



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 01-169
January 24, 2001

**COMMENTS SOUGHT ON THE USE OF UNBUNDLED NETWORK ELEMENTS
TO PROVIDE EXCHANGE ACCESS SERVICE
CC DOCKET NO. 96-98**

Comments Due: 30 days after publication in the Federal Register
Reply Comments Due: 45 days after publication in the Federal Register

On June 2, 2000, the Commission issued a *Supplemental Order Clarification* in the above docket that extended and clarified the temporary constraint on the ability of requesting carriers to use combinations of unbundled network elements solely to provide exchange access service.¹ The constraint requires a requesting carrier to provide a “significant amount of local exchange service” to a particular customer in order to obtain unbundled loop-transport combinations to serve that customer.² The Commission found this necessary to preserve the status quo while it examines the issues raised in the *Fourth FNPRM* in CC Docket No. 96-98 regarding the legal and policy ramifications associated with allowing requesting carriers to substitute combinations of unbundled network elements, obtained at cost-based prices, for the incumbent local exchange carriers’ (LECs) tariffed access service for customers for which the carrier does not provide any local exchange service.³

As the Commission stated, part of the inquiry that it will undertake in addressing the issues in the *Fourth FNPRM* is whether the exchange access and local exchange markets are so interrelated from an economic and technological perspective that a finding that a network element meets the “impair” standard under section 251(d)(2) of the Act for the local exchange market would itself entitle competitors to use that

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) (*Supplemental Order Clarification*).

² *Id.* at 9598-99, paras. 21-22. See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, 15 FCC Rcd 1760 (1999) (*Supplemental Order*).

³ *Supplemental Order Clarification*, 15 FCC Rcd at 9590-91, para. 5; *Supplemental Order*, 15 FCC Rcd at 1761-62, paras. 4-5 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth FNPRM, 15 FCC Rcd 3696 (1999), appeal pending (*Local Competition Third Report and Order and Fourth FNPRM*)).

network element solely or primarily in the exchange access market.⁴ The *Supplemental Order Clarification* also concluded that the Commission must take into account the market effects of the unbundling rules issued in the *Local Competition Third Report and Order* in order to evaluate whether or not carriers are impaired for special access service without access to combinations of unbundled network elements.⁵ It stated that the Commission would issue a Public Notice in early 2001 to gather evidence on these issues.⁶ Accordingly, we seek comment on the following specific questions and on any other relevant issues that will assist the Commission in determining whether combinations of unbundled network elements should be made available for the sole or primary purpose of providing exchange access service.⁷

Is the exchange access market economically and technically distinct from the local exchange market? If the markets are distinct, are requesting carriers impaired in their ability to provide special access services without access to loop-transport combinations? Specifically, we seek comment on whether, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning or acquiring an alternative from a third-party supplier, lack of access to loop-transport combinations would materially diminish a requesting carrier's ability to provide special access service.⁸ Are the same facilities that are available to interexchange carriers (IXCs) for exchange access service equally available to competitive LECs to provide local exchange service, thereby making it technically or practically difficult to differentiate between the two markets for purposes of an "impairment" analysis? One commenter stated in response to the *Fourth FNPRM* that the Commission needs to undertake two separate impairment analyses for the special access and private line markets: (1) whether IXCs are impaired in their ability to provide interexchange private line services without access to unbundled loop-transport combinations; and (2) whether competitive providers of special access and private line services are impaired without access to unbundled loop-transport combinations.⁹ We seek comment on whether this is necessary or whether it is appropriate to treat special access and private line service as a single market.

We stated in the *Local Competition Third Report and Order* that in some markets, particularly those markets serving high-volume business customers, it may be practical and economical for carriers to compete using self-provisioned facilities, but that in other markets, typically those consisting of residential and small business customers, the delay and cost associated with self-provisioning will preclude carriers from serving that market without access to unbundled network elements.¹⁰ We seek comment on the nature of the special access and private line market in terms of the types of end user customers carriers typically serve in this market. Do these customers use high capacity facilities that carriers can self-provision or obtain without being impaired in terms of cost, timeliness, quality, ubiquity and impact on network operation, or in terms of any of the other factors identified as part of the Commission's unbundling

⁴ *Supplemental Order Clarification*, 15 FCC Rcd at 9594-95, paras. 14-15 (citing 47 U.S.C. § 251(d)(2)).

⁵ *Id.* at 9596-97, paras. 16-17 (citing *Local Competition Third Report and Order*, 15 FCC Rcd at 3712, para. 21).

⁶ *Supplemental Order Clarification*, 15 FCC Rcd at 9596, para. 17.

⁷ *See id.* at 9595, para. 15.

⁸ *See Local Competition Third Report and Order*, 15 FCC Rcd at 3725, para. 51.

⁹ SBC Comments, CC Docket No. 96-98, filed Jan. 19, 2000, at n.7.

¹⁰ *Local Competition Third Report and Order*, 15 FCC Rcd at 3726, para. 54.

analysis?¹¹ Do these impairment criteria differ based on the type of facility that the customer uses (e.g. DS1 or DS3)? Given the point-to-point nature of the special access market, are alternative transport facilities ubiquitously available both to and from the specific points where requesting carriers need them? Consistent with our stated concerns regarding universal service,¹² we also seek comment on whether a permanent local usage requirement for unbundled network element combinations could impact how carriers classify end user revenue for purposes of interstate universal service contributions.

The Commission also stated in the *Supplemental Order Clarification* that it would seek comment in this Public Notice on whether requesting carriers should be permitted to combine unbundled network elements with tariffed access services that they purchase from the incumbent LECs.¹³ This practice is referred to as “co-mingling” and is currently prohibited under the terms the *Supplemental Order Clarification*.¹⁴ Specifically, if a requesting carrier converts special access circuits to combinations of unbundled network elements, we ask parties to comment on whether such circuits may remain connected to any existing access service circuits without regard to the nature of the traffic carried over the access circuits. Should incumbent LECs be required to co-mingle unbundled loops and loop-transport combinations for competitive carriers if they do so in their own networks? Does a prohibition on co-mingling force competitive carriers to operate two overlapping networks –one for local traffic and one for access traffic – even if there is spare capacity on the unconverted access circuits that could be used to carry local traffic? We also seek comment on what impact, if any, co-mingling may generally have on the Commission’s unbundling requirements.

Parties submitting comments in response to this Public Notice must file initial comments 30 days after publication of the Notice in the Federal Register and reply comments 45 days after such publication.

Ex parte presentations in this proceeding continue to be governed by the procedures set forth in Section 1.1206 of the Commission’s rules, 47 C.F.R. § 1.1206, covering “permit-but-disclose” proceedings.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

¹¹ *Id.* at 3730-50, paras. 62-116.

¹² *Supplemental Order Clarification*, 15 FCC Rcd at 9588, 9592, paras. 2, 7 (citing *Local Competition Fourth FNPRM*, 15 FCC Rcd at 3914-15, paras. 494-96).

¹³ *Supplemental Order Clarification*, 15 FCC Rcd at 9602, para. 28.

¹⁴ *Id.*

Parties who choose to file by paper must file an original and four copies of each filing with the Office of the Secretary, FCC, 445 12th Street, S.W., Suite TW-A325, Washington, D.C. 20554. In addition, parties should send two copies to Janice Myles, Common Carrier Bureau Policy and Program Planning Division, 445 12th Street, S.W., 5-C327, Washington, D.C. 20554. Comments and reply comments will be available for public inspection and copying during regular business hours in the Commission's Public Reference Center, 445 12th Street, S.W., Suite CY-A257, Washington, D.C. 20554, 202-418-0270. Copies will also be available from International Transcription Service, 445 12th Street, S.W., Suite CY-B400, Washington, D.C. 20554, or by calling 202-314-3070.

For more information, please contact Jodie Donovan-May or Tom Navin, Common Carrier Bureau Policy and Program Planning Division, 202-418-1580.