

#### **IV. The Commission Cannot Override the Results of the Impairment Analysis**

Having determined that requesting carriers seeking to provide special access services and all other services are impaired without access to loops, transport, and EELs, the Commission must make these elements available without restriction. Contrary to the ILECs' claims, the Commission cannot use the "at a minimum" language of Section 251(d)(2) to restrict access to an element that meets the impairment standard.

Restricting access to an element that meets the impairment standard would inherently be at odds with the Act's two fundamental goals – opening the local exchange and exchange access markets to competition and promoting innovation and investment by all participants in the telecommunications marketplace – and would therefore violate the Supreme Court's requirement that the Commission's unbundling rules must be "rationally related to the goals of the Act."<sup>32</sup>

##### **A. Restricting access to EELs is at odds with the Act's goal of opening the local exchange and exchange access market to competition**

By definition, restricting access to an element that meets the impairment standard would "materially diminish" CLECs' ability to offer competitive services – materially increasing costs, delaying service offerings, restricting the geographic scope of services,

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<sup>32</sup>The Commission's decision in the *UNE Remand Order* not to unbundle packet switching is not to the contrary. Whatever the merits of that decision -- and WorldCom continues to believe that that decision is legally indefensible -- the factors underlying the Commission's decision not to unbundle packet switching clearly do not apply here. That decision was driven by concerns about the impact of an unbundling requirement on the ILECs' incentives to deploy a "nascent" technology. There can be no such concerns in the case of the transport and loop facilities that are used in the provision of special access services. Transport and loops are deployed ubiquitously throughout the ILECs' networks.

and imposing material operational or technical burdens. Clearly, an unbundling rule that is acknowledged to “materially diminish” CLECs’ ability to offer competing services cannot be “rationally related” to the Act’s fundamental goal of “opening the local exchange and exchange access markets to competition.” Consideration of the factors outlined in the *UNE Remand Order* confirms this conclusion.

### ***Rapid Introduction of Competition in All Markets***

It is only by providing unrestricted access to loops, transport, and EELs that the Commission can achieve its objective of “encourag[ing] requesting carriers to rapidly enter the local market and serve the greatest number of customers.”<sup>33</sup> As discussed above in the impairment analysis, CLECs that do not have access to EELs cannot viably offer competitive special access services or any other service to many end users, particularly those end users that are served from the large number of less-dense ILEC central offices. In general, CLECs’ only option for offering service to these end users is to resell the ILECs’ special access services – a form of market entry that provides no price competition at all.<sup>34</sup>

The need for EELs-based competition to ILEC special access services is becoming particularly acute as the ILECs are granted Phase II pricing flexibility. If an ILEC has Phase II pricing flexibility, and is thus permitted to remove its special access services from price cap regulation, its tariffed special access rates will be subject to no

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<sup>33</sup> *UNE Remand Order* at ¶ 107.

<sup>34</sup> In the *Local Competition Order*, the Commission concluded that exchange access services, including special access services, are not subject to the wholesale discount provisions of Section 251(c)(4) of the Act. *Local Competition Order* at ¶ 874.

pricing constraints at all, particularly on the less-dense routes where there are no competitive alternatives or only one or two inefficiently-routed competitive alternatives. As the Commission acknowledged in the *Pricing Flexibility Order*, the Phase II pricing flexibility test does not guarantee that all ILEC special access services in an MSA are subject to effective competition.<sup>35</sup> Rate increases on the large number of less-dense routes that are not subject to effective competition will harm customers of special access services and of all services that use special access as an input.

Moreover, competitive providers of special access services require EELs in order to guard against price squeezes.<sup>36</sup> With the adoption of the *Pricing Flexibility Order*, ILECs have gained the ability to offer packages of special access services pursuant to contract tariffs. Because of the limited scope of CLEC networks, CLECs would in many instances be unable to offer a competing package using only their own facilities or those of a third-party supplier. If CLECs that “seek to offer” a competing package are denied access to EELs, and are instead forced to “fill out” their networks using resold ILEC special access services, then the ILEC could implement a price squeeze by using its

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<sup>35</sup> *Pricing Flexibility Order* at ¶ 155 (“We recognize that the regulatory relief we grant upon a Phase II showing may enable incumbent LECs to increase access rates for some customers.”)

<sup>36</sup>The Commission has long recognized the potential for the ILECs to impose a price squeeze on competing providers of special access services. As the Commission found in the *Virtual Collocation Tariff Order*, “[r]aising rivals’ costs can be a profitable and inexpensive strategy for vertically integrated firms that control essential facilities needed by its rivals.” Local Exchange Carriers’ Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, *Report and Order*, 10 FCC Rcd 6375, 6403 (1995) (*Virtual Collocation Tariff Order*).

Phase II pricing flexibility to increase the CLEC's costs for these services. By definition, the ILEC special access services that CLECs would need to "fill out" their networks are precisely those that will be subject to the least competition – and are therefore likely to see the largest rate increases.<sup>37</sup>

A restriction on the use of EELs for special access services would not only block the development of competition for special access services, but would harm the development of competition for local exchange and associated switched access services as well. First, a restriction on the use of EELs would increase CLECs' costs of providing local exchange service by preventing CLECs from developing economies of scale. For example, in cases where a CLEC would otherwise be able to reduce its costs by combining its local exchange traffic with other traffic on a single DS-3 EEL, a service-specific unbundling rule would force the CLEC into a less-efficient arrangement: either two under-utilized DS3s – one EEL and one access – or multiple DS1s – some EEL and some access. Second, a restriction on the use of EELs would also increase the CLEC's costs by requiring it to maintain two separate ordering systems – access and local -- and to determine on a circuit-by-circuit basis which system to use.

#### ***Certainty in the Market and Administrative Practicality***

As the Commission determined in the *UNE Remand Order*, its unbundling rules

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<sup>37</sup>Not only are ILECs with Phase II pricing flexibility no longer subject to price cap regulation, but they can change their tariffs on one day's notice. 47 C.F.R. § 69.727(b). One of the reasons that the Commission rejected ILEC arguments that tariffed services should be considered in the impairment analysis is that the ILEC "could change the tariff in such a manner that the competitive LEC could no longer rely on it to provide the services it seeks to offer." *UNE Remand Order* at ¶ 69.

should further the Act's goal of opening local exchange and exchange access markets by providing uniformity and predictability and by being administratively practical to apply.<sup>38</sup> Any service-by-service unbundling rule for EELs will fail this test and will block or slow the development of competition *even for local exchange and associated switched access services*.

First, as the failure of the *Supplemental Order Clarification* shows, any effort to distinguish between local exchange service and other services will inevitably result in a rule that is too complex to provide market certainty or be administratively practical to administer. For example, even if a CLEC sought only to offer local exchange voice and associated switched access, it would face daunting challenges in ensuring that its service offering met the requirements of the rule adopted in the *Supplemental Order Clarification* – a rule that must be applied on a circuit-by-circuit basis and is littered with arbitrary conditions and traffic thresholds. Given that the *UNE Remand Order* rejected wire center-by-wire center unbundling rules as “unworkable” and inconsistent with the Act's goal of bringing rapid competition to all consumers,<sup>39</sup> it is clear that the *Supplemental Order Clarification's* circuit-by-circuit unbundling rule is similarly inconsistent with the goals of the Act. Events of the past year have certainly confirmed the Commission's prediction that such complex unbundling rules would delay the development of competition: to the best of WorldCom's knowledge, CLECs have been able to convert only a handful of special access circuits to EELs for use in offering local

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<sup>38</sup> *UNE Remand Order* at ¶¶ 140-142.

<sup>39</sup> *UNE Remand Order* at ¶ 142.

exchange service.

Second, any service-by-service unbundling rule will inevitably give the ILECs a policing role that is at odds with the Act's goal of encouraging competitive entry. Far from providing market certainty, the *Supplemental Order Clarification's* rule exposes CLECs – even those that are seeking only to provide local exchange service – to the risk that their EELs orders will be challenged by the ILECs as inconsistent with the *Supplemental Order Clarification's* rule. Moreover, the service-by-service unbundling rules and auditing provisions of the *Supplemental Order Clarification* give the ILECs a pretext for seeking information of the most commercially sensitive kind: the CLECs' service offerings, customers, and traffic levels.

**B. Restricting access to EELs is at odds with the Act's goal of promoting innovation and investment**

Restricting access to an element that meets the impairment standard would also be at odds with the other fundamental goal of the Act – promoting innovation and investment by all participants in the telecommunications marketplace. By definition, if a CLEC is “impaired” without access to an element, then withholding access to that element will “materially diminish” CLECs' ability to offer innovative services that require that element.

There are two broad classes of innovative services that would use EELs. First, competing carriers would be able to offer on a ubiquitous basis new services that combine *EELs with their own advanced switching capabilities and network intelligence*. Because EELs provide the most basic function of a telecommunications network – a

transparent transmission path to the customer – the scope of innovative service offerings that competing carriers could offer over EELs is virtually unlimited. Second, competing carriers could use EELs to offer innovative “bundled” services to customers over a single facility. As the Commission explained in the *Local Competition Order*, the ability to package and market services in ways that differ from the incumbent’s offerings is likely to benefit consumers.<sup>40</sup>

Restrictions on the availability of EELs block such innovation. Under the rule adopted in the *Supplemental Order Clarification*, CLECs can use EELs to offer an innovative or bundled service only if the service happens to fall within one of the rule’s safe harbors – which is extremely unlikely. As a result, CLECs that seek to offer innovative or bundled services are forced to use above-cost tariffed ILEC special access services to reach their customers, except in the very limited number of cases in which CLEC facilities are available. By increasing CLECs’ costs of offering services that do not fall within one of the safe harbors, the *Supplemental Order Clarification’s* policy suppresses demand for innovative services and thereby slows the rate of innovation. This policy, which permits CLECs to use cost-based EELs only if they happen to be offering basic local telephone service – a service that has existed for over 100 years – is clearly at odds with the Act’s goal of promoting innovation.

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<sup>40</sup> *Local Competition Order* at ¶ 333.

**C. The ILECs' affirmative reasons for overriding the impairment analysis are without merit**

**1. Unbundling will not deter facilities-based competition**

There is no merit to the ILECs' suggestion that restrictions on the availability of EELs are required to "promote facilities-based competition" for loops, transport, and EELs. As an initial matter, the Commission has made clear that Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy, and that any attempt by the Commission to indicate such a preference would have unintended and undesirable results.<sup>41</sup> Furthermore, the Commission has found that facilities construction and investment is best promoted by providing, not withholding, those unbundled elements that meet the impairment standard. As the Commission discussed in the *UNE Remand Order*, unbundled elements allow CLECs to acquire sufficient customers and the necessary market information to justify the construction of new facilities.<sup>42</sup> For example, EELs would allow CLECs to aggregate traffic at a single "hub" wire center which would then have sufficient traffic to support efficient construction of competitive transport facilities.

The notion that CLEC facilities construction could be "promoted" by withholding access to elements that meet the impairment standard is inherently illogical. If the Commission has found that CLECs are impaired without access to an element, this can only be because ubiquitous self-provisioning of the element is too expensive and

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<sup>41</sup> *Local Competition Order* at ¶ 11.

<sup>42</sup> *UNE Remand Order* at ¶ 112.

time-consuming to be economically feasible. Under these circumstances, withholding access to that element would do nothing to promote facilities construction by CLECs; even if it had no other option, a rational CLEC would not undertake a construction project that is prohibitively expensive or inefficient.

Furthermore, restricting access to EELs would actually discourage investment in other parts of the network, such as the advanced switches and other network intelligence that CLECs could use to offer innovative services if EELs were available on a ubiquitous basis. If CLECs seeking to offer innovative services are forced to use above-cost ILEC tariffed special access services to reach their customers, the inflated circuit costs will suppress demand for innovative services and thereby reduce CLECs' incentives to invest in advanced switches and other portions of the network. Even worse, a policy of restricting access to EELs runs the risk of diverting investment from the development of innovative services to inefficient construction of duplicate transport and loop plant.

The *Supplemental Order Clarification's* concerns about the consequences of EELs for facilities-based competitive access providers are misplaced.<sup>43</sup> By definition, if the Commission has determined that requesting carriers seeking to provide special access services are impaired without access to loops, transport, and EELs, then the Commission must have established that alternatives are not available from third-party suppliers as a practical, economic, and operational matter. Given that third-party suppliers would be unable to provide the elements that are used to offer special access

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<sup>43</sup> *Supplemental Order Clarification* at ¶ 18.

services, unbundled elements would have little impact on these suppliers' revenues.

The only significant overlap between third-party facilities and EELs would be on "certain point-to-point routes," including entrance facilities, where the Commission has found effective alternatives in some situations.<sup>44</sup> But the impact of EELs on competitors' revenues would be limited precisely because these "effective alternatives" have already been moving prices closer to cost on these short, high-capacity routes. Moreover, where competitors have existing facilities, many customers would likely have already "rolled" circuits to these facilities to the extent feasible. And, if competitors build out to additional offices, WorldCom and other CLECs "prefer to use their own facilities or alternatives outside the incumbent's network when they are able to do so, in order to reduce their reliance on a primary competitor."<sup>45</sup>

**2. Section 251(d)(2) does not permit the Commission to consider the impact of competition on ILEC revenues**

For the Commission to consider the potential impact of competition on ILEC revenues in determining whether to unbundle an element would be contrary to the Supreme Court's instruction that the Commission's unbundling policy must be rationally related to the goals of the Act. Not only is it clear that "safeguarding ILEC revenues" is not one of the goals of the Act, but the safeguarding of ILEC revenues is inherently at odds with the Act's primary goal – opening local markets to competition. It would be absurd if the Commission's rules restricted the availability of unbundled elements

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<sup>44</sup> *UNE Remand Order* at ¶ 348.

<sup>45</sup> *UNE Remand Order* at ¶ 112.

whenever such elements threatened to enable true price competition.

The ILECs' claims that revenue losses would undermine universal service ignore the design of the Act. By instructing the Commission to replace implicit universal service support with explicit universal service support, Section 254(e) of the Act ensures that Section 251(d)(2)'s unbundling provisions cannot undermine universal service support.

Clearly, EELs-based competition for special access services would not undermine universal service support. Not only is it "established Commission practice that special access will not subsidize other services,"<sup>46</sup> but the *CALLS Order* eliminated implicit support from switched access as well.<sup>47</sup>

In any event, the ILECs' predictions of "sudden" revenue losses are unsubstantiated and wildly exaggerated. As WorldCom has previously explained, steep termination liabilities limit the pace at which carriers could convert special access circuits to EELs.<sup>48</sup> And the effects of any conversions would be almost immediately offset by growth in demand. Demand for special access services has been growing at approximately 25 percent per year even at current prices, and would be expected to grow even faster as EELs-based competition drives prices down, due to the price elasticity of

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<sup>46</sup> Access Charge Reform, *Report and Order*, 12 FCC Rcd 15982, ¶ 404 (1997).

<sup>47</sup> Access Charge Reform, *Sixth Report and Order*, CC Docket No. 96-262, released May 31, 2000, at ¶ 202 (*CALLS Order*) ("We are persuaded . . . that at this time \$650 million is a reasonable estimate of the amount of universal service support that currently is in our interstate access charge regime.")

<sup>48</sup>MCI WorldCom Reply Comments, CC Docket No. 96-98, February 18, 2000, at 29-30.

demand.

**V. The Commission Should Lift All Restrictions on Co-Mingling**

One thing that has become clear since the Commission released the *Supplemental Order Clarification* is that the prohibition on co-mingling should be lifted. Subsequent to that order's release, WorldCom filed a petition for waiver of certain facets of the order, most importantly the co-mingling prohibition. No party offered any coherent policy arguments to counter that petition. Moreover, the intervening months have shown that unless the Commission eliminates the co-mingling prohibition, ILECs will reject a large percentage of CLEC requests for conversions of special access circuits to UNEs – *even when those circuits are used to provide local exchange services*.<sup>49</sup> Given WorldCom's unrebutted showing that co-mingling is in the public interest, as well as the ILECs' continued reliance on the co-mingling prohibition to increase their competitors' costs, the Commission should act to lift the co-mingling prohibition on an expedited basis, apart from its consideration of the other items included in the public notice.

In the *Supplemental Order Clarification*, the Commission adopted a prohibition on "co-mingling" that was set out in the three safe harbors. As used in this context, "co-mingling" refers to the assignment of unbundled loop or unbundled loop and transport elements to channel facilities on higher capacity ILEC access services. For example, a CLEC may purchase SONET entrance facilities from an ILEC access tariff. That CLEC

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<sup>49</sup> Letter from Jonathan Askin, General Counsel, ALTS, to Jodie Donovan-May, FCC, CC Docket No. 96-98, December 22, 2000.

may then seek to assign an unbundled loop or unbundled loop and transport elements to channel facilities on that SONET service. This is a technically feasible means of obtaining access to unbundled network elements which conserves collocation space, and allows competitive carriers to enjoy economies of scale that they would otherwise be denied.

Nonetheless, the Commission approved the prohibition on co-mingling established in the joint ILEC-CLEC *ex parte* that was the basis for the three safe harbors.<sup>50</sup> Subsequent events have shown that this was an unwise decision on the part of the Commission, as well on the part of those CLECs that joined in that proposal. The ILECs have used the co-mingling prohibition to reject a large percentage of the loop-transport conversion orders that they have received. This result was entirely predictable. CLEC access networks first established when UNEs and UNE combinations were unavailable as a practical and/or legal matter, cannot now be converted to UNEs unless co-mingling of unbundled loops and unbundled loop and transport elements with higher capacity transport services, including multiplexing, is permitted.

The 1996 Act eliminated legal barriers to local exchange competition. However, a series of practical and legal issues shaped the manner in which CLECs entered the market. To enter as quickly as possible, CLECs had no choice but to utilize means that were both practically and legally available. For most CLECs, this meant that the vast majority of customer locations could be served only by ordering special access service

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<sup>50</sup>Letter from Gordon R. Evans, Bell Atlantic, et al., to Chairman Kennard and Commissioners, FCC, CC Docket No. 96-98, February 28, 2000.

from the ILEC. While in some sense legally available, unbundled loops depended on the use of untested, largely manual OSS, and in any case could be ordered only when the CLEC was collocated in the customer's central office. As a legal matter, unbundled loop and transport elements could not be ordered together pursuant to the decision of the Eighth Circuit of Appeals that excused ILECs from providing "combinations" of network elements.<sup>51</sup>

Speed-to-market dictated that CLECs order special access, which utilized better-developed, more automated OSS, and could be used to obtain ubiquitous connectivity to customers regardless of whether the CLEC was collocated in the appropriate central office. To take advantage of scale economies, CLECs ordered more cost-effective, higher capacity special access services wherever and whenever possible. Thus, at central offices with greater demand, CLECs would order multiplexing and higher capacity transport services. To optimize use of those higher capacity facilities, CLECs also used them for data circuits and circuits used to provide other telecommunications services.

It appears that the Commission expected when it released the *Supplemental Order Clarification* that conversions would be "simple and accomplished without delay."<sup>52</sup> Indeed, WorldCom's impression is that the Commission expected that CLECs would, in fairly short order, take advantage of the three safe harbors to convert their local circuits from special access to UNEs. As the Commission should now realize,

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<sup>51</sup>*Iowa Utilities Bd. v. FCC*, 120 F.3d at 813 (1997).

<sup>52</sup> *Supplemental Order Clarification*, ¶ 30.

conversions will never be accomplished simply and without delay until the co-mingling prohibition is lifted.

After the *Supplemental Order Clarification* was released, WorldCom thoroughly re-analyzed its circuit base to determine what opportunity, if any, the three safe harbors provided. As WorldCom had predicted, the safe harbors proved virtually worthless because of the co-mingling restriction. In the vast majority of cases, the special access circuits that WorldCom uses to provide local exchange service include, at a minimum, special access multiplexing that would not qualify for conversion. In many cases they also include DS-3s or other high capacity special access services that would not qualify under the three safe harbors. The co-mingling prohibition raised a near-absolute bar to any conversion by WorldCom.

Because of the way in which they developed, CLEC access networks now consist of some facilities that could, in theory, be converted to UNEs, and other facilities that could not be converted. As a practical matter, this means that almost nothing can be converted unless the Commission eliminates the co-mingling prohibition. Otherwise, the facilities eligible for conversion would have to be segregated from the ineligible facilities. Redundant facilities would have to be established. In some cases, utilization on existing high capacity circuits might be reduced so much that use of those circuits would no longer be cost-effective.

Neither ILECs, CLECs, nor, most importantly, CLEC customers should be forced to suffer through the labor-intensive, customer-impacting process of such grooming. To groom these circuits requires the submission of circuit-level disconnect

orders, and circuit-level reconnect orders. The grooms can be done only during limited maintenance windows, and require that customers be taken out of service. If begun, the process might take years to complete. In fact, it would never begin. As the ILECs undoubtedly knew, the co-mingling prohibition is an anticompetitive practice guaranteed to prevent CLECs from obtaining access to UNEs to which they are entitled under the Act.

Indeed, the ILECs themselves have vigorously fought against policies that would have forced them to establish redundant access networks. When AT&T attempted to segregate customer-provided access circuits from the entrance facilities which it purchased, the ILECs protested that this policy would require them to establish needlessly redundant facilities to AT&T's points-of-presence.<sup>53</sup> The ILECs argued that AT&T's policy created an inefficient use of network facilities and artificially increased the ILECs' costs. The co-mingling prohibition operates in exactly this manner. It requires CLECs to operate parallel networks. It thereby denies CLECs the economies of scale available from aggregating bandwidth demand onto a single access network. It is hypocritical of the ILECs now to prohibit co-mingling and thus force on CLECs the very diseconomies over which they opposed AT&T's shared customer provided access policy.

The need for co-mingling does not arise solely from the existing use restriction

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<sup>53</sup>Illinois Bell vs. AT&T, Illinois Commerce Commission Docket No. 97-0624, Ameritech Illinois Initial Brief, February 6, 1998, at 4 (Ameritech alleged that AT&T's policy forced Ameritech to "install and pay for a duplicate set of transmission facilities between the Ameritech central office and AT&T POP.")

and so needs to be permitted even after the *Supplemental Order Clarification's* use restrictions are lifted. As described above, CLEC's have established access networks that seek to take advantage of available scale economies. To do so, CLECs have made volume and term commitments that would, as a practical matter, prevent CLECs from seeking to convert all special access services to UNEs. Thus even if the Commission ordered the ILECs to allow flash-cut conversions of all special access circuits to UNEs, regardless of how they are used, CLECs would not order such conversions. The price of termination liabilities would not justify any cost savings inherent in UNEs. As a result, elimination of the use restriction would not solve the co-mingling problem.

Moreover, the need for co-mingling is likely to continue. When the Commission conducts its triennial review, it may find that there are central offices or other geographical areas where CLECs are no longer impaired without access to certain network elements. A process whereby unbundling obligations are gradually relaxed will work only if co-mingling is allowed. Without co-mingling, any relaxation could have massive customer impacts. For example, it is conceivable that at some point in time the Commission might find that CLECs are not impaired if denied access to optical-level transport circuits at some central offices. If that happens, CLECs must be allowed to substitute tariffed services for those circuits, and must be able to connect those tariffed services to circuits purchased as unbundled elements. Otherwise, existing customer links might be severed.

In approving the co-mingling prohibition, the Commission indicated some concern that co-mingling might lead to the "use of unbundled network elements by IXCs

solely or primarily to bypass special access services."<sup>54</sup> By lifting the use restriction, the Commission eliminates this concern. In any case, there is no basis for the Commission to be concerned that co-mingling will allow carriers to evade any restriction that the Commission establishes. The Commission can direct the ILECs to describe in their special access tariffs the terms and conditions that apply to the co-mingling of those services with unbundled network elements. If the Commission wishes to place a restriction of the use of unbundled network elements, the ILECs' special access tariffs can reference that restriction and prohibit CLECs from co-mingling UNEs with access services simply to escape an existing restriction.

For example, the existing rules allow CLECs to use unbundled loops to provide any telecommunications service. However, CLECs may use EELs only if they are providing a "significant amount" of local exchange service. The Commission may be concerned that CLECs would co-mingle unbundled loops with access transport services and evade the use restriction on EELs. A simple change in ILEC access tariffs should alleviate any concern. Those tariffs could be amended to specify that they allow co-mingling with unbundled loops only in cases where it would be permissible to order an EEL. This change would extend any use restriction to co-mingled facilities and thereby address concern about wholesale bypass if the Commission does not eliminate all restrictions on the use of EELs.

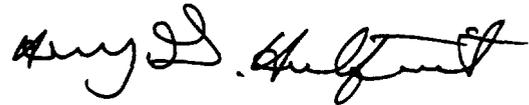
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<sup>54</sup> *Supplemental Order Clarification* at ¶ 28.

**VI. Conclusion**

For the reasons stated herein, the Commission should affirm that ILECs must provide unbundled loops, transport, and EELs to requesting carriers without restriction.

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**CERTIFICATE OF SERVICE**

I, Henry G. Hultquist, hereby certify that I have this 6th day of April, 2001, caused a true copy of these Comments to be served on the parties listed below via first class mail, postage pre-paid.

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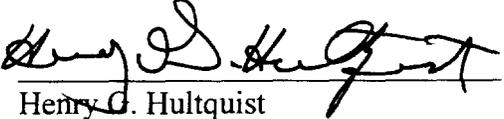
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