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445 12th Street, S.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: **Implementation of the Local Competition Provisions of  
the Telecommunications Act of 1996, CC Docket No. 96-98**

Dear Ms. Salas:

Please find enclosed for filing in the above-referenced proceeding, an original and twelve copies of the reply comments of Qwest Communications Corp. These reply comments are being filed in response to the request for comments in the public notice released April 16, 1999 in the referenced docket (FCC 99-70). A copy of the reply comments has also been filed electronically to <http://www.fcc.gov/e-file-ecfs.html>. Copies of these reply comments also are being hand-delivered today to Janice M. Myles at the Common Carrier Bureau and to International Transcription Services, Inc.

Please date stamp and return the additional copy of these reply comments. Please call the undersigned if you have any questions regarding this filing.

Respectfully submitted,



Linda L. Oliver  
Counsel for Qwest Communications  
Corp.

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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CC Docket No. 96-98  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )  
)

REPLY COMMENTS OF QWEST COMMUNICATIONS CORP.

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June 10, 1999

## SUMMARY

The incumbent local exchange carriers (ILECs) have filed large amounts of data to support their contention that the local exchange market is quite competitive and that new entrants have alternative sources of supply for many (if not most) network elements, so that they are not “impaired” within the meaning of Section 251(d)(2). Even assuming the data they filed is correct, the conclusions the ILECs draw from that data are not. The ILECs arguments are unsound because they are based on five fundamentally unsound assumptions about the local market - “myths” that must be debunked. They are:

1. Competition already exists in the local exchange market.
2. Access to ILEC UNEs is unnecessary because alternative facilities exist and can be used by new entrants.
3. If one competitor has the ability to obtain network elements from sources other than the ILEC, then all competitors can do the same.
4. Competitive local exchange carriers (CLECs) will not invest or innovate if they have access to ILEC UNEs, and ILECs will not invest or innovate if they must share their networks with CLECs.
5. The purpose of the Act is to promote only facilities-based competition.

When these false assumptions are stripped away, there is little foundation for the ILECs’ case against UNE availability.

The ILECs’ proposed tests, if applied, would leave local competition not much further along than it is today, where ILECs have more than 95 percent of the market. The ILEC tests focus on the ability of CLECs just to enter, not to compete broadly. They take a “go build it yourself” approach, contrary to the Act’s

preservation of three entry strategies: facilities, unbundled elements, and resale. They also adopt a “one-size-fits-all” approach which fails to consider variations in CLEC business plans, customer bases, services, capital resources, customer volumes, geographic scope, etc. Congress could hardly have meant the Commission to adopt a lowest common denominator approach to competition, whereby if one competitor can cost-justify construction of a facility, then all must do so. The non-ILEC commenters also generally agree that the essential facilities doctrine should not be imported into Section 251(d)(2).

In contrast to the ILECs’ proposed tests, the wholesale market test proposed by Qwest, CompTel, ALTS, and others would promote the statutory goals and would also be workable as a practical matter. The test:

- It gives the proper meaning to the statutory term “impairment;”
- It promotes the statutory goals of encouraging broad-based local competition, lowering entry barriers, and promoting the development of competitive local networks;
- It gives the ILECs and the Commission a way to take elements off the list while ensuring robust local competition and low entry barriers.
- It recognizes the economies of scope, scale, and connectivity of the ILEC network that led to the UNE provision in the first place, while recognizing that technology and markets do change.
- It does not require fine distinctions to be made on the basis of price of competitively supplied elements.
- It encourages ILECs to remove impairments to the development of a wholesale market for network elements.

An essential prerequisite of the wholesale market test is the determination that a competitively supplied element is “interchangeable” with the

ILEC element, meaning that it is there is no material reduction in quality, speed of service, or cost if the new entrant obtains the element outside the ILEC network. Many commenters supported the importance of interchangeability. The ILECs, however, completely fail to address the differences between obtaining an element from the ILEC and obtaining it from another source. Operational reforms, such as collocation and OSS improvements, can make elements interchangeable.

Contrary to the ILECs' arguments, a lack of access to UNEs would impair CLECs' ability to serve business customers of all sizes and in all locations. Serving multi-location and multi-product business customers requires that competitors have the same reach as the ILECs, and the ability immediately to provide service the customers demand, without first having to construct facilities. The ability to employ UNEs as an entry strategy to serve the most lucrative customers also enables competitors to build the customer base and revenues necessary to invest in facilities and to serve other segments of the market.

State commissions should have an important consultative role in the FCC's application of the wholesale market test, but the FCC should not delegate the job of taking UNEs off the mandatory list, as the ILECs propose. This is the role contemplated by Congress, as Section 251(d)(2) makes clear. States can, of course add to the list, in arbitrations applying the FCC's standard, or pursuant to state law.

The Commission should adopt a uniform national list of mandatory UNEs that includes all the elements on the original list plus the advanced capabilities and dark fiber, to take into account the evolution in technology and

consumer demand. There is no wholesale market today for any elements, although such a market could develop in the near future, particularly for elements such as operator services and directory assistance, if the obstacles to interchangeability are removed.

CLECs would be impaired without access to all loops, including broadband loops (xDSL, DS-1, DS-3, OC-n, and PRI). Loop deployment by competitors is scattered today and those loops are not available on a wholesale basis. Competitors desiring to provide broadband advanced services on a broad geographic basis, such as Qwest, will be stopped cold at the last mile without access to all broadband loops.

CLECs would be impaired if they do not have access to ILEC unbundled switching (including packet switching) on a ubiquitous basis. Without access to ILEC switching, competitors must make all customer conversions on a manual basis, which increases costs, delay, and customer outages, and does not permit customers to be converted at large commercial volumes -- as MCI WorldCom's experience in New York with the UNE platform demonstrated. The costs of transport, which is usually distance-sensitive, also mean that it may not be cost-justified to serve certain customers using one's own switch. The limitations proposed by the ILECs are not founded in business reality, because CLECs, regardless of their investment in their own switching, require the option of using the ILEC switching capability to serve some of their customers.

CLECs also would be impaired without access to ILEC interoffice transport -- dedicated, shared and packet. CLEC transport facilities are scattered

and even in the most dense areas do not cover every central office. No one CLEC can offer a ubiquitous transport offering in any area without relying on ILEC dedicated transport as an input. Competitively supplied transport, in addition to not being ubiquitous, is not always of the same quality. Construction of competitive transport facilities also entails cost, delay, and other obstacles that many CLECs cannot accommodate. Dedicated transport, in short, is not interchangeable with ILEC transport and must remain a UNE until a wholesale market for the element develops.

It is clear that some CLECs and outside vendors are providing (or are trying to provide) their own operator services and directory assistance. While a wholesale market for OS/DA is developing, that market remains nascent. Its products are simply not as ubiquitous -- or interchangeable with -- those of the ILECs. Hence, at least for now, CLECs should continue to be given network element access to ILEC OS/DA services.

The ILECs' view that dark fiber is not a network element contravenes the findings of at least three federal courts. Moreover, there is no question that without dark fiber, competitors would be impaired in their ability to provide advanced services. The Commission therefore should include dark fiber in its list of mandatory ILEC UNEs.

The Commission has ample authority to reinstate Rule 315(c)-(f), as the Supreme Court's reasoning in upholding Rule 51.315(b) applies equally to those provisions. Without reinstating Rule 315(c)-(f), the ILECs would be able to act in a

discriminatory manner. Thus, whether or not the Eighth Circuit grants pending motions to remand these rules, the Commission should re-adopt them.

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Provisions in the Telecommunications Act	)	
of 1996	)	
	)	

**REPLY COMMENTS OF QWEST COMMUNICATIONS CORP.**

Qwest Communications Corp. ("Qwest") hereby respectfully submits its reply comments in response to the Second Further Notice of Proposed Rulemaking in the referenced proceeding, 1/ which addresses the questions remanded to the Commission by the Supreme Court in AT&T v. Iowa Utilities Board. 2/

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1/ Implementation of the Local Competition Provisions in the 1996 Telecommunications Act of 1996, Second Further Notice of Proposed Rulemaking, FCC 99-70 (rel. April 16, 1999) ("Notice").

2/ AT&T Corp. v. Iowa Utilities Board, \_\_\_ U.S. \_\_\_; 119 S.Ct. 721 (1999) ("AT&T v. Iowa Utilities Board"). Qwest addresses in these comments the principal arguments and issues raised by the opposing commenters. We rely on our initial comments as fully addressing those opposing arguments that we have not addressed in this reply.

**I. THE ILECS' ARGUMENTS ON IMPAIRMENT ARE BASED ON MYTHS AND FALSE ASSUMPTIONS ABOUT LOCAL COMPETITION.**

**A. The Data Provided By the ILECs Proves Little About Competitors' Continuing Dependence on Access to ILEC Network Elements.**

At its core, this proceeding is about what it takes to compete in the local market. To that end, the ILECs have produced a cornucopia of information purporting to show that the local market is already competitive, and that it is time to cut back on access to the ILEC network by competitors.

While there are doubtless many inaccuracies and misleading assumptions embedded in the information provided by the ILECs it is unnecessary to engage in a line-by-line rebuttal of all of the ILECs' data in order to answer the questions presented in this proceeding. The ILECs' information, even if taken at face value, shows that some progress toward a competitive local market has in fact been made, and that some CLECs are beginning to deploy their own facilities. This progress, however, has been focused on limited geographical areas and customer segments, and has been limited even within those areas. As the FCC's Local Competition Report showed, ILECs still control almost 97 percent of the local market. <sup>3/</sup> Thus, none of the progress achieved to date is sufficient to justify reducing the Commission's UNE list at this time.

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<sup>3/</sup> Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Local Competition 12, Table 2.1 (December 1998) ("Local Competition Report").

The record developed by competitors shows a clearer, more accurate picture: that broad-based competition has yet to form, that significant hurdles still stand in the way of new entrants, that facilities deployment remains slow and expensive, and that without swift and decisive action by the Commission none of these things are likely to change soon. The record shows that competitors must have broad access to ILEC unbundled network elements if true competition is to flourish throughout the local market.

In suggesting that the Commission begin to cut back on the availability of network elements, the ILECs in effect are asking the Commission to be content with the minimal amount of competition we see today. Yet it defies all logic to suggest that the level and degree of competition that exists today is what Congress had in mind as an end result when it passed the 1996 Act.

Qwest submits that there has to be -- and that there is -- a better way. After dispelling some of the myths upon which the ILECs' claims are founded, Qwest will show that its proposed wholesale market test, which had wide support among commenters, is far more likely to lead to broad, lasting competition than the ILECs' cramped views of the Act. We also show how the Commission should apply the wholesale market test to establish a national minimum list of network elements, and lay the groundwork to gradually remove elements from that list as wholesale network element markets develop.

**B. The ILECs Have Attempted to Create Many False Myths.**

The ILECs' view of the statutory impairment test is founded on a number of false assumptions ("myths") about the local market and the intent of Congress. Once these myths are debunked, it becomes clear that the Commission must reject the ILECs' proposals to read narrowly the test for "impairment."

**Myth No. 1: Competition already exists in the local exchange market.**

The ILECs contend that local competition is thriving, and that the time has come to begin removing network elements from the list. <sup>4/</sup> This ILEC assertion requires a reality check. Despite the best efforts of competitive carriers, the ILECs' stonewalling has limited the ability of CLECs to enter the local exchange market. Indeed, as should be apparent to anyone who uses local exchange service in this country, the market share of competitive carriers in the local exchange market, whether looking at the market for residential services or the market for business services, remains minuscule in comparison to the ILECs. According to the Commission's recent Local Competition Report, the total market share of competitive carriers in the local exchange market was only 3.2 percent as of 1997 (the most recent year reported), compared to an ILEC market share of 96.8 percent. <sup>5/</sup>

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<sup>4/</sup> See, e.g., Bell Atlantic at 2-5; GTE at 1-2, 6, 32, 38-39 Ameritech at 2-4.

<sup>5/</sup> Local Competition Report at 12, Tab. 2.1.

**Myth No. 2: Access to ILEC UNEs is unnecessary because alternative facilities exist and can be used by new entrants. 6/**

The presence of limited self-supply of some network elements is, in itself, irrelevant to the question whether CLECs have meaningful alternatives to ILEC network elements. Competitively-supplied or self-supplied UNEs must be *interchangeable* with ILEC UNEs if the ILEC UNEs are to be taken off the list.

Moreover, if the presence of alternative UNE supply had made access to ILEC UNEs unnecessary, the ILECs would not now be opting to purchase other ILECs rather than installing their own facilities in order to enter out-of-region local exchange markets. 7/ The ILECs' actions speak louder than their words. The ILECs' decisions to merge rather than deploy their own duplicative facilities in out-of-region local exchange markets proves that access to the network elements that are already integrated into the ubiquitous, automated, efficient networks of the ILECs is necessary in order to enter the local exchange market on a geographically diverse, high-volume, commercial scale.

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6/ SBC at 22-23; Bell Atlantic at 9; Ameritech at 5.

7/ See Application of SBC and Ameritech for Approval of Transfer of Control, CC Docket No. 98-141; Application of GTE and Bell Atlantic, CC Docket No. 98-184.

**Myth No. 3: If one competitor has the ability to obtain a network element from sources other than the ILEC in one location, all competitors can do the same. 8/**

Just because one competitor may find it cost-justified to deploy one type of facility in one location does not mean that the competitor will find it cost-justified to do so in other locations. Similarly, one CLECs' investment in one location does not mean that other competitors will find it cost-justified to deploy facilities in that same location or in other locations. A CLEC's determination as to whether or not it should install its own facilities in a given location depends on the customers the CLEC is serving at that location; the services it is providing in that location; the other locations in which it is installing facilities; the ability -- or inability -- of the ILEC to provision associated UNEs, such as local loops, in commercial volumes and at acceptable speeds; 9/ and many other factors.

**Myth No. 4: CLECs will not invest or innovate if they have access to ILEC UNEs, and ILECs will not invest or innovate if they must share their networks with CLECs. 10/**

The ILECs attempt to convince the Commission that CLECs will not invest or innovate if they are not required to compete through the use of their own facilities. 11/ Qwest, and many competitors like it, stand as living proof that the

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8/ See, e.g., SBC at 21; US West at 12, 13; Bell Atlantic at 8, 9, 14; Ameritech at 19.

9/ See MCI Worldcom at 53.

10/ See, e.g., Bell Atlantic at 9-13; SBC at 5; BellSouth at 10, 27, 54-55; GTE at 17-18; Ameritech at 24, 25-26; USTA at 9, 21.

11/ See, e.g., Bell Atlantic at 10-11, 12-13; GTE at 17; Ameritech at 24, 25-26; SBC at 5; BellSouth at 10, 27, 54-55; USTA at 9, 21.

ILECs are wrong. 12/ Qwest has invested \$2.5 billion in developing one of the most innovative and advanced telecommunications networks in the world. Investment in facilities, moreover, is not the only source of innovation. 13/

Qwest, however, needs access to ILEC UNEs in order to complete the reach of its network and in order to provide a full complement of services to its customers. Access to ILEC UNEs will help Qwest bring its innovative network and services to customers, and in turn, will help Qwest undertake further investment and innovation. Access to UNEs, moreover, will help Qwest do so quickly, efficiently, and on a broad basis.

The ILECs also attempt to convince the Commission that ILECs will not invest or innovate if they must share their networks with CLECs. 14/ First, there is no evidence that leasing network capacity inhibits investment or innovation. It certainly has not done so in the intercity market. Second, the ILECs have upgraded, and are rapidly continuing to upgrade, their local networks on a

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12/ Indeed, the ILECs themselves discuss in detail the billions of dollars that CLECs have invested over the last three years in the deployment of local network facilities despite the availability of ILEC UNEs during that time. See, e.g., Bell Atlantic at 2-6; Ameritech at 2-4; GTE at 1-2, 6, 32, 38-39.

13/ See, e.g., CompTel, Affidavit of David Malfara, President of Z-Tel Technologies, Inc. ("Since its inception, Z-Tel has invested more than \$30 million developing the necessary application and database software to provide its unique suite of integrated services, as well as acquiring a nationwide signaling and call processing network to serve as the delivery vehicle for those services.") ("Malfara Affidavit")

14/ See, e.g., Bell Atlantic at 11, 12-13; GTE at 18; SBC at 5; BellSouth at 10, 27; USTA at 9, 21;

broad scale. The ILECs are also aggressively offering innovative services to all segments of the local exchange market. 15/ Third, the very competition the ILECs rely on to deny competitors access to ILEC network elements will prompt the ILECs to innovate and invest in their *own* networks or suffer the consequences. Finally, access to network elements will spur competition and construction of competing networks, thus spurring the ILECs to continue to invest and innovate.

**Myth No. 5: The purpose of the Act is to promote only *facilities-based* competition. 16/**

The ILECs spend a great deal of time urging the Commission to promote facilities-based competition over other types of competition, with the underlying assumption that facilities-based competition is “good,” while other types of competition are “bad.” 17/ They ask the Commission to revisit a judgment that Congress -- through the 1996 Act -- has already made: Competition is good, no matter what form it takes and no matter the entry strategy or strategies chosen to achieve it. The Act provided for three different strategies without a preference for any: (1) the use of unbundled network elements, (2) the interconnection of a carrier’s own facilities with the ILECs’ networks, and (3) the resale of the ILECs’

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15/ For example, most large ILECs are beginning to offer xDSL services.

16/ See, e.g., SBC at 53 (“The central purpose of the 1996 Act is to encourage facilities-based competition.”); BellSouth at 26 (“Section 251(d)(2) implements Congress’s judgment that efficient, facilities-based entry is the key to local telecommunications competition.”); see also GTE at 13.

17/ See, e.g., SBC at 53; BellSouth at 26; Ameritech at 16-17. see also GTE at 13.

retail services. 18/ The lower the entry barriers and the greater the entry vehicles there are in the market, the greater the choices that consumers will have, and the greater competition there will be among service providers in terms of innovation, price, and service quality. Facilities ownership, in and of itself, has nothing to do with the *quality* of the competition provided.

**II. THE METHODS PROPOSED BY THE ILECS FOR INTERPRETING IMPAIRMENT WOULD KEEP COMPETITION STAGNANT AND PREVENT NEW ENTRANTS FROM SUCCEEDING.**

The ILECs generally propose three different types of tests that can be used to demonstrate lack of impairment. 19/ Under the first test, the ILECs assert that if a least one efficient competitor is able to self-provision a particular network element in a specific geographic region, then all CLECs should be able to do the

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18/ See Local Competition Order, 11 FCC Rcd at 15509, para. 12:

Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results. Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored.

19/ Not every ILEC presents each of these tests. Considering all of the arguments raised by the ILECs in their comments and related affidavits, these are the three principal arguments that emerge.

same. 20/ Under the second test, if a network element is physically available from an alternative source in a given region, then there is no reason to require the ILEC to unbundle and offer that network element to competitors (even if that alternative source does not supply an interchangeable element or is not functioning as a wholesale provider). 21/ Under the third test, so long as a “reasonably efficient carrier” is capable of *entering* the local market without access to a particular ILEC UNE, then there is no need to require unbundling, even if all the carrier can do is “enter.” 22/

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20/ See Bell Atlantic at 9 (proposing that “[i]f efficient competitors can, and do, provide service without access to a particular network element, it is irrelevant whether a less efficient competitor might claim that -- due to size, cash flow, network configuration, or other considerations -- it needs access to that element in order to compete”); Ameritech at 5 (proposing that the “impair” standard should require unbundling only if “lack of access to [an] element would prevent a reasonably efficient competitor from providing the services it seeks to offer”).

21/ See, e.g., GTE at 3-4 (arguing that impairment exists “only where the element is essential to competition and there is convincing evidence that CLECs cannot effectively compete using substitutes for the element available from other sources”); see also US West at 12 (stating that evaluating impairment requires an “examination of *all* potential outside sources of elements -- other carriers, noncarrier sources (e.g., ISPs), and self-provisioning,” and that “evidence that one or more CLECs are obtaining an element in a geographic market from non-ILEC sources conclusively demonstrates that mandatory unbundling is not appropriate in that market”) (emphasis in original).

22/ See, e.g., BellSouth at 15, n. 12 (proposing, among other things, that carriers poised to *enter* the market within a year without the significant expenditure of sunk costs should be counted as market *participants*); US West at 10 (“[t]he focus of [the] inquiry should be whether the prices and terms on which an element (or its functional substitute) is available from non-ILEC sources allow an efficient competitor to *enter* the market”) (emphasis added); see also Ameritech at 35-36 (arguing that unbundling should not be required if a reasonably efficient competitor can *enter* the market and be capable of deploying alternative facilities within two years).

Each of these tests is significantly flawed, in part because they rest on false assumptions or “myths”, as detailed in Section I.B. above.

The ILECs’ tests are also flawed because they rest on the incorrect assumption that the conditions under which competition will emerge are static; in other words, they assume that the model for market entry is constant, and that the prices, terms and conditions of entry are unlikely to change in the future. This is plainly untrue. The fact is that pricing structures are likely to change (e.g., when ILECs begin to lower rates in response to competition and are permitted to engage in retail rate restructuring). This means that competitors’ cost-justifications for building facilities will change. As a result, entry strategies that appear justifiable today may not remain so in the future. The Commission needs a policy that will promote entry into the local market regardless of market fluctuations and other variables. The ILEC tests fail to meet this standard as well.

**A. The ILEC Tests Would Fail to Develop Broad-Based Competition in the Local Market.**

The problem with all of the ILECs’ tests is that they over simplify the requirements of competing for customers, and consequently would impede real competition from taking root in the local telecommunications market. For example, the first test -- whether one efficient CLEC can self-provision a UNE -- completely misses the fact that competitors are not all similarly situated. While the ILECs may view all CLECs similarly -- as a collective threat to their monopoly over the local exchange -- the fact is that different CLECs use different approaches and have different ways of entering the local market. Thus, what one theoretically “efficient”

CLEC may be able to do does not necessarily apply to all others. Contrary to the ILECs' view, Section 251(d)(2) does not look at whether there are carriers who are *not* impaired without access to ILEC UNEs. Rather, it asks whether there are carriers who *are* impaired without such access.

The notion that the actions of one CLEC should set the standard for the availability of UNEs contradicts the purpose and spirit of the 1996 Act. Under Section 251, competitors have the option of entering the local market through interconnection, the purchase of unbundled network elements, or through resale. 23/ This triangulated approach recognizes that different competitors will seek to enter the market in different ways. 24/ It also maximizes the number of carriers that are able to enter and compete in the provision of local telecommunications services. 25/ By presupposing that “what’s good enough for one CLEC is good enough for all,” the ILECs undercut the notion that the 1996 Act meant to open more than one prescribed route to competition.

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23/ 47 U.S.C. § 251(c); see also CPI at 2-3.

24/ See KMC Telecom at 6-7 (discussing the various permissible market entry strategies for competitors under the 1996 Act); CPI at 3 (citing a Merrill Lynch research publication showing that “new line additions by CLECs were accomplished through a balanced mixture of three entry modes: 35% facilities-based; 37% through total service resale; and 28% through unbundled network elements”) (citations omitted).

25/ See, e.g., CoreComm at 18-19 (stating that “the flexibility afforded by [the] various entry options [of Section 251(c)] is critical to timely and successful competitive entry and in establishing a viable, cost-effective business plan”).

The second test commonly cited by the ILECs -- that unbundling is not needed if the same network element is physically available from an alternative source in a given region -- is equally flawed. 26/ Were the Commission to base its unbundling test on the mere existence of alternative sources of network elements in a given region, its focus would be misdirected toward counting hardware (e.g., switches, loops, fiber, etc.) rather than evaluating whether that hardware is available to others or whether it is capable of supporting broad-based competition. 27/

The third test -- whether CLECs are able to *enter* the local market without access to UNEs -- is also off-base. While the ability to enter the market is one indication of whether competition is likely to emerge, it is not the appropriate test of whether a competitor is “impaired.” Section 251(d)(2)(B) measures the need for ILEC unbundling by whether lack of access to UNEs will impair the ability of a competitor to “*provide the services that it seeks to offer.*” 28/ This is obviously not limited to the mere ability to *enter* the local market. Congress did not have in mind such a limited vision of competition. As discussed above, the ILECs have lost only

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26/ See, e.g., CPI at 3 (“[c]ompetition for local exchange service and exchange access service is still quite small”); Washington UTD at 12 (finding that viable alternatives to most UNEs are not currently available and that they may only become available in time); Excel at 2 (stating that “time is growing short” for new entrants, and that the local market is not currently competitive).

27/ See, e.g., MediaOne at 10 (showing that the phrase “network elements” is not limited to physical facilities).

28/ 47 U.S.C. § 251(d)(2)(B).