

LECs by centralizing communications and thereby facilitating the negotiation process.²⁹¹ On the other hand, it is unreasonable to expect an agent to have authority to bind the principal on every issue -- i.e., a person may reasonably be an agent of limited authority.

155. We agree with incumbent LECs and new entrants that contend that the parties should be required to provide information necessary to reach agreement.²⁹² Parties should provide information that will speed the provisioning process, and incumbent LECs must prove to the state commission, or in some instances the Commission or a court, that delay is not a motive in their conduct. Review of such requests, however, must be made on a case-by-case basis to determine whether the information requested is reasonable and necessary to resolving the issues at stake. It would be reasonable, for example, for a requesting carrier to seek and obtain cost data relevant to the negotiation, or information about the incumbent's network that is necessary to make a determination about which network elements to request to serve a particular customer.²⁹³ It would not appear to be reasonable, however, for a carrier to demand proprietary information about the incumbent's network that is not necessary for such interconnection.²⁹⁴ We conclude that an incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the negotiation process, because we conclude that such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent LEC are reasonable. We find that this is consistent with Congress's intention for parties to use the voluntary negotiation process, if possible, to reach agreements. On the other hand, the refusal of a new entrant to provide data about its own costs does not appear on its face to be unreasonable, because the negotiations are not about unbundling or leasing the new entrants' networks.

²⁹¹ For purposes of our analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the Small Business Administration as "small business concerns."

²⁹² See *National Labor Relations Board v. Truitt Mfg Co.*, 351 U.S. 149, 153 (1956) (the trier of fact can reasonably conclude that a party lacks good faith if it raises assertions about inability to pay without making the slightest effort to substantiate that claim); see also *Microwave Facilities Operating in 1850-1990 MHz (2GHz) Band*, 61 F.R. 29679, 29689 (1996).

²⁹³ See discussion of technical feasibility, *infra*, Section IV. In addition, the Commission's federal advisory committee, the Network Reliability Council, has developed templates that summarize and list activities that need to occur when service providers connect their networks pursuant to defined interconnection specifications or when they are attempting to define a new network interface specification. As consensus recommendations from the Council, we presume the elements defined in the templates are "good faith" issues for negotiation. Comments of the Secretariat of the Second Network Reliability Council at 4-5 (citing *Network Reliability: The Path Forward*, (1996), Section 2, pp. 51-56).

²⁹⁴ This is consistent with previous FCC determinations. See, e.g., *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 4 FCC Red 468, 472 (1989) (good faith negotiations necessitate that, at a minimum, one party must approach the other with a specific request).

156. We also find that incumbent LECs may not require requesting carriers to satisfy a "bona fide request" process as part of their duty to negotiate in good faith. Some of the information that incumbent LECs propose to include in a bona fide request requirement may be legitimately demanded from the requesting carrier; some of the proposed requirements, on the other hand, exceed the scope of what is necessary for the parties to reach agreement, and imposing such requirements may discourage new entry. For example, parties advocate that a "bona fide request" requirement should require requesting carriers to commit to purchase services or facilities for a specified period of time. We believe that forcing carriers to make such a commitment before critical terms, such as price, have been resolved is likely to impede new entry. Moreover, we note that section 251(c) does not impose any bona fide request requirement. In contrast, section 251(f)(1) provides that a rural telephone company is exempt from the requirements of 251(c) until, among other things, it receives a "bona fide request" for interconnection, services, or network elements. This suggests that, if Congress had intended to impose a "bona fide request" requirement on requesting carriers as part of their duty to negotiate in good faith, Congress would have made that requirement explicit.

D. Applicability of Section 252 to Preexisting Agreements

1. Background

157. Section 252(a)(1) provides that, "[u]pon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section."²⁹⁵

158. In the NPRM, we sought comment on whether sections 252(a)(1) and 252(e) require parties that have negotiated agreements for interconnection, services or network elements prior to the passage of the 1996 Act to submit such agreements to state commissions for approval. We also asked whether one party to such an existing agreement could compel renegotiation and arbitration in accordance with the procedures set forth in section 252.

2. Comments

159. In general, potential local competitors that addressed this issue argue that the plain language of section 251(a)(1) requires such agreements to be filed with the appropriate state

²⁹⁵ 47 U.S.C. § 252(a)(1). Section 252(e) provides that "(a)ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." 47 U.S.C. § 252(e).

commission for review under section 252(e).²⁹⁶ In addition, these parties assert that, pursuant to section 252(i), the terms of such agreements must be made available to other carriers.²⁹⁷ These parties claim that filing such agreements also should be required as a matter of public policy, because they provide evidence of existing interconnection terms that may provide the baseline for other negotiations,²⁹⁸ and ensure that incumbents are not favoring some carriers over others.²⁹⁹ Parties also claim that preexisting agreements will provide useful information to the states,³⁰⁰ and that states should have the ability to review preexisting agreements to ensure that they comply with the 1996 Act.³⁰¹

160. Incumbent LECs allege that the statute does not require that preexisting agreements be filed with state commissions. They contend that Congress only intended parties to file agreements negotiated pursuant to section 251.³⁰² These parties point out that section 252(a) specifically refers to requests for interconnection, services, or network elements "pursuant to section 251," and contend that an agreement reached prior to the enactment of the 1996 Act, by definition, could not have been negotiated pursuant to section 251.³⁰³ Several parties suggest that the 1996 Act only requires filing of preexisting agreements that have been amended subsequent to the enactment of the 1996 Act, or that have been incorporated by reference into agreements negotiated pursuant to section 251.³⁰⁴ Some commenters also contend that, as a policy matter, there is no reason to require filing of preexisting agreements. The California Commission asserts that requiring filing and review of preexisting agreements would be burdensome for states, and is

²⁹⁶ See, e.g., ALTS comments at 14-16; CompTel comments at 104; GST comments at 7; Jones Intercable comments at 22-23; Ohio Consumers' Counsel comments at 6; Sprint comments at 12; TCC comments at 9-10; see also Louisiana Commission comments at 8 (carriers must submit preexisting agreements upon request by the state commission).

²⁹⁷ Section 252(i) provides that a LEC "shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i).

²⁹⁸ AT&T comments at 88-90; Jones Intercable comments at 22-23.

²⁹⁹ ALTS comments at 14-16, reply at 39-41.

³⁰⁰ See, e.g., AT&T comments at 88-90.

³⁰¹ See, e.g., Arch comments at 9-10; Time Warner comments at 25.

³⁰² See, e.g., BellSouth comments at 10-11; Cincinnati Bell comments at 9-10; Home Tel. comments at 2; J. Staurulakis comments at 3; F. Williamson comments at 5.

³⁰³ See, e.g., Ameritech comments at 95-96; BellSouth comments at 10-11; NYNEX reply at 15-16 (section 251(i) also applies only to agreements approved under section 252).

³⁰⁴ See, e.g., Ameritech comments at 95-96; BellSouth comments at 10-11.

unnecessary, because many states already reviewed such agreements prior to the passage of the 1996 Act.³⁰⁵

161. A related question is whether there should be a distinction between preexisting interconnection agreements between competitors within the same service area and agreements between non-competing or neighboring LECs. Several parties contend that the 1996 Act does not exempt such agreements from the filing requirement.³⁰⁶ They also claim that it may be difficult to monitor whether parties are competing, and that, in light of the 1996 Act, parties that did not compete in the past may do so in the future.³⁰⁷ ACTA asserts that such agreements will provide the best information available on technically, economically and operationally feasible interconnection arrangements, because these agreements were reached in a noncompetitive context, where the incumbent was not striving to protect its market from competition, and therefore, as a public policy matter, they should be publicly filed.³⁰⁸ ALTS states that Wisconsin and other states have already addressed this issue and reached the same conclusion.³⁰⁹

162. Incumbent LECs argue that Congress did not contemplate that agreements between non-competing LECs would be used as models for agreements between competitors,³¹⁰ and that such agreements bear no relation to competitive interconnection agreements.³¹¹ Some parties argue that requiring preexisting agreements between noncompeting LECs would jeopardize universal service in many areas, especially where extended area service arrangements are in place.³¹² NYNEX and the Rural Telephone Coalition contend that agreements between neighboring LECs fall within the provisions of section 259, which give rural LECs that lack

³⁰⁵ California Commission comments at 33.

³⁰⁶ See, e.g., Colorado Commission comments at 50; MFS comments at 66; Michigan Commission Staff comments at 20; Ohio Consumers' Counsel comments at 34; Oregon Commission comments at 33; ALTS reply at 35; Cox reply at 38-39; WinStar reply at 18-19.

³⁰⁷ See, e.g., MFS comments at 67; Oregon Commission comments at 34; ALTS reply at 36; Cox reply at 39.

³⁰⁸ ACTA comments at 6-8; accord Cox reply at 38; WinStar reply at 19.

³⁰⁹ ALTS reply at 35-36. See, e.g., *Investigation of the Implementation of the Federal Telecommunications Act of 1996 in Wisconsin*, 05-TI-140 (Wisconsin Commission May 17, 1996); *In re Negotiated Interconnection Agreements of Telecommunications Carriers*, Docket No. 96-098-U (Arkansas Commission rel. Apr. 1, 1996).

³¹⁰ See, e.g., NYNEX comments at 27 (citing Joint Explanatory Statement at 117, 120; Cong. Rec. S7893 (daily ed. June 7, 1995) (statement of Sen. Pressler)); Rural Tel. Coalition comments at 16; SBC comments at 53; USTA comments at 68-69.

³¹¹ Cincinnati Bell comments at 9-10; MECA comments at 20-21; Texas Statewide Telephone Cooperative, Inc. reply at 8-9; U S West reply at 29-30.

³¹² Home Tel. comments at 2; J. Staurulakis comments at 3; see also USTA comments at 69.

economies of scope or scale the right to obtain or continue "infrastructure sharing" with neighboring larger LECs.³¹³

163. Several parties recommend that agreements reached before enactment of the 1996 Act should be subject to a period of renegotiation.³¹⁴ For example, Sprint contends that the passage of the 1996 Act constitutes a "changed circumstance" that would justify renegotiation of preexisting agreements.³¹⁵ Sprint proposes that parties should be required to file preexisting agreements with the state commission, but that parties should be given a six-month period to renegotiate before the terms of such agreements are made available to others under section 252(i). Intermedia Communications advocates that parties that signed long-term contracts with incumbent LECs before additional rights and competitive alternatives were available under the 1996 Act should be permitted to terminate those agreements, with minimal liability, for a period of six months after such competitive alternatives become available.³¹⁶ GST advocates that only non-incumbent LECs that are parties to an agreement should have the right to renegotiate contracts.³¹⁷ The Texas Commission states that parties should be permitted to renegotiate in the event that the state determines that the preexisting agreement violates section 252.³¹⁸

164. Some parties contend that there is no basis for renegotiation of preexisting contracts.³¹⁹ The Illinois Commission maintains that parties have a legal obligation to abide by the terms of their contracts, and the 1996 Act does not affect that obligation.³²⁰ It claims that a unilateral right to abrogate existing contracts could undo progress that has already been made to foster local competition. The Illinois Commerce Commission notes that parties may mutually agree to amend existing contracts, and that a party that already has an agreement with an incumbent may request a new agreement under section 252(i) if the interconnection, services, or

³¹³ NYNEX reply at 15; Rural Tel. Coalition reply at 12.

³¹⁴ Intermedia comments at 16; LCI comments at 24-26; Sprint comments at 12-13, reply at 13-14.

³¹⁵ Sprint comments at 12 (pre-Act agreements were entered into under a different regulatory scheme, and without contemplation by the parties that the local market might become competitive; in addition, such contracts might be inconsistent with section 251, and states should not expend resources reviewing them); *accord* Time Warner comments at 26 (the Commission should establish "fresh look" period as it has done in other cases involving changed circumstances).

³¹⁶ Intermedia comments at 16; *accord* LCI comments at 24-26.

³¹⁷ GST comments at 7.

³¹⁸ Texas Commission comments at 7-8.

³¹⁹ *See, e.g.*, Illinois Commission comments at 23-24; Louisiana Commission comments at 8; F. Williamson comments at 5.

³²⁰ Illinois Commission comments at 23-24.

access to unbundled elements it seeks are different from those encompassed in the existing agreement. Pacific Telesis asserts that requiring renegotiation and arbitration of existing agreements would waste resources and interfere with parties' settled expectations.³²¹

3. Discussion

165. We conclude that the 1996 Act requires all interconnection agreements, "including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996," to be submitted to the state commission for approval pursuant to section 252(e).³²² The 1996 Act does not exempt certain categories of agreements from this requirement. When Congress sought to exclude preexisting contracts from provisions of the new law, it did so expressly. For example, section 276(b)(3) provides that "nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996."³²³ Nothing in the legislative history leads us to a contrary conclusion. Congress intended, in enacting sections 251 and 252, to create opportunities for local telephone competition. We believe that this pro-competitive goal is best effected by subjecting all agreements to state commission review.

166. The first sentence in section 252(a)(1) refers to requests for interconnection "pursuant to section 251."³²⁴ The final sentence in section 252(a)(1) requires submission to the state commission of all negotiated agreements, including those negotiated *before* the enactment of the 1996 Act. Some parties have asserted that there is a tension between those two sentences. We conclude that the final sentence of section 252(a)(1), which requires that *any* interconnection agreement must be submitted to the state commission, can and should be read to be independent of the prior sentences in section 252(a)(1). The interpretation suggested by some commenters that preexisting contracts need only be filed if they are amended subsequent to the 1996 Act, or incorporated by reference into agreements negotiated pursuant to the 1996 Act, would force us to impose conditions that were not intended by Congress.

167. As a matter of policy, moreover, we believe that requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements, including those that

³²¹ PacTel comments at 21.

³²² 47 U.S.C. § 252(a).

³²³ 47 U.S.C. § 276(b)(3) (addressing nondiscrimination safeguards and regulations regarding payphone service).

³²⁴ 47 U.S.C. § 252(a)(1).

were negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest. In particular, preexisting agreements may include provisions that violate or are inconsistent with the pro-competitive goals of the 1996 Act, and states may elect to reject such agreements under section 252(e)(2)(A). Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i).³²⁵ In addition, we believe that having the opportunity to review existing agreements may provide state commissions and potential competitors with a starting point for determining what is "technically feasible" for interconnection.³²⁶

168. Conversely, excluding certain agreements from public disclosure could have anticompetitive consequences. For example, such contracts could include agreements not to compete. In addition, if we exempt agreements between neighboring non-competing LECs, those parties might have a disincentive to compete with each other in the future, in order to preserve the terms of their preexisting agreements. Such a result runs counter to the goal of the 1996 Act to encourage local service competition. Moreover, preserving such "non-competing" agreements could effectively insulate those parties from competition by new entrants. For example, if a new entrant seeking to provide competitive local service in a rural community is unable to obtain from a neighboring BOC interconnection or transport and termination on terms that are as favorable as those the BOC offers to the incumbent LEC in the rural area, the new entrant cannot effectively compete.³²⁷ This is because the new entrant will have to charge its subscribers higher rates than the incumbent LEC charges to place calls to subscribers of the neighboring BOC.

169. We find that section 259 does not compel us to reach a different conclusion regarding the application of section 252 to agreements between neighboring LECs.³²⁸ Section

³²⁵ See *infra*, Section XV.B.

³²⁶ See, e.g., 47 U.S.C. §§ 251(c)(2)(B) and 251(c)(3).

³²⁷ This analysis does not address the separate question of whether an incumbent LEC in a rural area must offer interconnection, resale services, or unbundled network elements. As discussed *infra*, Section XII, Congress provided rural carriers with an exemption from section 251(c) requirements until the state commission removes such exemption. 47 U.S.C. § 251(f)(1).

³²⁸ Section 259 requires the Commission to prescribe, within one year after the date of enactment of the 1996 Act, regulations that require incumbent LECs "to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier to provide telecommunications services, or to provide access to information services . . ."

259 is limited to agreements for infrastructure sharing between incumbent LECs and telecommunications carriers that lack "economies of scale or scope," as determined in accordance with regulations prescribed by the Commission.³²⁹ We conclude that the purpose and scope of section 259 differ significantly from the purpose and scope of section 251.³³⁰ Section 259 is a limited and discrete provision designed to bring the benefits of advanced infrastructure to additional subscribers, in the context of the pro-competitive goals and provisions of the 1996 Act. Moreover, section 259(b)(7) requires LECs to file with the Commission or the state "any tariffs, contracts or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure and functions under this section."³³¹ We believe that this language further supports our conclusion that Congress intended agreements between neighboring LECs to be filed and available for public inspection. Commenters also have failed to persuade us that universal service is jeopardized by our finding that agreements between neighboring LECs are subject to section 252 filing and review provisions. Concerns regarding universal service should be addressed by the Federal-State Joint Board, empaneled pursuant to section 254 of the 1996 Act.³³² The Joint Board has initiated a comprehensive review of universal service issues and is considering, among other matters, access to telecommunications and information services in rural and high cost areas.³³³ In addition, as discussed in Section XII, *infra*, the 1996 Act provides for exemptions, suspension, or modification of some of the requirements in section 251 for rural or smaller carriers.

170. Some parties have suggested that we provide parties an opportunity to renegotiate preexisting contracts. Parties, of course, may mutually agree to renegotiate agreements, but we decline to mandate that parties renegotiate existing contracts. In addition, as discussed below, commercial mobile radio service (CMRS) providers that are party to preexisting agreements with incumbent LECs that provide for non-mutual compensation have the option of renegotiating such agreements with no termination liabilities or contract penalties.³³⁴ We believe that generally requiring renegotiation of preexisting contracts is unnecessary, however, because state

47 U.S.C. § 259(a). A "qualifying carrier" is a telecommunications carrier that "lacks economies of scale or scope," and that offers telephone exchange service, exchange access, and any other service included in universal service to all consumers in the service area without preference. 47 U.S.C. § 259(d).

³²⁹ 47 U.S.C. § 259(d)(1).

³³⁰ The Commission plans to initiate a proceeding to establish regulations pursuant to section 259.

³³¹ 47 U.S.C. § 259(b)(7).

³³² *Universal Service NPRM, supra.*

³³³ See 47 U.S.C. § 251(f).

³³⁴ See *infra*, Section XI.A.

commissions will review preexisting agreements, and may reject any negotiated agreement that "discriminates against a telecommunications carrier not a party to the agreement," or that "is not consistent with the public interest, convenience, and necessity."³³⁵ We recognize that preexisting agreements were negotiated under very different circumstances, and may not provide a reasonable basis for interconnection agreements under the 1996 Act. For example, non-competing neighboring LECs may have negotiated terms that simply are not viable in a competitive market. It would not foster efficient long-term competition to force parties to make available to all requesting carriers interconnection on terms not sustainable in a competitive environment. In such circumstances, a state commission would have authority to reject a preexisting agreement as inconsistent with the public interest. If a state commission approves a preexisting agreement, that agreement will be available to other parties in accordance with section 252(i). Contrary to NYNEX's assertion, once a state approves an agreement under section 252(e), that agreement is "approved under" section 252.

171. We decline to require immediate filing of pre-existing agreements. States should establish procedures and reasonable time frames for requiring filing of preexisting agreements in a timely manner. We leave these procedures largely in the hands of the states in order to ensure that we do not impair some states' ability to carry out their other duties under the 1996 Act, especially if a large number of such agreements must be filed and approved by the state commission. We believe, nevertheless, that we should set an outer time period to file with the appropriate state commission agreements that Class A carriers have with other Class A carriers that pre-date the 1996 Act.³³⁶ We conclude that setting such a time limit will ensure that third parties are not prevented indefinitely from reviewing and taking advantage of the terms of preexisting agreements. We are concerned, however, about the burden that a national filing deadline might impose on small telephone companies that have preexisting agreements with Class A carriers or with other small carriers.³³⁷ We therefore limit the filing deadline requirement to preexisting agreements between Class A carriers. We encourage all carriers to file preexisting contracts with the appropriate state commission no later than June 30, 1997, but impose this as a *requirement* only with respect to agreements between Class A carriers. We find that requiring preexisting agreements between Class A carriers to be filed no later than June 30, 1997 is unlikely to burden state commissions unduly, and will give parties a reasonable opportunity to renegotiate agreements if they so choose, while at the same time, establishing this outer time limit ensures that third parties will have access to the terms of such agreements, under section 252(i), within a reasonable period. We expect to have completed proceedings on

³³⁵ 47 U.S.C. § 252(e)(2)(A).

³³⁶ Class A companies are defined as companies "having annual revenues from regulated telecommunications operations of \$100,000,000 or more." 47 C.F.R. § 32.11(a)(1).

³³⁷ See Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

universal service and access charges by this filing deadline. States may impose a shorter time period for filing preexisting agreements.

IV. INTERCONNECTION

172. This section of the Report and Order, and the three sections that follow it, address the interconnection and unbundling obligations that the Act imposes on incumbent LECs. Beyond the resale of incumbent LEC services, it is these obligations that pave the way for the introduction of facilities-based competition with incumbent LECs. The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic. The unbundling obligation of section 251(c)(3) further permits new entrants, where economically efficient, to substitute incumbent LEC facilities for some or all of the facilities the new entrant would have had to obtain in order to compete. Finally, both the interconnection and unbundling sections of the Act, in combination with the collocation obligation imposed on incumbents by section 251(c)(6), allow competing carriers to choose technically feasible methods of achieving interconnection or access to unbundled elements.

173. Section 251(c)(2) imposes upon incumbent LECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."³³⁸ Such interconnection must be: (1) provided by the incumbent LEC at "any technically feasible point within [its] network;"³³⁹ (2) "at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the carrier provides interconnection,"³⁴⁰ and (3) provided on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."³⁴¹

A. Relationship Between Interconnection and Transport and Termination

1. Background

174. In the NPRM, we sought comment on the relationship between the obligation of incumbent LECs to provide "interconnection" under section 251(c)(2) and the obligation of all LECs to establish reciprocal compensation arrangements for the "transport and termination" of telecommunications pursuant to section 251(b)(5). We stated that the term "interconnection"

³³⁸ 47 U.S.C. § 251(c)(2)(A).

³³⁹ 47 U.S.C. § 251(c)(2)(B).

³⁴⁰ 47 U.S.C. § 251(c)(2)(C).

³⁴¹ 47 U.S.C. § 251(c)(2)(D).

might refer only to the physical linking of two networks or to both the linking of facilities and the transport and termination of traffic. We noted in the NPRM that section 252(d) sets forth different pricing standards for interconnection and transport and termination.

2. Comments

175. The BOCs, several state commissions, and other parties argue that a plain reading of section 251(c)(2) requires a determination that interconnection refers only to the physical linking of facilities.³⁴² In contrast, the IXCs and several other parties claim that interconnection includes both the physical connection of the facilities and the transmission and termination of traffic across that link.³⁴³ CompTel contends that it would make no sense for Congress to require an incumbent LEC to engage in a physical linking with another network without requiring the incumbent LEC to route and terminate traffic from the other network.³⁴⁴ Several parties claim that there is no inherent contradiction between the pricing standard in section 252(d)(1) for interconnection³⁴⁵ and section 252(d)(2) for transport and termination³⁴⁶ because, to the extent that section 252(d)(2) allows for the mutual and reciprocal recovery of each carrier's costs, the recovery could be interpreted to mean total service long run incremental cost (TSLRIC) (including a reasonable profit) plus a reasonable contribution to joint and common costs, which is consistent with section 252(d)(1).³⁴⁷

³⁴² See, e.g., Bell Atlantic comments at 20-21; BellSouth comments at 15; USTA comments at 9-10 (no useful purpose served by introducing ambiguity into the pricing standards that apply to the separate provisions); U S West comments at 11-12; GTE comments at 17-18 (interconnection denotes links between an incumbent LEC's network and a competitor's network while transport and termination refers to the transmission of a call from the point of interconnection to the called party); Florida Commission comments at 13; Illinois Commission comments at 29; New York Commission comments at 31; MFS comments at 15; Sprint comments at 13.

³⁴³ See, e.g., CompTel comments at 66-67; LDDS comments at 76; Texas Commission comments at 10; ACSI comments at 11.

³⁴⁴ CompTel comments at 66-67.

³⁴⁵ Section 252(d)(1) states that determinations by a state commission of the just and reasonable rate for interconnection pursuant to section 251(c)(2) and network elements pursuant to section 251(c)(3) shall be: (1) based on the cost determined without reference to a rate-of-return proceeding; (2) nondiscriminatory; and (3) may include a reasonable profit. 47 U.S.C. § 252(d)(1).

³⁴⁶ Section 252(d)(2) states that, in connection with an incumbent LEC's compliance with section 251(b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless: (1) the terms and conditions provide for mutual and reciprocal recovery of costs associated with the transport and termination of calls that originate on the network of another carrier; and, (2) such terms and conditions are a reasonable approximation of the additional costs of terminating such calls. Section 252(d)(2) explicitly states that bill-and-keep arrangements are not precluded under section 252(d)(2) and neither the Commission nor the states are authorized to establish rate regulation proceedings to establish the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls. 47 U.S.C. § 252(d)(2).

³⁴⁷ ACSI comments at 11; Texas Public Utility Counsel comments at 1, 50; Texas Commission comments at 10.

3. Discussion

176. We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish "reciprocal compensation arrangements for the transport and termination of telecommunications," under section 251(b)(5).³⁴⁸ In addition, in setting the pricing standard for section 251(c)(2) interconnection, section 252(d)(1) states it applies when state commissions make determinations "of the just and reasonable rate for interconnection of *facilities and equipment* for purposes of subsection (c)(2) of section 251."³⁴⁹ Because section 251(d)(1) states that it only applies to the interconnection of "facilities and equipment," if we were to interpret section 251(c)(2) to refer to transport and termination of traffic as well as the physical linking of equipment and facilities, it would still be necessary to find a pricing standard for the transport and termination of traffic apart from section 252(d)(1). We also reject CompTel's argument that reading section 251(c)(2) to refer only to the physical linking of networks implies that incumbent LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5). We note that because interconnection refers to the physical linking of two networks, and not the transport and termination of traffic, access charges are not affected by our rules implementing section 251(c)(2).

B. National Interconnection Rules

1. Background

177. In the NPRM, we tentatively concluded that national interconnection rules would facilitate swift entry by competitors in multiple states by eliminating the need to comply with a multiplicity of state variations in technical and procedural requirements.³⁵⁰ We sought comment on this tentative conclusion.

2. Comments

178. Parties raise many of the same arguments discussed above, in section II.A., regarding the advantages and disadvantages of explicit national rules for interconnection. IXCs, CAPs, cable operators, and others claim that national rules could prevent incumbent LECs from

³⁴⁸ 47 U.S.C. § 251(b)(5).

³⁴⁹ 47 U.S.C. § 251(d)(1) (emphasis added).

³⁵⁰ NPRM at paras. 50-51.

erecting artificial barriers to entry,³⁵¹ facilitate comprehensive business and network planning,³⁵² equalize bargaining power,³⁵³ and expedite and simplify negotiations.³⁵⁴ Other parties, including several BOCs and state commissions, argue that national rules should only be established for core requirements and should allow for state variations.³⁵⁵ Some parties contend, for example, that the pace of technological change makes it impossible to create immutable and uniform interconnection rules.³⁵⁶ SBC and PacTel claim that industry standards already exist for interconnection and that national standards would preclude the deployment of new technologies.³⁵⁷ PacTel also claims that Commission rules requiring untested interconnection methodologies may slow competitive entry.³⁵⁸

3. Discussion

179. As discussed more fully above, we conclude that national rules regarding interconnection pursuant to section 251(c)(2) are necessary to further Congress's goal of creating conditions that will facilitate the development of competition in the telephone exchange market.³⁵⁹ Uniform rules will permit all carriers, including small entities and small incumbent LECs, to plan regional or national networks using the same interconnection points in similar networks nationwide. Uniform rules will also guarantee consistent, minimum nondiscrimination safeguards and "equal in quality" standards in every state. Such rules will also avoid relitigating, in multiple states, the issue of whether interconnection at a particular point is technically feasible.

³⁵¹ See MFS comments at 14; Teleport comments at 22; CompTel comments at 21; Ad Hoc Telecommunications Users Committee comments at 5; ACTA comments at 10; ACSI comments at 10; MCI reply at 24.

³⁵² See ACTA comments at 10; Vanguard comments at 10; Omnipoint comments at 17-18; NTIA reply at 3.

³⁵³ See Teleport comments at 17; Kansas Commission comments at 5; AT&T reply at 9; MCI reply at 24; Time Warner reply at 6-7.

³⁵⁴ See Intermedia comments at 3; Teleport reply at 8.

³⁵⁵ See, e.g., Ameritech comments at 11; BellSouth comments at 13-14; Bell Atlantic reply at 6-7; GTE reply at 9; Lincoln Tel. comments at 3; California Commission comments at 16; Illinois Commission comments at 25; New York Commission comments at 33; Texas Commission comments at 8; TCA comments at 4; Texas Tel. Ass'n comments at 1; F. Williamson comments at 7.

³⁵⁶ See Ad Hoc Telecommunications Users Committee comments at 2; Citizens Utilities comments at 6-7; Rural Tel. Coalition comments at 31; Pennsylvania Commission reply at 23.

³⁵⁷ SBC comments at 33; PacTel comments at 24, 28.

³⁵⁸ PacTel comments at 23-24.

³⁵⁹ See *supra*, Section II.A.

180. We believe, however, that inflexible or overly detailed national rules implementing section 251(c)(2) may inhibit the ability of the states or the parties to reach arrangements that reflect technological and market advances and regional differences. We also believe that, on several issues, the record is not adequate at this time to justify the establishment of national rules. Therefore, as required by section 251(d)(3) and as discussed in section II.C. above, our rules will permit states to go beyond the national rules discussed below, and impose additional procompetitive interconnection requirements, as long as such requirements are otherwise consistent with the 1996 Act and the Commission's regulations. We believe that we can benefit from state experience in our ongoing review of these issues.

C. Interconnection for the Transmission and Routing of Telephone Exchange Service and Exchange Access

1. Background

181. Section 251(c)(2) imposes a duty upon incumbent LECs to provide "interconnection with the [LEC's] network . . . for the transmission and routing of telephone exchange service and exchange access."³⁶⁰ In the NPRM, we sought comment on whether a carrier could request interconnection pursuant to subsection (c)(2) for purposes of transmitting and routing telephone exchange service, exchange access, or both, or whether this provision requires that such a request be solely for purposes of providing *both* telephone exchange service and exchange access.³⁶¹

2. Comments

182. The BOCs and several other parties state that a telecommunications carrier should not be able to request cost-based interconnection under section 251(c)(2) solely for the purpose of offering access services. They argue that a carrier requesting interconnection solely under section 251(c)(2) must use that interconnection for the transmission and routing of both telephone exchange service *and* exchange access.³⁶² USTA concurs, and suggests that competitive access providers (CAPs) will not be harmed because, if CAPs wish to provide only exchange access, they are fully protected by the Commission's *Expanded Interconnection* rules.³⁶³

³⁶⁰ 47 U.S.C. § 251(c)(2).

³⁶¹ NPRM at para. 162.

³⁶² See, e.g., USTA comments at 62-64 (requiring both is in keeping with the Act's purpose of encouraging facilities-based competition); Ameritech comments at 17-19 (nothing in the Act or the legislative history indicates that Congress was concerned about exchange access service per se); Bell Atlantic comments at 8; BellSouth comments at 61; GTE comments at 75; Ohio Consumers' Counsel comments at 32.

³⁶³ USTA comments at 65.

183. IXCs and the DOJ argue that carriers should be able to request cost-based interconnection under section 251(c)(2) solely for the purpose of offering access services. The IXCs claim that, in view of congressional intent not to limit entry into the local telecommunications market, the statute should be read to permit telecommunications carriers to provide either local exchange service, exchange access, or both.³⁶⁴ DOJ and CompTel contend that permitting the use of section 251(c)(2) interconnection to provide competitive exchange access is not inconsistent with section 251(g)³⁶⁵ because section 251(g) only preserves the rights of IXCs to equal access under the Commission's preexisting rules until such time that the Commission adopts new requirements. They argue that section 251(g) was not intended to limit the provision of exchange access by new entrants.³⁶⁶ AT&T argues that, by requiring incumbent LECs to provide interconnection for the transmission and routing of telephone exchange access, Congress used the word "and" to make clear that incumbent LECs must make interconnection available for purposes of allowing new entrants to provide local exchange *and* exchange access, and thereby prevent incumbent LECs from claiming that, as long as they offered interconnection for at least one of these two purposes, they had met the requirement in section 251(c)(2).³⁶⁷

3. Discussion

184. We conclude that the phrase "telephone exchange service and exchange access" imposes at least three obligations on incumbent LECs: an incumbent must provide interconnection for purposes of transmitting and routing telephone exchange traffic or exchange access traffic or both. We believe that this interpretation is consistent with both the language of the statute and Congress's intent to foster entry by competitive providers into the local exchange market.³⁶⁸ Moreover, the term "local exchange carrier" is defined in the Act as "any person that

³⁶⁴ See, e.g., CompTel reply at 26, 33; AT&T reply at 24 n.40; Sprint comments at 68 n.38; DoJ comments at 44, 52; PageNet comments at 15-16 (the word "and" in the context of legislative history can be read alternatively as "and" or "or", depending on congressional intent).

³⁶⁵ Section 251(g) states that each LEC "shall provide exchange access, information access, and exchange services for such access to [IXCs] and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation)" that apply prior to enactment of the 1996 Act. Section 251(g) also states that these rules shall remain in effect until the Commission "explicitly supersede[s]" them. 47 U.S.C. § 251(g).

³⁶⁶ DoJ comments at 53 n.26; CompTel reply at 28.

³⁶⁷ AT&T reply at 24 n.40.

³⁶⁸ As the U.S. Court of Appeals for the Fifth Circuit stated in *Peacock v. Lubbock Compress Company*, "the word 'and' is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings." The court held that "[i]n the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, Courts are often compelled to construe 'or' as meaning 'and,' and again 'and' as meaning 'or.'" *Peacock v. Lubbock Compress Company*, 252 F.2d 892, 893 (5th Cir. 1958) (citing *United States v. Fisk*, 70 U.S. 445, 448).

is engaged in the provision of telephone exchange service *or* exchange access."³⁶⁹ Thus, we believe that Congress intended to facilitate entry by carriers offering either service. In imposing an interconnection requirement under section 251(c)(2) to facilitate such entry, however, we believe that Congress did not want to deter entry by entities that seek to offer either service, or both, and, as a result, section 251(c)(2) requires incumbent LECs to interconnect with carriers providing "telephone exchange service *and* exchange access."³⁷⁰ Congress made clear that incumbent LECs must provide interconnection to carriers that seek to offer telephone exchange service *and* to carriers that seek to offer exchange access. This interpretation is consistent with section 251(c)(2), which imposes an obligation on incumbent LECs, but not requesting carriers.³⁷¹ Thus, for example, an analogous requirement might be that incumbent LECs must provide interconnection for the transmission and routing of "electrical and optical signals." Such a hypothetical requirement could not rationally be read to obligate *requesting carriers* to provide both electrical and optical signals.³⁷²

185. We also conclude that requiring new entrants to make available both local exchange service and exchange access as a prerequisite to obtaining interconnection to the incumbent LEC's network under subsection (c)(2) would unduly restrict potential competitors. For example, CAPs often enter the telecommunications market as exchange access providers prior to offering telephone exchange services. Further, applying separate regulatory regimes (*i.e.*, section 251 related-rules for providers of telephone exchange and exchange access services and section 201 related-rules for providers of only exchange access services) with divergent requirements to parties using essentially the same equipment to transmit and route traffic, is undesirable in light of the new procompetitive paradigm created by section 251.³⁷³ We see no convincing justification for treating providers of exchange access services that offer telephone exchange services differently from access providers who do not offer telephone exchange services. We therefore conclude that parties offering only exchange access are permitted to seek interconnection pursuant to section 251(c)(2).

³⁶⁹ 47 U.S.C. § 153(26) (emphasis added).

³⁷⁰ 47 U.S.C. § 251(c)(2) (emphasis added).

³⁷¹ Where Congress intended to impose obligations on requesting carriers in section 251(c), it did so expressly. For example, section 251(c)(1) includes a specific and separate requirement on requesting carriers to negotiate in good faith. 47 U.S.C. § 251(c)(1).

³⁷² One definition of the word "and" is "as well as." Random House College Dictionary 50 (rev. ed. 1984). Under this definition, the provision can be read, and we believe should be read, to require LECs to provide interconnection for the transmission and routing of telephone exchange service as well as exchange access.

³⁷³ See *infra*, Section VI.B.2.a. for a discussion of the relationship between *Expanded Interconnection* tariffs and section 251. Competitive access providers use the same equipment in essentially the same manner as other providers of both telephone exchange and exchange access services.

D. Interexchange Service is Not Telephone Exchange Service or Exchange Access**1. Background**

186. Sections 251(c)(2) and 251(c)(3) impose duties upon incumbent LECs to provide interconnection and nondiscriminatory access to unbundled network elements to "any requesting telecommunications carrier."³⁷⁴ In the NPRM, we tentatively concluded that carriers providing interexchange services are "telecommunications carriers" and thus may seek interconnection and unbundled elements under subsections (c)(2) and (c)(3). We also tentatively concluded, however, that with respect to section 251(c)(2), the statute imposes limits on the purposes for which any telecommunications carrier, including IXCs, may request interconnection pursuant to that section. Section 251(c)(2) imposes an obligation upon incumbent LECs to provide requesting carriers with interconnection if the purpose of the interconnection is for the "transmission and routing of telephone exchange service and exchange access."³⁷⁵ We tentatively concluded in the NPRM that interexchange service does not appear to constitute either "telephone exchange service" or "exchange access." "Exchange access" is defined in section 3(16) as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."³⁷⁶ We stated that an IXC that requests interconnection to originate or terminate an interexchange toll call is not "offering" access services, but rather is "receiving" access services.

2. Comments

187. DOJ and the Illinois Commission agree with the Commission's tentative conclusion that IXCs may obtain interconnection pursuant to 251(c)(2) to provide exchange service and exchange access.³⁷⁷ DOJ states that this would permit IXCs to participate fully in the provision of local exchange and exchange access services.³⁷⁸

188. Many parties, including several incumbent LECs and DOJ, agree with the Commission's tentative conclusion in the NPRM that carriers are not permitted to receive interconnection pursuant to 251(c)(2) solely for the purpose of originating or terminating

³⁷⁴ 47 U.S.C. §§ 251(c)(2) and (c)(3).

³⁷⁵ 47 U.S.C. § 251(c)(2)(A).

³⁷⁶ 47 U.S.C. § 153(16).

³⁷⁷ DoJ comments at 42-43; Illinois Commission comments at 48-49.

³⁷⁸ DoJ comments at 42-43.

interexchange traffic.³⁷⁹ Several parties contend that, although IXCs are telecommunications carriers under the 1996 Act, they provide neither "exchange service" nor "exchange access" when they offer only long distance service to their customers.³⁸⁰ Some commenters assert that an IXC requesting interconnection to originate or terminate a toll call would be receiving access services, not offering them, and thus would not fall within the definition of exchange access.³⁸¹ Parties also claim that permitting interconnection for this purpose would conflict with the plain meaning of sections 251(i)³⁸² and (g).³⁸³ USTA argues that section 251(g) requires LECs to continue to provide exchange access service to IXCs under the Commission's existing rules. USTA claims that if Congress had intended to change the access charge regime within the timeframe for implementing section 251, it would not have granted the Joint Board, created under section 254, nine months to make recommendations to the Commission.³⁸⁴ Several parties also argue that the legislative history supports the conclusion that section 251 was not designed to permit IXCs to avoid application of our current access charge rules.³⁸⁵ Other carriers claim that permitting interconnection pursuant to section 251(c)(2) to allow parties avoid access charges would be unwise from a policy perspective, because it would divest the Commission of jurisdiction over

³⁷⁹ See, e.g., BellSouth comments at 60-61; NYNEX comments at 5; GTE comments at 75; DoJ comments at 42; California Commission comments at 34; Bell Atlantic reply at 4-5; PacTel reply at 36; Rural Tel. Coalition reply at 8; NYNEX reply at 7 (it is not a question of the type of party that is applying for interconnection but rather the purpose for which the interconnection is being sought).

³⁸⁰ DoJ comments at 42; USTA reply at 5; BellSouth reply at 45. NYNEX argues that, although some parties contend that section 251(c)(2)(A) refers to the services that the incumbent LEC provides rather than the services the requesting carrier seeks, this is contrary to the most natural reading of the language of the statute and is inconsistent with the legislative history, which makes clear that the section was intended to apply to interconnection between LECs. NYNEX reply at 7-8.

³⁸¹ See, e.g., DoJ comments at 42; USTA reply at 5; BellSouth reply at 45; PacTel reply at 36; Sprint reply at 33; Rural Tel. Coalition reply at 8.

³⁸² See, e.g., USTA comments at 61; Bell Atlantic comments at 9; NYNEX comments at 12-13; NYNEX reply at 9-10; Rural Tel. Coalition reply at 9.

³⁸³ See, e.g., USTA comments at 61; NYNEX comments at 13; Bell Atlantic comments at 9; GTE comments at 75; Citizens Utilities comments at 22; Rural Tel. Coalition reply at 10. GTE argues that if, as some parties claim, section 251(g) preserves the Commission's access charge regime only until the Commission adopts new rules under section 251(d), this renders section 251(g) unnecessary because the need to preserve those rules does not arise until the new section 251(d) rules are implemented. GTE reply at 39. Also, GTE claims that interpreting section 251(g) as maintaining only the existing equal access and nondiscrimination requirements of the MFJ, GTE Decree, and the Commission's rules overlooks the fact that section 251(g) explicitly preserves rules regarding "receipt of compensation" for such access. *Id.*

³⁸⁴ USTA comments at 61.

³⁸⁵ See, e.g., NECA comments at 4-5; PacTel reply at 36; Rural Tel. Coalition reply at 9-10 (the Joint Explanatory Statement (p. 123) evinces Congress's intent to preserve the Commission's access charge regime and authority over interstate access).

the rates for interstate exchange access services,³⁸⁶ and would preempt state pricing regulations that were the result of years of consideration.³⁸⁷

189. IXCs and others argue that section 251(c)(2) permits carriers to obtain interconnection solely for the purpose of originating and terminating interexchange traffic.³⁸⁸ CompTel claims that IXCs satisfy the "offering" requirement when they offer and provide exchange access as an integral part of long distance service to the end-user subscribers.³⁸⁹ Cable and Wireless claims that section 251(i) merely preserves the Commission's authority under section 201(a), which requires carriers to establish physical connection with each other in compliance with the Commission's rules.³⁹⁰ ALTS argues that any erosion of access revenues that might occur as a result of the IXCs' migration to section 251 interconnection arrangements would not occur so rapidly as to affect incumbent LECs materially before the Commission completes its reform of the universal service subsidy flows.³⁹¹ CompTel suggests an interim plan that would permit incumbent LECs to charge non-cost-based rates for access until the Commission completes access charge reform, but would declare that until that time, incumbent LECs would be deemed not to have met the section 271 checklist for providing in-region interexchange service.³⁹² Excel claims that it would be unlawful under section 202(a) for an IXC to pay charges for local network connections that are substantially higher than the charges paid by other users of the same network services.³⁹³ Finally, CompTel and MCI argue that the

³⁸⁶ Ameritech comments at 21; Bell Atlantic comments at 10; NYNEX comments at 78; PacTel reply at 36; Rural Tel. Coalition reply at 8.

³⁸⁷ NYNEX comments at 19; NECA comments at 2-4.

³⁸⁸ See, e.g., AT&T reply at 23; MCI reply at 20-22; CompTel reply at 25-26; American Petroleum Institute comments at 3-13; ALTS comments at 46; Cable & Wireless comments at 28; Citizens Utilities comments at 21; Excel comments at 3 (use restrictions will hinder competition).

³⁸⁹ CompTel comments at 51-52. CompTel claims that by writing a broader "offering" requirement into the statute, the FCC would limit interconnection under section 251(c)(2) to LECs, and not "telecommunications carriers" as Congress intended. CompTel also claims that there is no feasible interpretation that would prevent IXCs, regardless of whether they "offer" exchange access, from obtaining stand-alone exchange access indirectly through co-carrier interconnection arrangements under section 251(c)(2). CompTel reply at 31-32. Cable & Wireless claims that the canons of statutory construction preclude a reading of the Act that holds that Congress provided all telecommunications providers with the ability to purchase access to unbundled elements for telecommunications services, but forbade them from interconnecting to the network in order to utilize unbundled elements for all telecommunications services. Cable & Wireless comments at 29.

³⁹⁰ Cable & Wireless comments at 31.

³⁹¹ ALTS comments at 46; Citizens Utilities comments at 21; MCI reply at 21 (the loss of access charge revenues for incumbent LECs due to the Act cannot be used to deny the full benefits of section 251 to IXCs).

³⁹² CompTel comments at 81-87.

³⁹³ Excel comments at 4-5.

legislative history of section 251 supports the conclusion that IXCs are permitted to obtain interconnection pursuant to section 251.³⁹⁴

3. Discussion

190. We conclude that IXCs are telecommunications carriers³⁹⁵ under the 1996 Act, because they provide telecommunications services³⁹⁶ (*i.e.*, "offer telecommunications for a fee directly to the public") by originating or terminating interexchange traffic. IXCs are permitted under the statute to obtain interconnection pursuant to section 251(c)(2) for the "transmission and routing of telephone exchange service and exchange access."³⁹⁷ Moreover, traditional IXCs are a significant potential new local competitor and we conclude that denying them the right to obtain section 251(c)(2) interconnection lacks any legal or policy justification. Thus, all carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (*i.e.*, non-interexchange calls).

191. We conclude, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its *interexchange* traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2).³⁹⁸ Section 251(c)(2) states that incumbent LECs have a duty to interconnect with telecommunications providers "for the transmission and routing of telephone exchange service and exchange access."³⁹⁹ A

³⁹⁴ CompTel reply at 32 (although the Senate bill, S.652, expressly required requesting carriers to obtain interconnection for the purpose of providing exchange access service, Congress rewrote that provision in conference to remove the requirement that carriers obtain interconnection for the purpose of providing exchange access); MCI reply at 21 (arguments based on provisions in unenacted drafts of the Act excluding access from the local interconnection provisions are rebutted by the fact that both the House and Senate bills included provisions mandating cost-based access rates in other sections).

³⁹⁵ 47 U.S.C. § 153(44).

³⁹⁶ 47 U.S.C. § 153(46).

³⁹⁷ 47 U.S.C. § 251(c)(2).

³⁹⁸ As stated above, interconnection pursuant to section 251(c)(2) is merely the physical linking of facilities between two networks, and thus access charges are not implicated by the Commission's decisions regarding whether parties who seek to interconnect solely for the purpose of originating or terminating interexchange traffic on the incumbent's network are entitled to obtain interconnection pursuant to section 251(c)(2). *See supra*, Section IV.A.

³⁹⁹ Section 153(47) defines telephone exchange service as "(A) service within a telephone exchange, or within a connected system of [] exchanges within the same exchange area operated to furnish . . . intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities . . ." 47 U.S.C. § 153(47). Section 153(16) states that exchange access means "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47

telecommunications carrier seeking interconnection only for interexchange services is not within the scope of this statutory language because it is not seeking interconnection for the purpose of providing telephone exchange service. Nor does a carrier seeking interconnection of interstate traffic only – for the purpose of providing interstate services only – fall within the scope of the phrase "exchange access." Such a would-be interconnector is not "offering" access to telephone exchange services. As we stated in the NPRM, an IXC that seeks to interconnect solely for the purpose of originating or terminating its own interexchange traffic is not offering access, but rather is only obtaining access for its own traffic. Thus, we disagree with CompTel's position that IXCs are offering exchange access when they offer and provide exchange access as a part of long distance service. We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service, if it does not offer exchange access services to others. As we stated above, however, providers of competitive access services are eligible to receive interconnection pursuant to section 251(c)(2). Thus, traditional IXCs that offer access services in competition with an incumbent LEC (*i.e.*, IXCs that offer access services to other carriers as well as to themselves) are also eligible to obtain interconnection pursuant to section 251(c)(2). For example, when an IXC interconnects at a local switch, bypassing the incumbent LECs' transport network, that IXC may offer access to the local switch in competition with the incumbent. In such a situation, the interconnection point may be considered a section 251(c)(2) interconnection point.

E. Definition of "Technically Feasible"

1. Background

192. In addition to specifying the purposes for which carriers may request interconnection, section 251(c)(2) obligates incumbent LECs to provide interconnection within their networks at any "technically feasible point."⁴⁰⁰ Similarly, section 251(c)(3) obligates incumbent LECs to provide access to unbundled elements at any "technically feasible point." Thus our interpretation of the term "technically feasible" applies to both sections.

193. In the NPRM, we sought comment on a "dynamic" definition of "technically feasible" that would provide flexibility for negotiating parties and the states in determining interconnection and unbundling points as network technology evolves.⁴⁰¹ We requested

U.S.C. § 153(16).

⁴⁰⁰ 47 U.S.C. § 251(c)(2)(B).

⁴⁰¹ NPRM at paras.56-59, 87-88.

comment on the extent to which network reliability concerns should be included in a technical feasibility analysis, and tentatively concluded that, if such concerns were involved, the incumbent LEC had the burden to support such a claim with detailed information.⁴⁰² We also sought comment on the role of other considerations, such as economic burden, in determining technical feasibility under sections 251(c)(2) and 251(c)(3).⁴⁰³

194. We also tentatively concluded that interconnection or access at a particular point in one LEC network evidences the technical feasibility of providing the same or similar interconnection or access in another, similarly structured LEC network.⁴⁰⁴ Finally, we tentatively concluded that incumbent LECs have the burden of proving the technical infeasibility of providing interconnection or access at a particular point.⁴⁰⁵

2. Comments

195. Commenters offer a wide range of interpretations of the term "technically feasible." Many commenters urge the Commission to offer only broad guidelines with respect to technical feasibility and allow the parties and the states to determine the details.⁴⁰⁶ Most BOCs and other LECs argue that "technically feasible" does not mean technically possible or imaginable, and that other factors should be considered in determining what points are technically feasible.⁴⁰⁷ Other factors offered by the commenters include cost, network reliability and security, space limitations, the existence of operations support systems, quality of service provided, interoperability, field trials, performance standards, industry standards, the need for construction of new facilities, and inherent fairness.⁴⁰⁸ USTA, SBC, and others allege that previous

⁴⁰² *Id.* at paras. 56, 88.

⁴⁰³ *Id.* at paras. 56-59, 87-88.

⁴⁰⁴ *Id.* at paras. 57, 87.

⁴⁰⁵ *Id.* at paras. 58, 87.

⁴⁰⁶ *See, e.g.*, USTA comments at 11; Bell Atlantic comments at 15; U S West comments at 44; BellSouth reply at 18; California Commission comments at 19; Texas Commission comments at 11; Citizens Utilities comments at 8 (parties are in the best position to determine the technical requirements and abilities).

⁴⁰⁷ *See, e.g.*, SBC comments at 25; BellSouth comments at 16; USTA comments at 11; U S West reply at 22.

⁴⁰⁸ *See, e.g.*, NYNEX comments at 65-66; SBC reply at 17; Ameritech comments at 16; ALLTEL comments at 7-8; Roseville Tel. comments at 5-6; U S West reply at 22; Lincoln Tel. reply at 3; *see also* USTA comments at 10-12; Florida Commission comments at 13-14; DoD comments at 6 (network reliability must be considered in technical feasibility). GVNW believes that interconnection is technically feasible if: (1) the interconnection point is a normal LEC access point for provisioning of service to its customers; (2) the LEC maintains assignment records for the point; (3) LEC personnel access facilities at the point for interconnecting other LEC facilities; (4) cross-connecting the facility at the point does not expose the network to undue damage; and (5) the LEC and requesting carriers can demonstrate the technical proficiency of personnel assigned to work at the interconnect point. GVNW comments at

Commission orders have considered economic issues in technical feasibility analyses.⁴⁰⁹ GVNW argues that small LECs should not be required to unbundle if it is economically unreasonable.⁴¹⁰ The Rural Telephone Coalition contends that the Commission should recognize the differences between small and large operations, high-volume and low-volume local networks, and urban and rural carriers and networks.⁴¹¹ USTA also suggests that the statute only requires incumbent LECs to provide interconnection to their networks as they are configured presently and that it does not require incumbent LECs to take risky or unreasonable steps to construct new facilities or reconfigure their networks in response to competitor requests.⁴¹²

196. Many potential competitors argue that the definition of "technical feasibility" should be extremely broad and dynamic, to encompass the effects of future technical changes.⁴¹³ Sprint contends that the Commission should use the plain meaning of the word "feasible" in defining technical feasibility. Sprint states that Webster's Dictionary defines "feasible" as "possible of realization" and any more restrictive reading would unduly restrict the availability of interconnection.⁴¹⁴ Many parties contend that incumbent LECs should have the burden of proving specific points are not technically feasible.⁴¹⁵ Time Warner claims that any point should be presumptively technically feasible and those claiming technical infeasibility should bear the burden of proof.⁴¹⁶ AT&T argues that existing industry standards for interconnection at a point

18-19.

⁴⁰⁹ See, e.g., USTA comments at 12 n.16; SBC comments at 16.

⁴¹⁰ GVNW comments at 21-22.

⁴¹¹ Rural Tel. Coalition comments at 31.

⁴¹² See, e.g., USTA comments at 11; BellSouth comments at 16; SBC comments at 25; Lincoln Tel. reply at 3; Roseville Tel. comments at 5-6; Office of the Ohio Consumers' Counsel comments at 10; ALLTEL reply at 5-6.

⁴¹³ See, e.g., MCI comments at 12-13; MFS comments at 15; Teleport comments at 25; Nortel comments at 7; Continental Cablevision comments at 20; NCTA comments at 32; Time Warner reply at 13 (all points should be presumptively technically feasible and those claiming technical infeasibility should bear the burden of proof); Colorado Commission comments at 18; Michigan Commission comments at 8-9; Attorneys General of Connecticut *et al.* reply at 4 n.2; Hyperion comments at 10; Independent Cable & Telcomm. Ass'n reply at 9.

⁴¹⁴ Sprint reply at 16; ACSI reply at 6.

⁴¹⁵ See, e.g., MCI comments at 11; Continental Cablevision comments at 20; CompTel comments at 41; Sprint comments at 14; Cox comments at 42; AT&T reply at 11; DoJ comments at 19; California Commission comments at 19; Alabama Commission comments at 15; Ohio Commission comments at 25; Colorado Commission comments at 19.

⁴¹⁶ Time Warner reply at 13; MCI reply at 23 (incumbent LECs do not argue that interconnection points are not technically feasible but rather that the Commission reverse its tentative conclusion that the burden of proof falls on incumbent LECs to demonstrate technical infeasibility); Cable & Wireless comments at 13 (technical feasibility can be assessed by examining the type and quality of interconnection an incumbent LEC already provides to itself, its

evidences the technical feasibility of interconnection at such a point.⁴¹⁷ MCI argues that technically feasible points of interconnection may be either physical, for facilities and equipment, or logical, for software and databases.⁴¹⁸ Several parties ask the Commission to make clear that technical feasibility does not require that operations support systems for order processing, provisioning and installation, billing, and other support functions be in place in order to make a specific interconnection point technically feasible.⁴¹⁹ Several competing carriers also contend that economic factors should not be considered in determining technically feasible points of interconnection and access to unbundled elements. They argue that if incumbent LECs are not required to expend any funds or resources to provide for technically feasible interconnection or access, competing carriers will be limited to the services currently offered by the incumbents.⁴²⁰

197. Some parties propose specific definitions of technical feasibility. For example, Sprint defines "technically feasible" as "possible to accomplish without a scientific or technological breakthrough, *i.e.*, without an advance in the state of the art."⁴²¹ MFS defines the term as "any point in an [incumbent LEC's] network where suitable transmission, cross-connect or switching facilities are present to permit the routing of traffic to and from another network."⁴²²

3. Discussion

198. We conclude that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations. We further conclude that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements. Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible. We also conclude that preexisting interconnection or access at a particular point evidences the

affiliates and co-carriers).

⁴¹⁷ AT&T comments at 33.

⁴¹⁸ MCI comments at 12; IDCMA reply at 6-7.

⁴¹⁹ See, e.g., MCI comments at 12, Sprint reply at 16-17; AT&T reply at 10 (the need for additional investment to make an arrangement available should not result in a determination of technical infeasibility); Time Warner reply at 15, 17; ACTA comments at 10;

⁴²⁰ See, e.g., AT&T comments at 14-20; MCI reply at 23-29; Sprint reply at 16; Time Warner reply at 16.

⁴²¹ Sprint reply at 15-16; Time Warner reply at 13 (any point of interconnection should be presumptively technically feasible).

⁴²² MFS comments at 15.