



FCC Presentation
UNE Rules Proceeding
11/2004

- After *USTA II*, facilities-based CLECs like Covad remain the only real hope for sustainable competition in enterprise and mass market voice and data services.
- It is critical that the Commission develop rules that both respond to court decisions as well as provide facilities-based CLECs a chance at remaining viable competitors.
- Covad continues to need access to local loop facilities like DS-1 loops and line sharing nationwide.
- It remains critical that these facilities remain available for the provision of data services.
- On the vast majority of routes, Covad continues to have no practicable alternatives to ILEC transport facilities.

Local Loop Unbundling

- **Eligibility Criteria.** Any new eligibility criteria should be fashioned in a way that enables access to loops for the provision of facilities-based data services.
 - In the *TRO*, the Commission unanimously determined that data services (including local data, xDSL and high-capacity services) were “qualifying services,” determinations left undisturbed by the D.C. Circuit.
- **No “Gaming” Problem.** There is no record evidence that data providers’ access to UNE loops in any way enhanced long distance providers’ so-called “gaming” of special access tariffs.
 - If the Commission precluded data providers from accessing local loops, it would simply create a new issue for judicial review to solve a non-existent problem.
- **No New Use Restrictions.** There is no need to extend use restrictions beyond EELs to any other UNEs.
- **Alternative Eligibility Criteria.** If the Commission chooses nonetheless to include high-capacity loops in any eligibility criteria, it must adopt alternative eligibility criteria enabling UNE access for data services, as Covad has suggested.

Local Loop Unbundling (cont.)

- The Commission should make a nationwide finding of impairment for DS-1 high capacity loops.
- Data providers like Covad remain impaired without access to local high capacity loops nationwide.
- The Commission's determination in the *TRO* that the high fixed costs of self-provisioning at the DS-1 level outweigh potential service provider revenues remain undisturbed by the D.C. Circuit.
- There is little record evidence that the difficulties and costs of administering a location-specific DS-1 impairment test would yield determinations of non-impairment in any significant numbers. The available evidence suggests the contrary.
- If the Commission nonetheless adopts a location-specific test for DS-1 impairment, it must not be implemented by ILECs unilaterally. Rather, a system based on CLEC self-certification of wholesale alternatives and independent oversight must be employed.

- It is not merely enough that fiber-based collocators are present in two COs – the same collocator must be present on both ends of a route in order to practicably provision alternative transport circuits.
- In the *TRO*, the Commission determined that at least 2 wholesale providers or 3 self-provisioners must be present on a route for it to be actually competitive.
- Although the D.C. Circuit remanded the Commission's delegation of state authority, it did not disturb the Commission's underlying numerical triggers for determining transport impairment.
- A test seeking to determine potential transport competition must of necessity use a higher number than the TRO wholesale and self-provisioning triggers – at least the same 4 collocators on both ends.

- It is equally important the Commission adopt the correct number of business access lines on both ends of a route for it to be considered potentially competitive.
- The number of business lines should be established in addition to the number of the same fiber collocators on both ends of the route.
- Neither the number of collocators nor the number of lines alone establishes whether the prerequisite potential for competition exists.
 - The presence of the same 4 fiber collocators on both ends of the route does not conclusively establish that there is sufficient revenue potential for providing service between those two ends.
 - Likewise, the number of business access lines on both ends of a route says nothing about the practical ability to actually provide a transport service between those two ends.
- At least 40,000 business access lines must be present on both ends of a route for it to be considered potentially competitive.

- **Since Feb. '03 Triennial decision**, Covad has pursued negotiations aggressively with all four Bell companies.
 - **In April '04, Covad and Qwest** signed a 3-year deal.
 - **In Sept '04**, Covad signed short term agreements with VZ and SBC that would extend linesharing until January '05 and September, '05 respectively.
- Without long-term agreements with all four Bells, **Covad still needs FCC safe harbor rules.**
- Under circumstances that have changed since the *TRO*, **FCC can lawfully reinstate line sharing.**
 - Market events since *TRO* demonstrated that whole loops and line splitting are not viable platforms for mass market broadband competition.
 - Covad analysis provides a means of determining and allocating line shared loop costs.