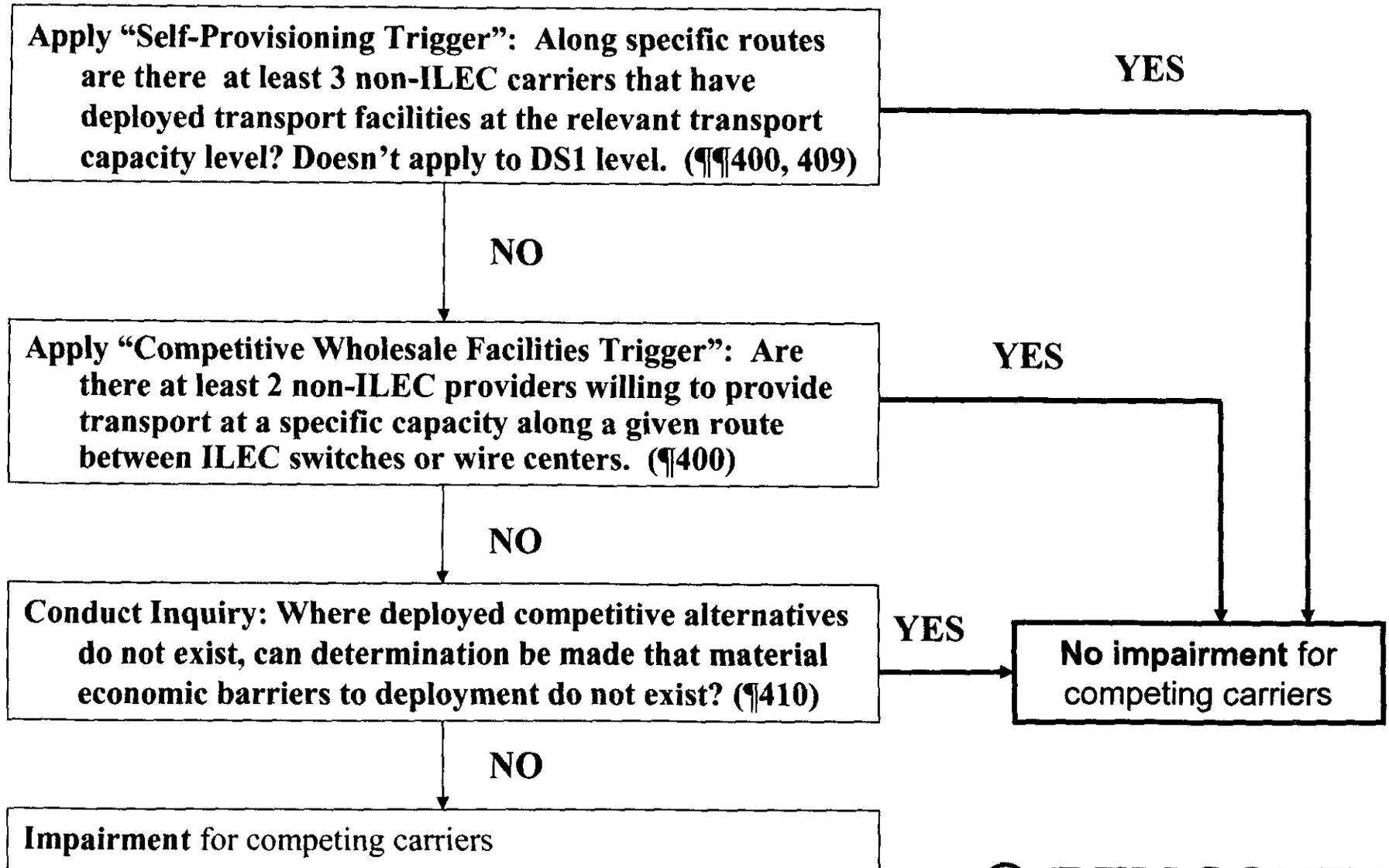|	•BellSouth CLEC model	•Latest version of NRRI model
•Capable of granular analysis	**Y** — • Wirecenter level analysis, with granular costs and revenues	**N** — • Some zone-level granularity, but mostly more aggregated
•Assumes efficient business model and network architecture	**Y** — • Assumes efficiency, e.g., in areas such as SG&A and DSLAM deployment	**N** — • No "business model" and unclear what network architecture is assumed
•Provides a business case analysis	**Y** — • True "business case" analysis based on CLEC cashflows	**N** — • No "business case" – all per line averages
•Incorporates all likely revenues and costs	**Y** — • Includes multiple voice and data products for business and residential customers	**N** — • Residential voice only
•Uses NPV as the test of impairment	**Y** — • Accurate calculation of NPV	**N** — • No calculation of NPV – annual net revenue per line only
•Well-supported parameters	**Y** — • LECG, CostQuest, and BLS providing detailed support for parameters in testimony	**?** — • Uncertain – no clear documentation to date

Transport Impairment?

- What will be the factors assessed to determine if no impairment exists for transport?

    •What we are talking about is dedicated transport. The Order provides that the treatment of shared transport will follow the states' decisions on switching for the mass market customers. If no impairment for switching, there is no requirement for shared transport.

    •For dedicated transport, the FCC established two triggers to be applied on a route by route basis, which if met will require a finding of no impairment.

    1. If there are three retail providers of transport on a particular route, CLECs are not impaired if they do not have access to the ILEC's dedicated transport on an unbundled basis for that route.

    2. If there are two wholesale providers willing to offer transport to other CLECs on the route, the CLECs are not impaired by not having access to the ILEC's unbundled transport on the route.

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Process to determine <u>Transport</u> Impairment

Apply "Self-Provisioning Trigger": Along specific routes are there at least 3 non-ILEC carriers that have deployed transport facilities at the relevant transport capacity level? Doesn't apply to DS1 level. (¶¶400, 409)

YES

NO

Apply "Competitive Wholesale Facilities Trigger": Are there at least 2 non-ILEC providers willing to provide transport at a specific capacity along a given route between ILEC switches or wire centers. (¶400)

YES

NO

Conduct Inquiry: Where deployed competitive alternatives do not exist, can determination be made that material economic barriers to deployment do not exist? (¶410)

YES

No impairment for competing carriers

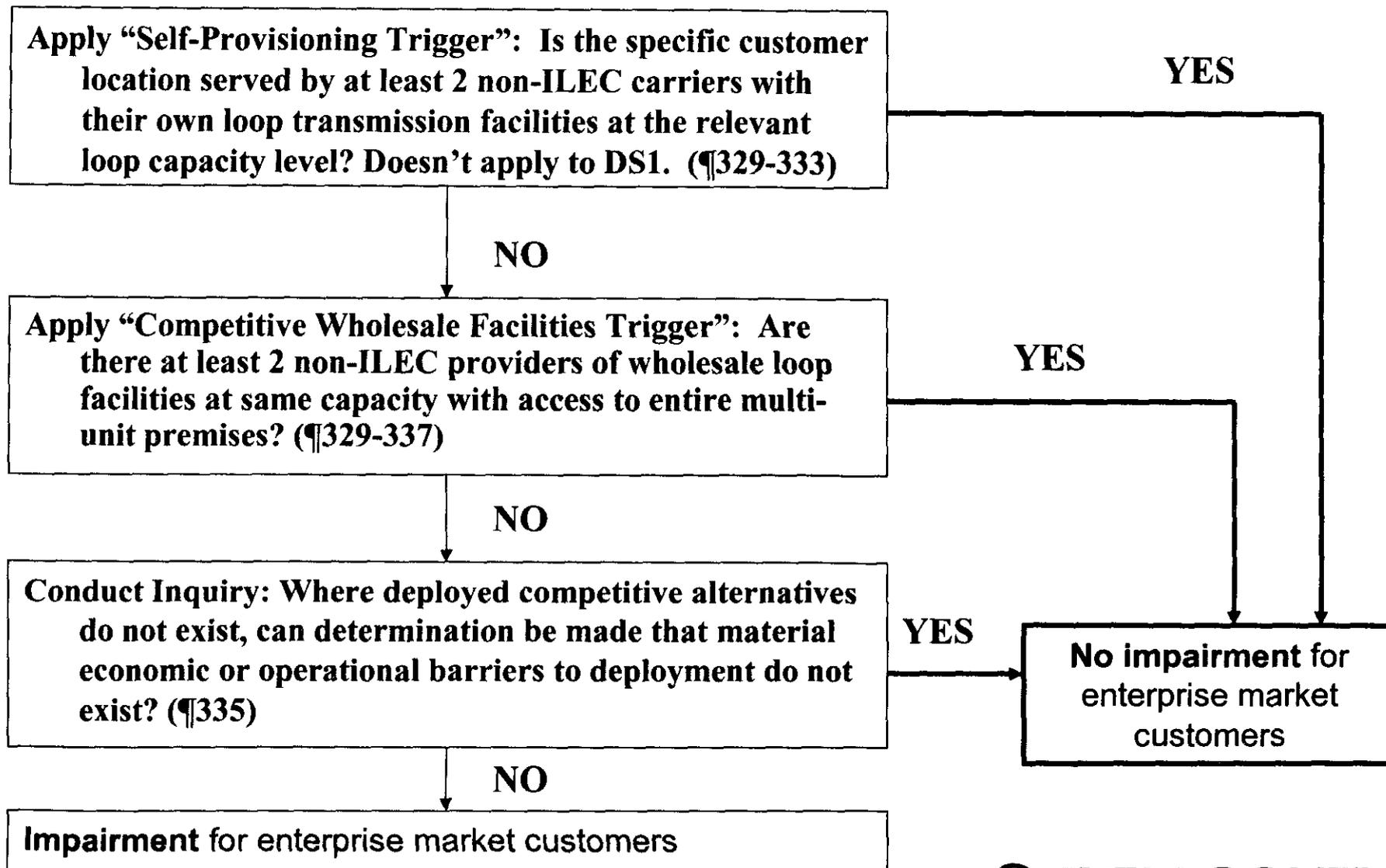**NO**

Impairment for competing carriers

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High Capacity Loop Impairment?

•What will be the factors assessed to determine if no impairment exists for transport?

- First, the FCC found, on a national basis, that there was no impairment with regard to OCn loops, FTTH loops, sub-loop feeder, and greenfield fiber construction

- With regard to other situations, if there are two CLECs self-provisioning high-capacity loops to a particular location, other CLECs are not impaired without access to the ILEC's unbundled high-capacity loops.

- Finally there is a wholesale trigger that is met when there are two wholesale providers of high-capacity loops to a particular multi-tenant location.

- Since these are high-capacity loops involving enterprise customers, and has to be analyzed on a location-by-location basis, each capacity level is looked at separately.

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Process to determine <u>Enterprise Loop</u> Impairment

>>

Apply "Self-Provisioning Trigger": Is the specific customer location served by at least 2 non-ILEC carriers with their own loop transmission facilities at the relevant loop capacity level? Doesn't apply to DS1. (¶329-333)

↓ **NO**

YES

Apply "Competitive Wholesale Facilities Trigger": Are there at least 2 non-ILEC providers of wholesale loop facilities at same capacity with access to entire multi-unit premises? (¶329-337)

↓ **NO**

YES

Conduct Inquiry: Where deployed competitive alternatives do not exist, can determination be made that material economic or operational barriers to deployment do not exist? (¶335)

YES →

↓ **NO**

No impairment for enterprise market customers

Impairment for enterprise market customers

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Procedural Issues

- Agreed Motion by BellSouth and CompSouth (CLEC Coalition) Proposing Procedural Guidelines

    - Because of Voluminous materials and large number of parties, certain procedures for service and exchange of information.
    - Joint Protective Agreement to handle commercially sensitive documents

- BellSouth Filings

    - Motion to add other parties who have necessary information
        - IXCs
        - Other providers of telecom services, e.g., other utilities such as power companies and municipal utilities, and local governments
    - Discovery

- PSC's Order – Follow Up

    - Best method of gathering information
        - Discovery from all
        - Discovery to all
    - October 24, 2003 Petition

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>> Proposed Schedule

- Hearing & Decision within 9 months of effective date of FCC order – to determine no <u>Impairment</u>

- <u>Industry Proposed</u> Kentucky Schedule (approximate):

— Triennial Review Order Effective date	10/02/03
— <u>Direct Testimony</u> Filed (Mass Market Switching) *	?
— <u>Rebuttal</u> (Mass Market Switching)* <u>Direct Testimony</u> (Loop & Transport)*	?
— <u>Surrebuttal Testimony</u> (Mass Market Switching)* <u>Rebuttal</u> (Loop & Transport)*	?
— <u>Hearing</u> (M-F)	?
— <u>Deadline</u> for State Decisions	July 2, 2004

* All Parties

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Conclusion

>>

- FCC's Order is Complex

- Requires Input from Entire Industry for the Commission
to Make its Decisions

- Efficient Coordination of Resources is Critical

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