

ORIGINAL

MCWHIRTER REEVES

ATTORNEYS AT LAW

TAMPA OFFICE
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602-5126
P.O. BOX 3350, TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 33201
(850) 222-2525
(850) 222-5606 FAX

December 22, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

RECEIVED-FPSC
03 DEC 22 PM 4: 26
COMMISSION
CLERK

Re: Docket No. 030852-TP

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association ("FCCA"), I am enclosing the following:

- Original and 15 copies of the Direct Testimony of Gary J. Ball on behalf of the Florida Competitive Carriers Association

Please stamp and return the extra copy that I have enclosed. Thank you for your assistance.

RECEIVED & FILED

[Signature]
FPSC-BUREAU OF RECORDS

Yours truly,

[Signature: Joe McGlothlin]
Joseph A. McGlothlin

AUS
CAF
CMP
COM 5+ copy IAM/mls
CTR Enclosure
ECR
GCL 1
OPC
MMS 2
SEC 1
OTH

DOCUMENT NUMBER-DATE

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, KAUFMAN & ARNOLD, P.A. 13319 DEC 22 8

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising ) Docket No.  
030852-TP )  
from Federal Communications Commission's )  
Triennial UNE Review: Location-Specific Review ) Filed: December  
22, 2003 )  
for DS1, DS3 and Dark Fiber Loops, and Route- )  
Specific Review for DS1, DS3 and Dark Fiber Transport )

**DIRECT TESTIMONY**

**OF**

**GARY J. BALL**

**ON BEHALF OF**

**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION**

DOCUMENT NUMBER - DATE

13319 DEC 22 8

FPSC-COMMISSION CLERK

## TABLE OF CONTENTS

	<b>Page</b>
I. THE FCC'S IMPAIRMENT ANALYSIS.....	4
II. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT .....	12
III. WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT .....	21
IV. CONTINUED IMPAIRMENT AFTER TRIGGERS HAVE BEEN MET.	29
V. POTENTIAL DEPLOYMENT.....	30
VI. TRANSITIONAL ISSUES.....	33

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

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

5  
6   **Q.   PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
7       **PROFESSIONAL EXPERIENCE.**

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

16  
17      From 1991 through 1993, I was employed by the Rochester Telephone Corporation  
18      (now part of Citizens Communications) where I served in various engineering,  
19      financial, and regulatory roles. From 1993 to 1994, I was the manager of Regulatory  
20      Affairs for Teleport Communications Group.

21  
22      Beginning in 1994, I served initially as the Regional Director of Regulatory Affairs  
23      for MFS Communications Company for the Northeast, and subsequently was

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

8  
9 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

10 A. I am testifying on behalf of the Florida Competitive Carriers Association ("FCCA").  
11 The FCCA is a coalition of Florida competitors committed to the advancement of  
12 policies that encourage local and long distance competition in the state. The jobs,  
13 services and customer savings that these companies provide are a product of the  
14 competitive policies of both the federal Telecommunications Act of 1996 and Chapter  
15 364, Florida Statutes.

16  
17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. In its Triennial Review Order ("TRO"), the FCC conducted a comprehensive analysis  
19 that resulted in the determination that CLECs are impaired without access to high  
20 capacity loops and dedicated transport at the national level. As a result, incumbent  
21 local exchange carriers ("ILECs") must continue to provide competitive carriers  
22 ("CLECs") with access to unbundled loops and dedicated transport at the DS1, DS3,  
23 and dark fiber capacity levels on a widespread basis. Recognizing that there may be

1 individual customer locations or transport routes where competitively provisioned  
2 loops and transport have been deployed to such an extent that the national finding  
3 does not apply and CLECs may not be impaired, the FCC developed a procedure  
4 known as the trigger analysis (“triggers”). The triggers are designed to give ILECs an  
5 opportunity to rebut the national finding at specific customer locations or on specific  
6 transport routes where actual deployment demonstrates non-impairment at that  
7 location or route.

8  
9 The purpose of my testimony is to provide to the Commission a workable framework  
10 for evaluating ILEC claims of non-impairment that is faithful to the principles and  
11 requirements set forth in the TRO. As I will demonstrate, the ILECs face a  
12 significant burden in satisfying the rigorous granular analysis of the triggers, and the  
13 Commission should cast a suspicious view upon any ILEC claims that the triggers  
14 have been satisfied on a large scale.

15  
16 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

17 A. My testimony is divided into six parts. In part one, I will discuss the FCC’s  
18 impairment analysis and how it relates to the unbundled loop and transport services  
19 necessary for a facilities-based CLEC to compete effectively with the ILECs. In part  
20 two, I will explain the self-provisioning triggers that the FCC devised for high  
21 capacity loops and dedicated transport at the DS3 and dark fiber capacity levels, and  
22 will provide the proper framework for interpreting an ILEC’s claim that the triggers  
23 have been met. In part three, I will explain the wholesale triggers for high capacity

1 loops and transport, and will discuss the additional requirements needed to define a  
2 carrier as a wholesale provider. In part four, I will discuss situations where  
3 competitive providers still may be impaired for a customer location or route even if  
4 the trigger has been met. In part five, I will discuss the concept of potential  
5 deployment claims, including the fact that DS1-level loops and transport are not  
6 eligible for potential deployment claims. Lastly, in part six, I will describe the  
7 transitional issues this Commission should consider in order to protect CLECs and  
8 their customers from unanticipated disruption to their services and rates if the  
9 Commission delists any loops or transport routes.

10  
11 **I. THE FCC'S IMPAIRMENT ANALYSIS**

12 **Q. PLEASE DESCRIBE THE FCC'S POLICY OBJECTIVES THAT PROVIDE**  
13 **THE FRAMEWORK FOR THE TRIENNIAL REVIEW IMPLEMENTATION.**

14 A. When applying the rigorous standards for the granular analysis, it is imperative that  
15 the Commission keep the TRO's three policy objectives at the forefront. First, the  
16 TRO continues the Commission's implementation and enforcement of the federal  
17 Act's market-opening requirements. This objective is critical because it recognizes  
18 the importance of providing a regulatory environment that is conducive to  
19 competition. Second, the TRO applies unbundling as Congress intended: with a  
20 recognition of the market barriers faced by new entrants as well as the societal benefit  
21 of unbundling. This again is critical because it recognizes the balance that is required  
22 to ensure that consumers are able to realize the benefits of competition through better  
23 telecommunications options at lower costs. This objective further recognizes the

1 consumer's investment in the ILEC's monopoly network and the objective of  
2 delivering better services and lower costs to consumers through competition. Finally,  
3 the TRO establishes a regulatory foundation that seeks to ensure that investment in  
4 telecommunications infrastructure will generate substantial, long-term benefits for all  
5 consumers.

6  
7 **Q. PLEASE DESCRIBE THE FCC'S APPROACH TO DETERMINING**  
8 **IMPAIRMENT FOR UNBUNDLED NETWORK ELEMENTS.**

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

16  
17 **Q. WHAT DID THE FCC CONCLUDE WITH REGARD TO HIGH CAPACITY**  
18 **LOOPS AND DEDICATED TRANSPORT?**

19 A. The FCC concluded that competing carriers are impaired on a national level without  
20 access to unbundled high capacity loops (DS1, DS3, and dark fiber) and transport  
21 (DS1, DS3, and dark fiber). *See TRO ¶ 202* (stating that "requesting carriers are  
22 impaired on a location-by-location basis without access to incumbent LEC loops  
23 nationwide."); *see also TRO ¶ 359* (stating that it finds "on a national level that



1 requesting carriers are impaired without access to unbundled dark fiber transport  
2 facilities ... [DS3 transport and DS1 transport]).” As a result, the FCC rules require  
3 that competing carriers have access to unbundled loops and transport everywhere  
4 unless a specific route has been found to lack impairment.

5  
6 **Q. DID THE FCC’S IMPAIRMENT ANALYSIS DISTINGUISH BETWEEN**  
7 **DIFFERENT TYPES OF UNBUNDLED LOOPS AND TRANSPORT?**

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

15  
16 The FCC segregated dedicated transport by capacity levels before performing its  
17 impairment analysis, stating that this would “be the most informative manner to  
18 review the economic barriers to entry that affect how a competing carrier is impaired  
19 without access to unbundled transport.” *TRO* ¶ 380. The FCC performed separate  
20 impairment analyses for OC(n) Transport, Dark Fiber Transport, DS3 Transport, and  
21 DS1 Transport.

22

1    **Q.    WHAT WAS THE FCC’S BASIS FOR FINDING THAT COMPETING**  
2    **CARRIERS WERE IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY**  
3    **LOOPS AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?**

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

14  
15   The FCC found that there are substantial economic and operational barriers to  
16   deploying loops. For example, the FCC found that “the cost to self-deploy local  
17   loops at any capacity is great . . . and that a competitive LEC that plans to self-deploy  
18   its facilities must target customer locations where there is sufficient demand from a  
19   potential customer base, usually a multi-tenant premises location, to generate a  
20   revenue stream that could recover sunk construction costs of the underlying loop  
21   transmission facility . . .” *TRO* ¶ 303. The FCC emphasized, however, that other  
22   obstacles to deploying high capacity loops exist even if the carrier can overcome the  
23   cost issues. For example, carriers encounter barriers in obtaining reasonable and

1 timely access to the customer's premises and in "convincing customers to accept the  
2 delays and uncertainty associated with deployment of alternative loop facilities."

3 *TRO* ¶ 303 (citations omitted).

4  
5 **Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING**  
6 **CARRIERS ARE IMPAIRED WITHOUT ACCESS TO UNBUNDLED**  
7 **DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1**  
8 **CAPACITY LEVELS?**

9 A. The FCC stated that its impairment findings with respect to DS1, DS3, and dark fiber  
10 transport facilities "recognize that competing carriers face substantial sunk costs and  
11 other barriers to self-deploy facilities and that competitive facilities are not available  
12 in a majority of locations, especially non-urban areas." *TRO* ¶ 360 (citations  
13 omitted). The FCC concluded that it would be extremely difficult to recover these  
14 costs and to be a viable competitor in the marketplace. Indeed, the FCC concluded  
15 that "[d]eploying transport facilities is an expensive and time-consuming process for  
16 competitors, requiring substantial fixed and sunk costs." *Id.* ¶ 371 (citations omitted).  
17 The FCC elaborated that the costs of self-deployment include collocation costs, fiber  
18 costs, costs to physically deploy the fiber, and costs to light the fiber. *Id.* CLECs  
19 also encounter delays in constructing dedicated transport due to having to obtain  
20 rights-of-way and other permits. *Id.*

21

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

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

8  
9    For transport, the FCC found that "alternative facilities are not available to competing  
10   carriers in a majority of areas." *TRO* ¶ 387. Indeed, even relying on ILEC data,  
11   which was not subject to cross-examination in the FCC proceeding, at most 13% of  
12   BOC wire centers have even a single competing carrier collocated using non-ILEC  
13   transport facilities. *TRO* at note 1198. The triggers require the presence of two or  
14   three such competitors (also satisfying additional criteria) on each route. Therefore,  
15   based on this analysis, one would expect that there will be only a small number of  
16   transport routes at issue in this proceeding.

17  
18   **Q.    ARE THE FCC'S FINDINGS ON IMPAIRMENT CONSISTENT WITH THE**  
19   **TYPICAL FACILITIES-BASED CLEC'S NETWORK?**

20   A.    Yes. FCCA's members use a variety of entry strategies to provide services to their  
21   customers. The FCCA members that provide facilities-based local services rely on  
22   UNE loops to serve the majority of their customers. FCCA members also use loop  
23   and transport UNEs in a combination commonly referred to as an "enhanced extended

1 link" or "EEL." EELs are a predominant reason facilities-based CLECs need access  
2 to unbundled dedicated transport, as they allow CLECs to access customers in central  
3 offices where they are not collocated, greatly expanding the scope of customers they  
4 can serve.

5  
6 Although there is some variance among CLEC networks, competitors' network  
7 architectures ordinarily are composed of multiple fiber rings in a city or market,  
8 which have been completed at different stages due to construction funding  
9 limitations, growth in capacity requirements, or, in some cases, acquisitions. These  
10 CLECs serve customers using their fiber rings when possible, although in a majority  
11 of instances, they will need access to unbundled loops and loop/transport  
12 combinations (EELs) to provide service to customers. This is the case because the  
13 fiber rings typically only connect aggregation points, such as collocation  
14 arrangements to a carrier's switching or hub site. A few major customer sites  
15 sometimes will be included on the ring, but most CLEC networks only reach a  
16 handful of such sites in any state.

17  
18 These networks have been developed in this manner as a direct consequence of the  
19 fixed and sunk costs that the FCC found create impairment for CLECs. As the FCC  
20 found, there are few customer locations where there is sufficient demand from a  
21 potential customer base to justify the deployment of a DS3 loop to the location, with  
22 building access and construction delays compounding the entry barriers that CLECs  
23 face in deploying loop facilities. In addition, the fixed and sunk costs associated with

1 deployment of transport facilities leads carriers to deploy facilities only where a  
2 sufficient aggregation of traffic between the two end points justifies the deployment.

3

4 **Q. HOW DOES THIS NETWORK ARCHITECTURE IMPACT THE TRIGGERS**  
5 **ANALYSIS?**

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

14

15 As a result, the existence of fiber facilities does not by itself mean that the CLEC  
16 provides transport between ILEC wire centers. First, as I explain in Part Two of my  
17 testimony (22-23), although a typical CLEC network will have multiple “on-net”  
18 aggregation points, it would be a misinterpretation of the FCC's triggers to conclude  
19 that each pair of these aggregation points have CLEC owned transport facilities  
20 between them. Assume, for example, that a CLEC has an “on-net” presence at  
21 aggregation points A and B. The typical CLEC network will be configured to carry  
22 traffic from point A to the switch, and similarly, from point B to the switch. It does  
23 not carry traffic from point A to point B. (Most often, these two connections will

1 travel on separate fiber strands within the ring.) The configuration is not unlike the  
2 design of some elevators in very tall buildings. One elevator may provide access to  
3 the 40<sup>th</sup> floor, while a separate elevator operating in a separate shaft accesses the 12<sup>th</sup>  
4 floor. Even though a person in the lobby can reach either floor, it is not the case that  
5 a person on the 40<sup>th</sup> floor can stop his elevator on the 12<sup>th</sup> floor.

6  
7 Second, in many situations, a CLEC will serve two ILEC central offices that are not  
8 on the same fiber ring. Although it is theoretically possible to connect central offices  
9 on different fiber rings, transport routes linking the two central offices are not  
10 ordinarily provisioned in this manner. Applying an elevator analogy, this is like  
11 going from the 40<sup>th</sup> floor in one building to the 12<sup>th</sup> floor in another. Once in a while,  
12 one could get there by going down to the lobby, exiting the building, walking to the  
13 other building and using the elevator to reach the 12<sup>th</sup> floor in the second building. It  
14 is possible and maybe even tolerable if no other solution is available, but one would  
15 not want to do this every day.

16  
17 **II. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND**  
18 **TRANSPORT**

19 **Q. WHAT ARE THE PURPOSES OF THE FCC'S SELF-PROVISIONING**  
20 **TRIGGER FOR UNBUNDLED LOOPS AND TRANSPORT?**

21 A. The Self-Provisioning Triggers are intended to identify those customer locations and  
22 transport routes where sufficient deployment of competitively owned facilities is  
23 present to demonstrate that *other competitors* are not impaired without access to

1 unbundled loops or transport. The Self-Provisioning Trigger assumes a world where  
2 the competitors that own the existing facilities do not make them available to other  
3 competitive providers. In order for the Self-Provisioning Trigger to be satisfied, the  
4 CLEC without any facilities has to be able to deploy duplicative facilities without  
5 experiencing impairment.

6  
7 The Self-Provisioning Trigger relies on indirect evidence based on a proven past  
8 deployment in order to demonstrate non-impairment for other carriers. The FCC's  
9 theory is that actual deployment by similarly situated CLECs provides evidence that a  
10 CLEC without its own facilities does not face impairment. Indeed, the FCC  
11 specifically cautioned that the Self-Provisioning Trigger must exclude "unusual  
12 circumstances unique to [a] single provider that may not reflect the ability of other  
13 competitors to similarly deploy." *TRO* ¶ 329 at n.974. Thus, the purpose of the Self-  
14 Provisioning Trigger is to identify situations through actual deployment situations  
15 where the barriers created by fixed and sunk costs have been overcome with respect  
16 to all providers that may offer service to a particular location or on the given route.

17  
18 **Q WHAT CAPACITY LEVELS ARE SUBJECT TO THE SELF-**  
19 **PROVISIONING TRIGGERS?**

20 A. The Self-Provisioning Triggers only apply to DS3 and Dark Fiber Loops and  
21 Transport. *TRO* ¶¶ 334, 409. DS1 Loops and Transport are not included under these  
22 triggers. In other words, regardless of how much self-provisioned deployment may



1 exist at a customer location or on a route, a DS1 UNE will continue to be available to  
2 a requesting CLEC.

3

4 **Q. WHAT MUST AN ILEC DEMONSTRATE TO ITS STATE COMMISSION**  
5 **TO SATISFY THE SELF-PROVISIONING TRIGGERS AT THE RELEVANT**  
6 **CAPACITY LEVEL?**

7 A. For loops, the ILEC must demonstrate that there are *two or more* competing providers  
8 that have deployed their own facilities at the specific capacity level (DS3 or dark  
9 fiber), and are serving customers using those facilities. For transport, the ILEC must  
10 demonstrate there are *three or more* competing providers that have deployed their  
11 own facilities at the specific capacity level (DS3 or dark fiber), and are offering  
12 service using those facilities.

13

14 **Q. WHAT MUST AN ILEC DEMONSTRATE TO PROVE THAT THE SELF**  
15 **PROVISIONING TRIGGERS ARE SATISFIED FOR HIGH CAPACITY**  
16 **LOOPS AT A SPECIFIC CUSTOMER LOCATION?**

17 A. As a preliminary matter, the ILEC must demonstrate that the two competitive  
18 providers:

- 19
- 20 • Are not affiliated with each other or the ILEC
  - 21 • Use their own facilities and not facilities owned or controlled by the other  
22 competitive provider or the ILEC; and
  - 23 • Are serving customers using their own facilities at that location over the  
24 relevant capacity level.

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

4    A    The ILEC must demonstrate for each of the three competitive providers, that:

- 5           •    They not affiliated with each other or the ILEC
- 6           •    Each qualifying self-provisioned facility along a route must be operationally  
7                ready to provide transport into or out of an incumbent LEC central office
- 8           •    Each qualifying self-provisioned facility terminates in a collocation  
9                arrangement.

10

11   **Q.    FOR THE SELF-PROVISIONING TRIGGERS TO BE SATISFIED, MUST A**  
12   **CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN**  
13   **QUESTION?**

14   A.    Yes.  The *Triennial Review Order* contemplates that the Self-Provisioning Triggers  
15   apply when a CLEC self-provisions the particular capacity level in question.  For  
16   example, a CLEC that self-provisions at the OCn capacity level will not be capable of  
17   providing service at lower capacity levels in a given wire center if it has not deployed  
18   the appropriate electronics to demultiplex the traffic at that wire center.

19

20   **Q.    WHAT ARE THE KEY CRITERIA THAT A STATE COMMISSION MUST**  
21   **APPLY IN ORDER TO ENSURE THE ILECS ARE USING THE**  
22   **APPROPRIATE INTERPRETATION OF THE SELF-PROVISIONING**  
23   **TRIGGERS?**

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

8  
9 The FCC defined a transport route as "a connection between wire center or switch 'A'  
10 and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent  
11 LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate  
12 wire center 'X,' the competing providers must *offer service* connecting wire centers  
13 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC  
14 through wire center 'X'." Thus, the FCC requires that transport service must be  
15 offered between the two wire centers in question.

16  
17 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE DEFINITION OF A**  
18 **LOOP COULD BE MISINTERPRETED BY AN ILEC FOR THE PURPOSES**  
19 **OF THE SELF-PROVISIONING TRIGGER?**

20 A. Yes. In a multi-tenant building, two CLECs may have provisioned fiber-optic  
21 facilities to serve one customer each, while the rest of the building is being served  
22 solely by the ILEC. Even though there are two competing loop facilities into the  
23 building, an ILEC request that the Trigger is satisfied for the entire building, or even

1 the two customers served by the CLECs, would be incorrect, as no customer location  
2 within the building is being served by the facilities of two or more competing  
3 providers. The key distinction in this example is that the customer location, which is  
4 the endpoint of the loop per the FCC, is a subset of a building location in a multi-  
5 tenant environment.

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

10 A. Yes. An ILEC may have performed a primitive counting exercise, in which it simply  
11 identifies all of the collocation arrangements for a given CLEC, confirms that fiber  
12 optic facilities are present in the collocation arrangement, then declares that transport  
13 routes exist between each collocation arrangement. This approach would be  
14 deficient, in that it presents no evidence that the CLEC in question is providing  
15 transport service between the two ILEC wire centers, which is the FCC requirement.  
16 The “evidence” does not identify the capacity levels at which the service is provided  
17 (in order to apply the trigger to each level of capacity), nor does it demonstrate that  
18 the CLEC is operationally ready to provide transport “into or out of” the two end  
19 points of the route. As I explained earlier in my testimony, CLECs generally use  
20 collocation arrangements to aggregate unbundled loops, so there is a high probability  
21 that the equipment and fiber optics installed in a collocation arrangement are not  
22 being used to provide transport between two ILEC wire centers. For example, a  
23 CLEC may have deployed equipment to concentrate voice-grade loops, such as a

1 digital loop carrier system, or equipment to provide DSL service, such as a DSLAM,  
2 in a given central office. In these instances, the CLEC would have equipment  
3 installed in its collocation but would *not* be able to provide transport at either a DS3  
4 or a Dark Fiber level between wire centers. To support a trigger claim, the ILEC  
5 must produce additional evidence that shows that the CLEC self-provisions transport  
6 service at the specific capacity level (DS3 or dark fiber) between the two wire centers  
7 and that each collocation arrangement in question is being used as an endpoint for a  
8 transport route at the specific capacity level between two wire centers.

9  
10 **Q. WHAT EVIDENCE MUST AN ILEC SUBMIT TO MEET THE FCC'S**  
11 **REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-**  
12 **PROVISIONING TRIGGER?**

13 A. While the existence of CLEC facilities obviously is a prerequisite to the provision of  
14 service, that alone does not reflect whether the equipment can be used to provide the  
15 service to satisfy the trigger, whether the CLEC can provide service at the requisite  
16 capacity level, or whether CLEC has performed the necessary engineering,  
17 provisioning, and administrative tasks to ensure that service can be provided. The  
18 only reliable way of demonstrating that a CLEC is operationally ready under the Self-  
19 Provisioning Trigger is to produce evidence that the CLEC is actually providing  
20 service at the customer location or on the given transport route. If the CLEC facilities  
21 are in use providing the requisite capacity of service and if the CLEC is able to  
22 provision additional circuits using existing equipment and facilities, then it is  
23 operationally ready to provide the service. This is consistent with the FCC's

1 requirement that evidence be provided that CLECs are *servicing* customers using self-  
2 provisioned loop facilities, and that CLECs *offer service* between two wire centers on  
3 a given transport route. *See, e.g.*, 47 C.F.R. §§ 51.319(a)(5)(1)(A), 51.319(e)(2)(i)(A).  
4

5 **Q. FOR PURPOSES OF APPLYING THE TRIGGERS, WHICH FACILITIES**  
6 **COUNT AS "OWNED FACILITIES"?**

7 A. In order for facilities to qualify for purposes of the triggers, the carrier must have  
8 deployed its "own facilities" on the entire loop. There are two ways that a carrier can  
9 have ownership over the facilities: the carrier can have legal title to the facilities or,  
10 the carrier can have a "long-term" (*i.e.*, 10 years or more) dark fiber IRU, if the fiber  
11 is lit by the qualifying carrier by attaching its own optronics to the facilities. If the  
12 carrier does not use its own facilities, then the carrier cannot count for purposes of the  
13 self-provisioning trigger.  
14

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

16 A. Facilities obtained from other sources such as through special access arrangements,  
17 UNEs, capacity leases (unless they are long term IRUs), and all third-party provided  
18 facilities fail to qualify as "owned facilities." The FCC specifically emphasized that a  
19 CLEC "using the special access facilities of the incumbent LEC or the transmission  
20 facilities of the other competitive provider ... would *not* satisfy the definition of a  
21 self-provisioning competitor for purposes of the trigger." *TRO* ¶ 333.  
22

1 In addition, the triggers are designed to prevent double counting of facilities.

2 Therefore, for purposes of the self-provisioning test, a carrier may not be using

3 "facilities owned or controlled by one of the other two providers ...." *TRO* ¶ 333.

4 For example, if Carrier A has deployed facilities to a building or on a transport route

5 and Carrier B purchases service from Carrier A, only one self-provisioner is present

6 on the route. Carrier B does not own the facilities it uses to provide service to its

7 customers.

8  
9 **Q. IF A CARRIER SATISFIES THE SELF-PROVISIONING TRIGGER, WILL**  
10 **IT AUTOMATICALLY QUALIFY AS AN ELIGIBLE PROVIDER UNDER**  
11 **THE COMPETITIVE WHOLESALE FACILITIES TRIGGER OR VICE**  
12 **VERSA?**

13 A. No. The FCC emphasized that the triggers are separate and distinct. The purpose of  
14 the self-provisioning trigger is to determine through actual experience whether  
15 similarly situated CLECs can deploy their own facilities in order to serve its own  
16 customers. In contrast, the wholesale facilities trigger examines whether the provider  
17 makes its facilities available to other carriers on a widely available basis. Self-  
18 provisioners that do not provide service to other carriers do not qualify under the  
19 Wholesale Trigger. *See TRO* ¶ 414 (wholesale test does not count facilities owned by  
20 a competitor unwilling to offer capacity on a whole basis). Similarly, although some  
21 wholesale carriers also may self-provide facilities to serve their own customers,  
22 others may not provide any end user service and thus cannot be self-provisioners  
23 under the triggers. *See TRO* ¶ 406 & n.1256 (self-provisioner must be operationally

1 ready to provide transport; carrier must “remain in operation” on the route). For  
2 example, an entity that operates only as a “carrier’s carrier” does not qualify as a self-  
3 provisioner under the FCC’s triggers.

4  
5 **III. WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND**  
6 **TRANSPORT**

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

9 A. The Wholesale Triggers provide the ILECs an opportunity to demonstrate that there is  
10 no impairment for a specific customer location or route by identifying locations for  
11 which there are a sufficient number of alternative providers offering wholesale loop  
12 and transport services using their own facilities. The underlying premise of the  
13 Wholesale Triggers is that when a working wholesale market with multiple  
14 alternative sources of supply exists for loops or transport, then CLECs would not be  
15 reliant on receiving the element from the ILEC as a UNE.

16  
17 **Q. WOULD A WORKING WHOLESALE MARKET BE BENEFICIAL TO**  
18 **CLECS?**

19 A. Yes, if the alternative facilities were available as more than a theoretical possibility.  
20 For a viable competitive wholesale market to exist, not only must competitive  
21 facilities be deployed, but also the requesting carrier must be able to use these  
22 facilities to replace ILEC UNEs in ordinary applications. It is for this reason that the  
23 FCC emphasized in the context of loops that alternative providers must “offer an



1 equivalent wholesale loop product at a comparable level of capacity, quality and  
2 reliability.” *TRO* ¶ 337. Equally important, the alternative facilities must work  
3 seamlessly with other components of a CLEC network, including ILEC-supplied  
4 UNEs. Because loops and transport must be examined separately, there will be many  
5 instances where a CLEC will purchase a UNE loop and competitive transport, or will  
6 purchase a competitively supplied loop in conjunction with UNE transport.  
7 Moreover, CLECs may even face situations where DS1 loops and transport are  
8 ordered as UNEs, but DS3 loops or transport to the same location or along the same  
9 route are ordered through competitive suppliers. These permutations make it  
10 imperative that all barriers to a competitive wholesale market be eliminated before  
11 any finding can be made that the Wholesale Trigger’s requirements are satisfied. At a  
12 minimum, a working wholesale market requires reasonable and nondiscriminatory  
13 cross connects from the ILEC, UNE and special access ordering procedures that  
14 accommodate a multi-vendor environment, and billing processes for combinations of  
15 UNE and non-UNE arrangements.

16  
17 **Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESAL**  
18 **TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT?**

19 A. Wholesale loops and transport at both the DS1 and DS3 level are subject to the  
20 Wholesale Triggers. Dark Fiber loops are not subject to the Trigger, Dark Fiber  
21 transport is subject to the Trigger.

22

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

4   A.   The wholesale facilities trigger examines whether there are competing providers  
5           offering a bona fide product on the specific route. To satisfy the wholesale facilities  
6           trigger, the Commission must find that there are *two or more* competing providers  
7           that have deployed their own high capacity loop or dedicated transport facilities, that  
8           are operationally ready to use those transport facilities and are willing to provide  
9           transport over those facilities on a widely available wholesale basis to other carriers.

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

16  
17   **Q.   WHAT MUST AN ILEC DEMONSTRATE TO SATISFY THE WHOLESALE**  
18           **PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS?**

19   A.   Specifically, under the FCC's rules, this trigger requires evidence that:

- 20           •   Two or more competing providers not affiliated with each other or the ILEC  
21           are present at the customer location;
- 22           •   Each provider has deployed its own facilities and is operationally ready to use  
23           those facilities to provide wholesale loops at that location;

- 1           •       Each provider is willing to provide wholesale loops on a widely available  
2           basis at that location; and
- 3           •       Each provider has access to the entire multiunit customer premises. *See* 47  
4           C.F.R. § 51.319(a)(5)(i)(B).

5

6   **Q.       WHAT MUST AN ILEC DEMONSTRATE TO SATISFY THE WHOLESALE**  
7   **PROVISIONING TRIGGERS FOR DEDICATED TRANSPORT?**

8   A.       Specifically, the trigger requires evidence that:

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

22

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

26   A.       Yes. A significant issue is to properly identify the relevant wholesale providers of  
27   loops and transport, and to ensure that the ILECs are not overly broad in their  
28   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 services  
2 necessary to satisfy the trigger. For example, a carrier may offer wholesale long  
3 distance voice services, and also may have established collocation arrangements for  
4 the self-provision of a data service for a specific retail customer. The fact that the  
5 carrier is a wholesale provider of an unrelated service is not relevant to the trigger  
6 analysis if the carrier is not offering wholesale services specific to its collocation  
7 arrangements. The FCC also triggers require evidence of wholesale availability be  
8 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 access  
14 to the entire customer premises, including in multi-tenant buildings, access to the  
15 same common space, house and riser and other intra-building wire as the ILEC. If a  
16 loop does not provide alternative providers with access to the entire customer  
17 premises, then the carrier providing the loop should not be counted for purposes of  
18 either the wholesale or the self-provisioning trigger. This requirement is particularly  
19 important in the context of the wholesale trigger because the CLEC most often would  
20 be seeking to buy a wholesale loop in order to serve tenants in the building that are  
21 not already served on a retail basis by the wholesale provider. If the wholesale  
22 provider is not able to offer service to reach customers other than its own, that carrier  
23 is not truly offering an alternative wholesale service.

1

2

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

3

4

5

6

7

8

9

10

11

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

12

13

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

14

15

16

17

18

19

20

21

22

23

24

25

26

- Has sufficient systems, methods and procedures for pre-ordering, ordering, provisioning, maintenance and repair, and billing;
- Possesses the ability immediately to provision wholesale high capacity loops to each specific customer location identified or dedicated transport along the identified route;
- For loops, has access to an entire multi-unit customer premises;
- Is capable of providing transport at a comparable level of capacity, quality, and reliability as that provided by the ILEC;
- For transport, is collocated in each central office at the end point of each transport route;

- 1       •     Has the ability to provide wholesale high capacity loops and transport in  
2             reasonably foreseeable quantities, including having reasonable quantities of  
3             additional, currently installed capacity; and
  
- 4       •     Reasonably can be expected to provide wholesale loop and transport capacity  
5             on a going-forward basis.

6  
7     **Q.    WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE WHOLESALE**  
8     **FACILITIES TRIGGER?**

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

1   **Q.   WHAT DOES IT MEAN TO HAVE REASONABLE ACCESS TO THE**  
2   **WHOLESALE PROVIDER?**

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

9  
10   As I stated above, for a competitive wholesale market to be in place, there must be  
11   proper systems and processes for ordering and provisioning. In addition, carriers  
12   must be able to obtain the service at nondiscriminatory rates and on  
13   nondiscriminatory intervals. Requesting carriers also must be able to order circuits  
14   to terminate in all qualified wholesale providers' collocation space. The Commission  
15   should inquire whether the ILEC's OSS is capable of handling LSRs that are  
16   provisioned to a wholesale provider's facilities.

17  
18   **Q.   WHAT ARE THE REMAINING STEPS?**

19   A.   Once the Commission has determined the appropriate application of the triggers, then  
20   it must gather the evidence for each route. As I stated above, the ILEC is responsible  
21   for challenging the national finding of impairment and must provide demonstrative  
22   evidence that the trigger is satisfied for each route for which it challenges the FCC's  
23   national finding. The ILEC then has the burden of proving that the competing

1 carriers that it has identified indeed satisfy the trigger for the particular loop at issue.  
2 The ILEC's evidence must be differentiated among each capacity type and for each  
3 customer route.

4  
5 Once the ILEC has put forth the routes that it intends to challenge and the supporting  
6 evidence, the Commission must evaluate whether the carriers that the ILEC has  
7 identified as satisfying the trigger for each route meet the qualifying criteria. The  
8 Commission then must classify the route as impaired or not impaired based on all of  
9 evidence that the parties have submitted.

10  
11 **IV. CONTINUED IMPAIRMENT AFTER TRIGGERS HAVE BEEN MET**

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

16 **A.** No. If a state finds that a trigger is facially satisfied but believes that impairment still  
17 exists, then the state may petition the FCC for a waiver of application of the trigger  
18 until the barrier to deployment identified by the state no longer exists. For example,  
19 in the *Triennial Review Order*, the FCC explained that a state might find impairment  
20 if “a municipality has imposed a long-term moratorium on obtaining the necessary  
21 rights-of-way such that a competing carrier can not deploy new facilities.” *TRO* ¶  
22 411. As another example, ILECs have claimed collocation exhaust in many central  
23 offices throughout the state. If a CLEC cannot collocate in one or both of the central



1 offices on the transport route, then CLECs remain impaired on that route, regardless  
2 of whether the trigger is facially satisfied.

3

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

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

14

15 **V. POTENTIAL DEPLOYMENT**

16 **Q. PLEASE DESCRIBE WHAT YOU MEAN BY POTENTIAL DEPLOYMENT.**

17 A. A “potential deployment” analysis refers to the State Analytical Flexibility described  
18 in paragraphs 335 and 410 of the *TRO*. Under the Self-Provisioning Trigger, these  
19 paragraphs permit an ILEC to attempt to demonstrate that no impairment exists for  
20 customer locations or routes even though the Self-Provisioning Trigger has not been  
21 satisfied.

22

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

3    A.    No. As this is an exception to the self-provisioning trigger, only DS3 and Dark Fiber  
4    Services are eligible for potential deployment claims. This is confirmed by the  
5    omission of potential deployment rules in the DS1 triggers in Appendix B of the  
6    TRO. *Compare* § 51.319(e)(1).(DS1 transport) *with* 51.319(e)(2) (DS3 transport).  
7    This point should not be controversial: in Illinois, SBC recently conceded in its  
8    testimony before the Illinois Commerce Commission that neither the Self-  
9    Provisioning Trigger nor the potential deployment analysis is applicable to DS1 loops  
10   and transport. *See* SBC Illinois Ex. 1.0 PUBLIC Smith Testimony at 21-22  
11   (transports) and SBC Illinois Ex. 2.0 PUBLIC Smith Testimony at 12 (loops).

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

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

18                   *[W]hen conducting its customer location specific analysis, a*  
19                   *state must consider and may also find non impairment at a*  
20                   *particular customer location ... if the state commission finds*  
21                   *that no material economic or operational barriers at a customer*  
22                   *location preclude a competitive LEC from economically*  
23                   *deploying loop transmission facilities to that particular*  
24                   *customer location at the relevant loop capacity 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 TRIGGERS**  
4    **HAVE NOT BEEN MET?**

5    A.    The potential deployment test posits a situation that is extremely unlikely to occur.  
6    By definition, in order for the potential deployment analysis to be relevant, the self-  
7    provisioning trigger must *not* be satisfied. This means that there will be fewer than  
8    two carriers that have deployed loop facilities to a customer location or fewer than  
9    three carriers that have deployed transport facilities on a particular route.

10   Importantly, since the FCC considered actual deployment to be the best evidence of  
11   impairment or non-impairment, *TRO* ¶¶ 335, 410, the failure to satisfy the trigger is  
12   strong evidence that CLECs are impaired.

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

1 extremely unlikely to exist if the FCC triggers are applied consistent with the  
2 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 to  
8 unbundled transport and/or loops on any particular route or at any customer location,  
9 then the Commission must establish an "appropriate period for competitive LECs to  
10 transition from any unbundled [loops or transport] that the state finds should no  
11 longer be unbundled." *TRO ¶¶ 339, 417.*

12  
13 **Q. WHAT ISSUES ARE INVOLVED IN ESTABLISHING AN APPROPRIATE**  
14 **TRANSITION PERIOD?**

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

1 needed, therefore, to prevent rate shock to customers receiving service using UNE  
2 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 a  
7 state commission determines that two or more wholesale providers make their  
8 facilities widely available to other CLECs, CLECs needing loops or transport (as the  
9 case may be) will need time to consider the alternative sources of supply that are  
10 available to them and to implement the solution that best fits each CLEC's needs.  
11 One cannot assume that a CLEC will desire to transition to an ILEC-provided non-  
12 UNE service. Indeed, if the wholesale trigger is satisfied, it is because other  
13 alternatives are equally viable and presumably equally attractive to the CLEC. A  
14 transition period must build in sufficient time to enable the CLEC to make use of the  
15 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 network  
21 elements of the combination have been delisted. In the *TRO*, over ILEC objections,  
22 the FCC specifically stated that competing carriers are permitted to continue to have  
23 access to combinations of loops and transport regardless of whether one of the items

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

4  
5 **Q. HOW SHOULD TRANSITION ISSUES BE ADDRESSED?**

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

14  
15 **Q. WHAT IS YOUR RECOMMENDATION REGARDING THE MINIMUM**  
16 **COMPONENTS OF A TRANSITION PROCESS?**

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

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

6

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

8   **A.    Yes, it does.**

9

## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Direct Testimony of Gary J. Ball on behalf of the Florida Competitive Carriers Association in Docket No. 030852-TP has been provided by (\*) hand delivery, (\*\*)email and U.S. Mail this 22nd day of December 2003, to the following:

(\*)(\*\*)Adam Teitzman, Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

(\*\*) Tracy Hatch  
AT&T Communications of the  
Southern States, LLC  
101 North Monroe Street  
Suite 700  
Tallahassee, Florida 32301

(\*\*) Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

(\*\*) Michael Gross  
Florida Cable Telecommunications  
246 East 6<sup>th</sup> Avenue  
Tallahassee, Florida 32302

(\*\*) Richard Chapkis  
Verizon Florida, Inc.  
201 North Franklin Street  
MC: FLTC0717  
Tampa, Florida 33602

(\*\*) Matthew Feil  
Florida Digital Network, Inc.  
390 North Orange Avenue, Suite 2000  
Orlando, Florida 32801

(\*\*) Susan Masterton  
Sprint Communications Company  
1313 Blairstone Road  
Post Office Box 2214  
MC: FLTLHO0107  
Tallahassee, Florida 32301

(\*\*) Jeffrey J. Binder  
Allegiance Telecom, Inc.  
1919 M Street, NW  
Washington, DC 20037

(\*\*) Donna Canzano McNulty  
MCI WorldCom  
1203 Governors Square Boulevard  
Suite 201  
Tallahassee, Florida 32301

(\*\*) Floyd R. Self  
Messer, Caparello & Self  
215 South Monroe Street, Suite 701  
Tallahassee, FL 32301

(\*\*) Norman H. Horton, Jr.  
215 South Mornoe Street  
Tallahassee, Florida 32302-1876

(\*\*) Nanette Edwards  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, Alabama 35802

(\*\*) Jake E. Jennings  
Senior Vice-President  
Regulatory Affairs & Carrier Relations  
NewSouth Communications Corp.  
NewSouth Center  
Two N. Main Center  
Greenville, SC 29601

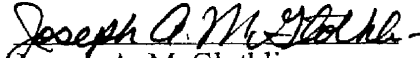


(\*\*) Jon C. Moyle, Jr.  
Moyle, Flanigan, Katz, Raymond  
& Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

(\*\*) Rand Currier  
Geoff Cookman  
Granite Telecommunications, LLC  
234 Copeland Street  
Quincy, MA

(\*\*) Andrew O. Isar  
Miller Isar, Inc.  
2901 Skansie Avenue, Suite 240  
Gig Harbor, WA 98335

(\*\*) Scott A. Kassman  
FDN Communications  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801

  
Joseph A. McGlothlin