

PROPOSED SPECIAL CONSTRUCTION POLICY PRINCIPLES

1. No Special Construction Charges Apply If:

A. Existing Facilities Can Meet Competitors' Needs

- Copper – Before declaring no facilities are available for competitive use, the ILEC shall test spare copper loop facilities to determine if any can fulfill the order. The need to perform routine network modifications (e.g., remove bridge taps and load coils) does not make a loop “unavailable.” These obligations do not apply if the ILEC offers comparable wholesale service at equivalent rates to the ordered location using an alternate technology that does not require special construction.
- Fiber – When fiber for any of the ILEC’s services (retail and/or wholesale) already connects to the location addressed by the order, the ILEC shall make capacity available to the requesting wholesale customer without assessing a special construction charge, just as it would for a retail customer at the same location.

B. The ILEC Would Incur the Construction Costs in Its Normal Course of Business

- With existing infrastructure at exhaust, any new network delivery infrastructure (conduit, subduct, buried, aerial infrastructure) configured for capacity beyond that requested is presumed to be in part for the ILEC’s own use and therefore deemed normal construction that is not subject to special construction charges. To rebut this presumption, the ILEC must certify that it will not use the infrastructure for any of its or its affiliates’ retail services in the future.
- Simultaneous or subsequent modifications of a facility to bring the ILEC into compliance with applicable codes and other safety or engineering requirements that are not exclusively for the requesting customer’s benefit are for ILEC use.

2. Transparency Is Required for Special Construction Determinations

- Facilities Availability – When an ILEC asserts that no facilities are available, it must explain the basis for its conclusions (consistent with its tariff) and the testing that it conducted to determine that facilities are unavailable with respect to the specific facilities at issue. ILECs have an obligation to properly maintain copper loop facilities, except when such facilities are properly retired.
- Cost Estimates – Within 5 business days of a CLEC’s request, the ILEC must provide detailed back-up for its cost estimates.
- Audit Rights – ILECs must agree to a reasonable number of audits per year.

3. Any Special Construction Should Occur Expeditiously

- A published timeline will establish reasonable times for an ILEC to determine whether facilities are available (i.e., if no special construction is warranted), provide a special construction quote and supporting data, and complete construction.