Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
At confluence with Maxwell Creek	*561
Approximately 2,000 feet upstream of confluence	*575
Maps are available for inspection at the City of Murphy City Hall, 205 North Murphy Road, Murphy, Texas.	
UTAH	
St. George (City), Washington County (FEMA Docket No. 7214)	
Virgin River:	
Approximately 4,400 feet downstream of confluence with Middleton Wash	*2,567
Approximately 2,700 feet upstream of confluence with Middleton Wash	*2,583
Approximately 9,900 feet upstream of confluence with Middleton Wash	*2,601
Maps are available for inspection at the City of St. George Engineering Department, 175 East 200 North, St. George, Utah.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–22940 Filed 8–27–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96–98; FCC 97–295]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Third Order on Reconsideration (Order) released August 18, 1997 addresses the obligation of incumbent local exchange carriers (LECs) to provide unbundled access to interoffice transport facilities on a shared basis. The Order clarifies the definition of shared transport as a network element which includes the same transport links and routing table as used by the incumbent local exchange carrier. The effect of this rule will be to allow competitive carriers to share in the scale and scope benefits of the incumbent LEC's network, thus increasing competition opportunities in the local exchange and exchange access market.

EFFECTIVE DATE: The stay of 47 CFR 51.501 through 51.515, 51.601 through 51.611, 51.705 through 51.715, and 51.809 effective October 15, 1996 (62 FR 662, Jan. 6, 1997) was lifted by the United States Court of Appeals for the Eighth Circuit effective July 18, 1997.

The amendments to 47 CFR part 51 made in this final rule are effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Kalpak Gude, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted and released August 18, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–295.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Analysis

The changes adopted in this Order do not affect our analysis in the *First Report and Order* (61 FR 45476 (August 29, 1996)).

Synopsis of Third Order on Reconsideration

I. Introduction

1. In this Order, we address two petitions for reconsideration or clarification of the *Local Competition and Order* regarding the obligation of incumbent local exchange carriers (LECs) to provide unbundled access to interoffice transport facilities on a shared basis. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, (61 FR 45476 (August 29, 1996)) (Local Competition Order), *Order on Reconsideration*, (61 FR 52706 (October 8, 1996)), *Second Order on Reconsideration*, 61 FR 66931 (December 19, 1996)), *further recon. pending, aff'd in part and vacated in part sub. nom. CompTel.* v. *FCC*, 11 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd.* v. *FCC and consolidated cases*, No. 96–3321 *et al.*, 1997 WL 403401 (8th. Cir., Jul. 18, 1997) (*Iowa Utilities Bd.*). We intend to address petitions for reconsideration of other aspects of the *Local Competition Order* in the future.

2. In the *Local Competition Order*, which established rules to implement sections 251 and 252 of the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996, the Commission required incumbent LECs ''to provide unbundled access to shared transmission facilities between end offices and the tandem switch.'' In this reconsideration order, we first explain that the *Local Competition Order* required incumbent LECs to provide requesting carriers with access to the same transport facilities, between the end office switch and the tandem switch, that incumbent LECs use to carry their own traffic. We further explain that, when a requesting carrier takes unbundled local switching, it gains access to the incumbent LEC's routing table, resident in the switch. Second, we reconsider the requirement that incumbent LECs only provide ''shared transport'' between the end office and tandem. Section 51.319(d) of the Commission's rules requires that incumbent LECs provide access on an unbundled basis to interoffice transmission facilities shared by more than one customer or carrier. 47 CFR § 51.319(d). In this reconsideration order, we refer to such shared interoffice transmission facilities as ''shared transport.'' For the reasons discussed below, we conclude that incumbent LECs should be required to provide requesting carriers with access to shared transport for all transmission facilities connecting incumbent LECs' switches—that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. Third, we conclude that incumbent LECs must permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table and transport links that the incumbent LEC uses to route and carry its own traffic. By requiring incumbent LECs to provide requesting carriers with access to the incumbent LEC's routing table and to all its interoffice transmission facilities on an unbundled basis, requesting carriers can route calls in the same manner that an incumbent routes its own calls and thus take advantage of the incumbent LEC's economies of scale, scope, and

density. Finally, incumbent LECs must permit requesting carriers to use shared transport as an unbundled element to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is also providing local exchange service.

3. We also issue a further notice of proposed rulemaking seeking comment on whether requesting carriers may use shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. Moreover, we seek comment on whether requesting carriers may use dedicated transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service.

II. Background

Local Competition Order

4. Sections 251(c)(3) and 251(d)(2) of the Act set forth standards for identifying unbundled network elements that incumbent LECs must make available to requesting telecommunications carriers. Section 251(c)(3) requires incumbent LECs to provide requesting carriers with ''nondiscriminatory access to network elements on an unbundled basis at any technically feasible point.'' Section 251(d)(2) provides that, in identifying unbundled elements, the ''Commission shall consider, at a minimum, whether—

(A) Access to such network elements as are proprietary in nature is necessary; and

(B) The failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.''

5. In the *Local Competition Order,* the Commission, pursuant to sections 251(c)(3) and 251(d)(2), identified a minimum list of seven network elements to which incumbent LECs must provide access on an unbundled basis. These network elements included local switches, tandem switches, and interoffice transmission facilities. With respect to interoffice transmission facilities, the Commission required incumbent LECs to provide requesting telecommunications carriers access to both dedicated and ''shared'' interoffice transmission facilities. The Commission defined ''interoffice transmission facilities'' as:

Incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

The Commission stated that ''[f]or some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period, [and for] other elements, especially shared facilities such as common transport, [carriers] are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis.'' In defining the network elements to which incumbent LECs must provide access on an unbundled basis, the Commission adopted the statutory definition of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. The Commission concluded that ''the definition of the term network element includes physical facilities, such as a loop, switch, or other node, as well as logical features, functions, and capabilities that are provided by, for example, software located in a physical facility such as a switch.'' The Commission found that:

The embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. Accordingly, incumbent LECs must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services.

The Commission also determined that ''we should not identify elements in rigid terms, but rather by function.''

6. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit issued a decision affirming certain of the Commission's rules adopted in the *Local Competition Order,* and vacating other rules. *Iowa Utilities Bd.* v. *FCC,* 1997 WL 403401 (8th Cir. July 18, 1997). With respect to issues relevant to this reconsideration decision, the court affirmed the Commission's authority to identify unbundled network elements pursuant to section 251(d)(2), and generally upheld the Commission's decision regarding incumbent LECs' obligations to provide access to network elements on an unbundled basis. The order we issue today is consistent with the court's decision.

III. Discussion

7. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit affirmed in part and vacated in part the Commission's *Local Competition Order.* We note, as a predicate to our discussion below, that the court affirmed the Commission's rulemaking authority to identify unbundled network elements. The court held that section 251(d)(2) of the Act expressly gave the Commission jurisdiction in this area. We thus conclude that the Commission has authority to address, in this reconsideration order, the issues raised by petitioners concerning the extent to which ''shared transport'' should be provided as an unbundled element.

8. WorldCom filed a petition for clarification, and LECC filed a petition for reconsideration of the *Local Competition Order;* both petitions concerned the definition of shared transport as an unbundled network element. WorldCom filed a petition for clarification pursuant to 47 U.S.C. § 405 and 47 CFR § 1.429, which set forth rules regarding petitions for reconsideration. In its petition WorldCom also stated that, ''[s]hould the Commission not regard this petition as a request for clarification of the *Local Competition Order,* WorldCom requests that it be regarded as a petition for reconsideration.'' We believe WorldCom's filing is more properly addressed as a petition for reconsideration, and treat it as such in this decision.

9. Parties disagree about what we required in the *Local Competition Order* with respect to shared transport. In addition, parties ask us to clarify or reconsider our decision regarding the provision of shared transport under section 251(c)(3). We first restate what we required in the *Local Competition Order,* and then reconsider certain aspects that may have been unclear or that were not addressed in the *Local Competition Order.* We then respond to arguments raised by parties that advocate a different approach to the provision of shared transport than our rules require.

10. We believe that the petitions for reconsideration have raised reasonable questions about the scope and nature of an incumbent LEC's obligation to offer shared transport as an unbundled network element, pursuant to section 251(c)(3) and our implementing regulations. We address these issues below. We also believe, however, some parties have argued that certain aspects of the rules adopted last August were ambiguous which, in our view, were clear. Specifically, in the *Local Competition Order,* we expressly required incumbent LECs to provide access to transport facilities ''shared by more than one customer or carrier.'' The term ''carrier'' includes both an incumbent LEC as well as a requesting telecommunications carrier. We,

therefore, conclude that ''shared transport,'' as required by the *Local Competition Order* encompasses a facility that is shared by multiple carriers, including the incumbent LEC. We recognize that the *Local Competition Order* did not explicitly state that an incumbent LEC must provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same facilities that an incumbent LEC uses for its traffic. We find, however, that a fair reading of our order and rules does not support the claim advanced by Ameritech that a shared network element necessarily is shared only among competitive carriers and is separate from the facility used by the incumbent LEC for its own traffic. Indeed, only Ameritech and US West suggest that the *Local Competition Order* could be interpreted to require sharing only between multiple competitive carriers. Moreover, the fact that we required incumbent LECs to provide access to other network elements, such as signalling, databases, and the local switch, which are shared among requesting carriers and incumbent LECs is consistent with our view that transport facilities ''shared by more than one customer or carrier'' must be shared between the incumbent LECs and requesting carriers. Furthermore, with respect to local switching, we expressly rejected, in the *Local Competition Order*, a proposal that incumbent LECs could, or were required to, partition local switches before providing requesting carriers access to incumbent LEC switches under section 251(c)(3). We stated that ''[t]he requirements we establish for local switch unbundling do not entail physical division of the switch, and consequently do not impose the inefficiency or technical difficulties identified by some commentators.'' We thus required that shared portions of incumbent LEC switches would be shared by all carriers, including the incumbent LEC. Although we do not believe that the *Local Competition Order* was unclear as to this aspect of an incumbent LEC's obligation to provide shared transport, we take this opportunity to state explicitly that the *Local Competition Order* requires incumbent LECs to offer requesting carriers access, on a shared basis, to the same interoffice transport facilities that the incumbent uses for its own traffic.

11. We also conclude that the *Local Competition Order* was not ambiguous as to an incumbent LEC's obligation to offer access to the routing table resident in the local switch to requesting carriers that purchase access to the unbundled local switch. The *Local Competition Order* made clear that requesting carriers that purchase access to the unbundled local switch may obtain customized routing, unless it is not technically feasible to provide customized routing from that switch. In those instances, a requesting carrier is limited to using the routing instructions in the incumbent LEC's routing table. In so holding, we necessarily accepted the view that requesting carriers that take unbundled local switching have access to the incumbent LEC's routing table, resident in the switch. We find nothing in the *Local Competition Order* that supports the contention that requesting carriers that obtain access to unbundled local switching, pursuant to section 251(c)(3), do not obtain access to the routing table in the unbundled local switch.

12. The *Local Competition Order* did not clearly define certain aspects of incumbent LECs' obligation to provide access to shared transport under section 251(c)(3). In particular, we did not clearly and unambiguously (1) identify all portions of the network to which incumbent LEC must provide interoffice transport facilities on a shared basis; and (2) address whether requesting carriers may use shared transport facilities to provide exchange access service to IXCs for access to customers to whom they also provide local exchange service. We do so here on reconsideration.

A. Incumbent LECs' Obligation Regarding Shared Transport

13. We conclude that the obligation of incumbent LECs to provide requesting carriers with access to shared transport extends to all incumbent LEC interoffice transport facilities, and not just to interoffice facilities between an end office and tandem. Thus, incumbent LECs are required to provide shared transport (between end offices, between tandems, and between tandems and end offices).

14. The *Local Competition Order* expressly required ''incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch.'' Parties disagree, however, about whether incumbent LECs are required to provide shared transport between end offices. As noted above, there is a discrepancy between the rule that establishes the general obligation to provide shared transport as a network element, and the rule vacated by the court that purports to establish the pricing standard for shared transport. 47 CFR §§ 51.319(d) and 51.509(d). We note that the Eighth Circuit has held that the Commission lacked jurisdiction to adopt the pricing standard set forth in § 51.509(d), and accordingly vacated that section of the Commission's rules. To the extent that incumbent LECs already have transport facilities between end offices, and between tandems, the routing table contained in the switch most likely would route calls between such switches. We therefore conclude that there is no basis for limiting the use of shared transport facilities to links between end office switches and tandem switches. Limiting the definition of shared transport in this manner would not permit requesting carriers to utilize the routing tables in the incumbent LECs' switches. To the contrary, such a limitation effectively would require a requesting carrier to design its own customized routing table, in order to avoid having its traffic transported over the same interoffice facilities, connecting end offices, that the incumbent LEC use to transport its own interoffice traffic. Moreover, in the *Local Competition Order*, we held that it is technically feasible to provide access to interoffice transport facilities between end offices and between end offices and tandem switches. No new evidence has been presented in this proceeding to convince us that our earlier conclusion regarding technical feasibility was incorrect.

15. We further clarify in this order that incumbent LECs are only required to offer *dedicated* transport between their switches, or serving wire centers, and requesting carriers' switches. Our *Local Competition Order* was not absolutely clear as to whether incumbent LECs must provide dedicated or shared interoffice transport between incumbent LEC switches, or serving wire centers, and switches owned by requesting carriers. In the *Local Competition Order*, we required incumbent LECs to ''provide access to *dedicated transmission facilities* between LEC central offices or between end offices and those of competing carriers.'' This could be read to suggest that incumbent LECs are only required to provide dedicated (but not shared) interoffice transport facilities between their end offices, or serving wire centers, and points in the requesting carrier's network. The rule that defines interoffice transmission facilities, however, is less clear, and could be read to require incumbent LECs to provide shared transport between incumbent LECs' switches, or serving wire centers, and requesting carriers' switches.

16. We therefore clarify here that incumbent LECs must offer only *dedicated transport*, and not shared transport, between their switches, or

serving wire centers, and requesting carriers' switches, as set forth in the *Local Competition Order.* We also note that the *Local Competition Order* expressly limited the requirement to provide unbundled interoffice transport facilities to *existing* incumbent LEC facilities.

17. On reconsideration, we further clarify that incumbent LECs are not required to provide shared transport between incumbent LEC switches and serving wire centers. We stated above that shared transport must be provided between incumbent LEC switches. Serving wire centers are merely points of demarcation in the incumbent LEC's network, and are not points at which traffic is switched. Traffic routed to a serving wire center is traffic dedicated to a particular carrier. We thus conclude that unbundled access to the transport links between incumbent LEC switches and serving wire centers must only be provided by incumbent LECs on a *dedicated* basis.

18. Finally, we note that, traditionally, shared facilities are priced on a usage-sensitive basis, and dedicated facilities are priced on a flat-rated basis. We believe that this usage-sensitive pricing mechanism provides a reasonable and fair allocation of cost between the users of shared transport facilities. For example, in the *Access Charge Reform Order* (62 FR 40460 (July 29, 1997)), specifically the sections dealing with rate structure issues for interstate access charges, we required that the cost of switching, a shared facility, be recovered on a per minute of use basis, while the cost of entrance facilities, which are dedicated to a single interexchange carrier, be recovered on a flat-rated basis. We note that several state commissions, in proceedings conducted pursuant to section 252 of the Act, have required incumbent LECs to offer shared transport priced on a usage-sensitive basis. We acknowledge that, under the Eighth Circuit's decision, we may not establish pricing rules for shared transport. However, in situations where the Commission is required to arbitrate interconnection agreements pursuant to subsection 252(e)(5), we intend to establish usage-sensitive rates for recovery of shared transport costs unless parties demonstrate otherwise.

B. Application of the Requirements of Section 251(d)(2) To Shared Transport

19. Shared transport, as defined in this order, satisfies the two-prong test set forth in section 251(d)(2) of the Act. Section 251(d)(2) requires the Commission, in determining what network elements should be made available under section 251(c)(3), to consider ''at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.'' In the *Local Competition Order,* we held that an incumbent could refuse to provide access to a network element pursuant to section 251(d)(2) only if the incumbent LEC demonstrated that ''the element is proprietary and that gaining access to that element is not necessary because the competing provider can use other, nonproprietary elements in the incumbent LEC's network to provide service.'' We further held that, under section 251(d)(2)(B), we must consider ''whether the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network.'' The Eighth Circuit affirmed the Commission's interpretation of section 251(d)(2).

20. In the *Local Competition Order,* we concluded that, with respect to transport facilities, ''the record provides no basis for withholding these facilities from competitors based on proprietary considerations.'' We also concluded that section 251(d)(2)(B) requires incumbent LECs to provide access to shared interoffice facilities and dedicated interoffice facilities. With respect to the unbundled local switch, we held that, even assuming that switching may be proprietary, at least in some respects, ''access to unbundled local switching is clearly 'necessary' under our interpretation of section 251(d)(2)(A).'' We also concluded that a requesting carrier's ability to offer local exchange service would be ''impaired, if not thwarted,'' without access to the unbundled local switch, and therefore, that section 251(d)(2)(B) requires incumbent LECs to provide access to the unbundled local switch.

21. Upon reconsideration, we herein affirm that incumbent LECs are obligated under section 251(d)(2) to provide access to shared transport, as we here define it, as an unbundled network element. Parties in the record have not contended that interoffice transport facilities are proprietary, and we have no basis for modifying our prior conclusion that interoffice transport facilities are not proprietary. Thus, there is no basis under section 251(d)(2)(A) for incumbent LECs to refuse to provide interoffice transport facilities on a shared as well as a dedicated basis.

22. We also note that the failure of an incumbent LEC to provide access to all of its interoffice transport facilities on a shared basis would significantly increase the requesting carriers' costs of providing local exchange service and thus reduce competitive entry into the local exchange market. In the *Local Competition Order,* we observed that:

> By unbundling various dedicated and shared interoffice facilities, a new entrant can purchase *all* interoffice facilities on an unbundled basis as part of a competing local network, or it can combine its own interoffice facilities with those of the incumbent LEC. The opportunity to purchase unbundled interoffice facilities will decrease the cost of entry compared to the much higher cost that would be incurred by an entrant that had to construct all of its own facilities. An efficient new entrant might not be able to compete if it were required to build interoffice facilities where it would be more efficient to use the incumbent LEC's facilities.

We continue to find the foregoing statements to be true with respect to shared as well as dedicated transport facilities. Requesting carriers should have the opportunity to use *all* of the incumbent LEC's interoffice transport facilities. Moreover, the opportunity to purchase transport facilities on a shared basis, rather than exclusively on a dedicated basis, will decrease the costs of entry.

23. We believe that access to transport facilities on a shared basis is particularly important for stimulating initial competitive entry into the local exchange market, because new entrants have not yet had an opportunity to determine traffic volumes and routing patterns. Moreover, requiring competitive carriers to use dedicated transport facilities during the initial stages of competition would create a significant barrier to entry because dedicated transport is not economically feasible at low penetration rates. In addition, new entrants would be hindered by significant transaction costs if they were required to continually reconfigure the unbundled transport elements as they acquired customers. We note that incumbent LECs have significant economies of scope, scale, and density in providing transport facilities. Requiring transport facilities to be made available on a shared basis will assure that such economies are passed on to competitive carriers. Further, if new entrants were forced to rely on dedicated transport facilities, even at the earliest stages of competitive entry, they would almost inevitably miscalculate the capacity or routing

patterns. We recognize, however, that the need for access to all of the incumbent LEC's interoffice facilities on a shared basis may decrease as competitive carriers expand their customer base and have an opportunity to identify traffic volumes and call routing patterns. We therefore may revisit at a later date whether incumbent LECs continue to have an obligation, under section 251(d)(2), to provide access to all of their interoffice transmission facilities on a shared, usage sensitive basis. We note that, if, in the future, competitive carriers gain sufficient market penetration to justify obtaining dedicated transport facilities, either through the use of unbundled elements or through building their facilities, shared transport may no longer meet the section 251(d)(2) requirements. In that event, the Commission can evaluate at that time whether incumbent LECs must continue to provide access to shared transport as a network element.

24. As noted above, although interoffice transport, as we define the element pursuant to section 251(c)(3), refers to the transport links in the incumbent LEC's network, access to those links on a shared basis effectively requires a requesting carrier to utilize the routing table contained in the incumbent LEC's switch. Ameritech contends that the routing table contained in the switch, which is used in conjunction with shared transport, is proprietary. Ameritech and other incumbent LECs further allege that requesting carriers may obtain the functional equivalent of shared transport either by purchasing transport as an access service, or by purchasing dedicated transport facilities. These parties thus contend that, under section 251(d)(2)(A), incumbent LECs are not required to provide shared transport (including use of the routing table contained in the switch) as a network element.

25. Issues regarding intellectual property rights associated with network elements are before us in a separate proceeding. For purposes of this Order only, we therefore assume without deciding that the routing table is proprietary. We nevertheless conclude that section 251(d)(2) requires an incumbent LEC to provide access to both its interoffice transmission facilities and to the routing tables contained in the incumbent LEC's switches. We affirm our finding in the *Local Competition Order* that transport provided as part of access service, or as a wholesale usage service, is not a viable substitute for shared transport as a network element. All incumbent LECs are not required to offer transport as an access service on a stand alone basis. Only Class A carriers are required, under our *Expanded Interconnection* rules, to unbundle interstate transport service. Moreover, transport service that incumbents offer under the *Expanded Interconnection* tariffs may include only interstate transport facilities (transport provided either via a tandem switch or direct trunked between a local switch and the serving wire center), not interoffice transport facilities directly connecting two local switches. In the *Local Competition Order,* moreover, we expressly rejected the suggestion that requesting carriers ''are not impaired in their ability to provide a service * * * if they can provide the proposed service by purchasing the service at wholesale rates from a LEC.''

C. Use of Shared Transport Facilities To Provide Exchange Access Service

26. In this order on reconsideration, we clarify that requesting carriers that take shared or dedicated transport as an unbundled network element may use such transport to provide interstate exchange access services to customers to whom it provides local exchange service. We further clarify that, where a requesting carrier provides interstate exchange access services to customers, to whom it also provides local exchange service, the requesting carrier is entitled to assess originating and terminating access charges to interexchange carriers, and it is not obligated to pay access charges to the incumbent LEC.

27. In the *Local Competition Order,* we held that, if a requesting carrier purchases access to a network element in order to provide local exchange service, the carrier may also use that element to provide exchange access and interexchange services. We did not impose any restrictions on the types of telecommunications services that could be provided over network elements. We did not specifically consider in the *Local Competition Order,* however, whether a requesting carrier may use interoffice transport to provide exchange access service. We conclude here that a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service. We find that this is consistent with our initial decision.

D. Response to Specific Arguments Raised by Parties

28. As discussed above, we define the unbundled network element of shared transport under section 251(c)(3) as interoffice transmission facilities, shared between the incumbent LEC and one or more requesting carriers or customers, that connect end office switches, end office switches and tandem switches, or tandem switches, in the incumbent LEC's network. We exclude from this definition interoffice transmission facilities that connect an incumbent LEC's switch and a requesting carrier's switch, and those connecting an incumbent LEC's end office switch, or tandem switch, and a serving wire center. This definition of shared transport assumes the interconnection point between the two carriers' networks, pursuant to section 251(c)(2), is at the incumbent LEC's switch. This definition is consistent with the statutory definition of network elements, which defines a network element as a facility or equipment used in the provision of a telecommunications service, including the features, functions, and capabilities provided by means of such facility or equipment.

29. As an initial matter, we reject Ameritech's contention that, by definition, network elements must be partly or wholly dedicated to a customer. To the contrary, we held in the *Local Competition Order* that some network elements, such as loops, are provided exclusively to one requesting carrier, and some network elements, such as interoffice transport provided on a shared basis, are provided on a minute-of-use basis and are shared with other carriers. In the *Local Competition Order,* we also identified signalling, call-related databases, and the switch, as network elements that necessarily must be shared among the incumbent and multiple competing carriers.

30. We also reject Ameritech's and BellSouth's contention that, because WorldCom and other requesting carriers seek access to an element—shared transport—that cannot be effectively disassociated from another element—local switching, the requesting carriers are in fact seeking access to a bundled service rather than to transport as a network element unbundled from switching. As previously discussed, several of the network elements we identified in the *Local Competition Order* depend, at least in part, on other network elements. In particular, although we identified the signalling network as a network element, the information necessary to utilize signalling networks resides in the switch, which we identified as a separate network element. In addition, we required incumbent LECs, upon request, to provide access to unbundled loops conditioned to provide, among other things, digital services such as ISDN, even though the equipment used

to provide ISDN service typically resides in the local switch, rather than in the loop. We thus find no basis for concluding that each network element must be functionally independent of other network elements.

31. We reject as well Ameritech's contention that a network element must be identifiable as a limited or pre-identified portion of the network. We find nothing in the statutory definition of network elements that prohibits requesting telecommunications carriers from seeking access to every transport facility within the incumbent's network. Our definition of signalling as a network element does not require requesting carriers to identify in advance a particular portion of the incumbent LEC's signalling facilities, but instead permits requesting carriers to obtain access to multiple signalling links and signalling transfer points in the incumbent LEC's network on an as-needed basis. We also reject Ameritech's assertion that shared transport cannot be physically separated from switching. Both dedicated and shared transport facilities are transport links between switches. These links are physically distinct from the end office and tandem switches themselves.

32. Although we conclude that shared transport is physically severable from switching, incumbent LECs may not unbundle switching and transport facilities that are already combined, except upon request by a requesting carrier. Although, the Eighth Circuit struck down the Commission's rule that required incumbent LECs to rebundle separate network elements, the court nevertheless stated that it: ''upheld the remaining unbundling rules as reasonable constructions of the Act, because, as we have shown, the Act itself calls for the rapid introduction of competition into the local phone markets by requiring incumbent LECs to make their networks available to * * * competing carriers.'' Among other things, the court left in effect § 51.315(b) of the Commission's rules, which provides that, ''[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.'' Therefore, although incumbent LECs are not required to combine transport and switching facilities to the extent that those elements are not already combined, incumbent LECs may not separate such facilities that are currently combined, absent an affirmative request. In addition to violating section 51.315(b) of our rules, such dismantling of network elements, absent an affirmative request, would increase the costs of requesting carriers and delay their entry into the local exchange market, without serving any apparent public benefit. We believe that such actions by an incumbent LEC would impose costs on competitive carriers that incumbent LECs would not incur, and thus would violate the requirement under section 251(c)(3) that incumbent LECs provide nondiscriminatory access to unbundled elements. Moreover, an incumbent LEC that separates shared transport facilities that are already connected to a switch would likely disrupt service to its own customers served by the switch because, by definition, the shared transport links are also used by the incumbent LEC to serve its customers. Thus, incumbent LECs would seem to have no network-related reason to separate network elements that it already combines absent a request.

33. We likewise reject Ameritech's contention that purchasing access to the switch as a network element does not entitle a carrier to use the routing table located in that switch. According to Ameritech, vendors provide switches that are capable of acting on routing instructions, but the switch itself does not include routing instructions; those instructions are added by the carrier after it purchases the switch from the vendor and are contained in a routing table resident in the switch. Ameritech asserts that its routing tables are proprietary products, and ''are not a feature of the switch.'' In the *Local Competition Order,* we determined that ''we should not identify elements in rigid terms, but rather by function.'' Routing is a critical and inseverable function of the local switch. One of the most essential features a switch performs is to provide routing information that sends a call to the appropriate destination. We find no support in the statute, the *Local Competition Order,* or our rules for Ameritech's assertion that the switch, as a network element, does not include access to the functionality provided by an incumbent LEC's routing table. In fact, the only question addressed in the *Local Competition Order* was whether requesting carriers could obtain *customized* routing, that is, routing different from the incumbent LEC's existing routing arrangements.

34. We further find that access to unbundled switching is not necessarily limited to the product the incumbent LEC originally purchased from a vendor. As we noted in the *Local Competition Order,* incumbent LECs may in some instances be required to modify or condition a network element to accommodate a request under section 251(c)(3). Moreover, we held that unbundled local switching includes access to the vertical features of the switch, regardless of whether the vertical features were included in the switch when it was purchased, or whether the vertical features were purchased separately from the vendor or developed by the incumbent. We held that network elements include physical facilities ''as well as logical features, functions, and capabilities that are provided by, *for example, software located in a physical facility such as a switch.*'' We also note that the Eighth Circuit affirmed the Commission's interpretation of the Act's definition of ''network elements.'' The court stated that ''the Act's definition of network elements is not limited to only the physical components of a network that are directly used to transmit a phone call from point A to point B'' and that the Act's definition explicitly made reference to ''databases, signaling systems, and information sufficient for billing and collection.'' Thus, just as databases and signaling systems may include software created by the incumbent LEC, which must be made available to competitive carriers purchasing those elements on an unbundled basis, we believe that the routing table created by the incumbent LEC that is resident in the switch must be made available to requesting carriers purchasing unbundled switching. Finally, we note that Ameritech is the only incumbent LEC that has argued in this record that the routing table is not included in the unbundled local switching element. Other incumbent LECs have stated that they offer shared transport in conjunction with unbundled local switching. This suggests that other incumbent LECs recognize that the routing table is a feature, function, or capability of the switch.

35. We also disagree with Ameritech's and BellSouth's argument that defining the unbundled network element shared transport as all transport links between any two incumbent LEC switches would be inconsistent with Congress's intention to distinguish between resale services and unbundled network elements. Section 251(c)(3) requires incumbent LECs to make available unbundled network elements at cost-based rates; sections 251(c)(4) and 252(d)(3) require incumbent LECs to make available for resale, at retail price less avoided costs, services the incumbent LEC offers to retail users. In the *Local Competition Order,* we held that a key distinction between section 251(c)(3) and section 251(c)(4) is that a requesting carrier that obtains access to

unbundled network elements faces greater risks than a requesting carrier that only offers services for resale. A requesting carrier that takes a network element dedicated to that carrier, and recovered on a flat-rated basis, must pay for the cost of the entire element, regardless of whether the carrier has sufficient demand for the services that the element is able to provide. The carrier thus is not guaranteed that it will recoup the costs of the element. By contrast, a carrier that uses the resale provision will not bear the risk of paying for services for which it does not have customers. In particular, a requesting carrier that takes an unbundled local switch must pay for all of the vertical features included in the switch, even if it is unable to sell those vertical features to end user customers. Requesting carriers that purchase shared transport as a network element to provide local exchange service must also take local switching, for the practical reasons set forth herein, and consequently will be forced to assume the risk associated with switching. A requesting carrier that uses its own self-provisioned local switches, rather than unbundled local switches obtained from an incumbent LEC, to provide local exchange and exchange access service would use dedicated transport facilities to carry traffic between its network and the incumbent LEC's network. Thus, the only carrier that would need shared transport facilities would be one that was using an unbundled local switch.

36. BellSouth's argument, that assessing a usage-sensitive rate for shared transport would be inconsistent with the 1996 Act because it would not reflect the manner in which costs are incurred, is similarly unpersuasive. BellSouth's argument is premised on the assumption that incumbent LECs would be required to provide shared transport over facilities between the tandem switch and the serving wire center. In this order, however, we make clear that incumbent LECs are required to provide transport on a dedicated, but not on a shared basis, over transport facilities between the incumbent LEC's tandem and the serving wire center. Thus, BellSouth's concern is misplaced.

37. We also find that there is no element in the incumbent LEC's network that is an equivalent substitute for the routing table. We agree with Ameritech that requesting carriers could duplicate the shared transport network by purchasing dedicated facilities. But in that instance, requesting carriers would be forced to develop their own routing instructions, and would not be utilizing a portion of the incumbent LEC's network to substitute for the routing table. In the *Local Competition Order,* we specifically rejected the suggestion that an incumbent LEC is not required to provide a network element if a requesting carrier could obtain the element from a source other than the incumbent LEC. The Eighth Circuit affirmed the Commission's conclusion.

38. Furthermore, we find that, at this stage of competitive entry, limiting shared transport to dedicated transport facilities, as Ameritech suggests, would impose unnecessary costs on new entrants without any corresponding, direct benefits. AT&T and Ameritech have both presented evidence regarding the costs of dedicated transport facilities linking every end office and tandem in an incumbent LEC's network as significant relative to the cost of ''shared transport.''. For example, AT&T contends that the cost is $.041767 per minute for dedicated transport plus associated non-recurring charges (NRCs). AT&T claims that Ameritech would charge a total of $5008.58 per DS1 (including administrative charges and connection charges) and $58,552.87 per switch (including customized routing and billing development). AT&T argues that this compares with $.000776 per minute for unbundled shared transport. Ameritech, on the other hand, contends the use of tandem routed dedicated facilities cost is $.0031148 per minute plus associated NRCs. Ameritech claims that the nonrecurring charges per DS1 are $2769.27 (including administrative charges per order). Ameritech states that other NRCs include two trunk port connection charges ($770.29 initial, $29.16 subsequent), service ordering charge per occasion ($398.72 initial, $17.37 subsequent), billing development charge per switch ($35,328.87), custom routing charge, per line class code per switch ($232.24), and a service order charge ($398.73). Nevertheless, under either AT&T's or Ameritech's cost calculations for dedicated transport, we conclude that the relative costs of dedicated transport, including the associated NRCs, is an unnecessary barrier to entry for competing carriers.

39. We also find that limiting shared transport to dedicated facilities, as defined by Ameritech, would be unduly burdensome for new entrants. First, we agree with MCI, AT&T, et al., that a new entrant may not have sufficient traffic volumes to justify the cost of dedicated transport facilities. Second, a new entrant entering the local market with smaller traffic volumes would have to maintain greater excess capacity relative to the incumbent LEC in order to provide the same level of service quality (i.e., same level of successful call attempts) as the incumbent LEC. *See* William W. Sharkey, *The Theory of Natural Monopoly* 184–85, (1982) (''that for a given number of circuits the economies [of scale] are more pronounced at higher grades of service (lower blocking probability). The economics of scale, however, decline substantially as the number of circuits increases. *Therefore for small demands a fragmentation of the network could result in a significant cost penalty, because more circuits would be required to maintain the same grade of service. At larger demands the costs of fragmentation are less pronounced*.'') (emphasis added). As a new entrant gains market share and increased traffic volumes for local service, however, the relative amount of excess capacity necessary to prevent blocking should decrease. We do not rule out the possibility, therefore, that, once new entrants have had a fair opportunity to enter the market and compete, we might reconsider incumbent LECs' obligations to provide access to the routing table.

40. As discussed above, requesting carriers may use shared transport to provide exchange access service to customers for whom they also provide local exchange service. Several competing carriers contend that an interexchange carrier (IXC) has the right to select a requesting carrier that has purchased unbundled shared transport to provide exchange access service. The carriers further contend that, if the IXC selects a requesting carrier, rather than the incumbent LEC, as the exchange access provider, the competing carrier is entitled to bill the IXC for the access services associated with shared transport. We find that a requesting carrier may use shared transport facilities to provide exchange access service to originate or terminate traffic to its local exchange customers, regardless of whether the requesting carrier or another carrier is the IXC for that traffic. We further conclude that a requesting carrier that provides exchange access service to another carrier is entitled to assess access charges associated with the shared transport facilities used to transport the traffic. We believe that this necessarily follows from our decision in the *Local Competition Order* where we stated that:

> [W]here new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXCs originating or terminating toll calls on those elements. In these circumstances, incumbent LECs may not assess exchange access charges to IXCs because the new entrants, rather than the

incumbents, will be providing exchange access services. * * *

We therefore find that requesting carriers that provide exchange access using shared transport facilities to originate and terminate local exchange calls may also use those same facilities to provide exchange access service to the same customers to whom the requesting carrier is providing local exchange service. Requesting carriers are then entitled to assess access charges to interexchange carriers that use the shared transport facilities to originate and terminate traffic to the requesting carrier's customers.

E. Final Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act (RFA), the Commission issued a Final Regulatory Flexibility Analysis (FRFA) in its *Local Competition Order* in this proceeding. None of the petitions for reconsideration filed in Docket No. 96–98 specifically address, or seek reconsideration of, that FRFA. This present Supplemental Final Regulatory Flexibility Analysis addresses the potential effect on small entities of the rules adopted pursuant to the *Third Order on Reconsideration* in this proceeding, supra. This Supplemental FRFA incorporates and adds to our FRFA.

42. *Need for and Objectives of this Third Order on Reconsideration and the Rules Adopted Herein.* The need for and objectives of the rules adopted in this *Third Order on Reconsideration* are the same as those discussed in the *Local Competition Order*'s FRFA ''Summary Analysis of Section V Access to Unbundled Network Elements.'' In general, our rules adopted in Section V were intended to facilitate the statutory requirement that incumbent local exchange carriers (LECs) are required to provide nondiscriminatory access to unbundled network elements. In this Third Order on Reconsideration, we grant in part and deny in part the petitions filed for reconsideration and/or clarification of the *Local Competition Order*, in order to further the same needs and objectives. We conclude that the duty of incumbent LECs to provide access to unbundled network elements also includes the provision of ''shared transport'' as an unbundled network element between end offices, even if tandem switching is not used to route the traffic. We also hold that the term ''shared transport'' refers to all transmission facilities connecting an incumbent LEC's switches—that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. We conclude that incumbent LECs are obligated under Section 251(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(d)(2), to provide access to both their interoffice transmission facilities and their routing tables contained in the incumbent LEC's switches. Finally, we conclude that a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service.

43. *Description and Estimate of the Number of Small Entities To Which the Rules Will Apply.* In determining the small entities affected by our Third Order on Reconsideration for purposes of this Supplemental FRFA, we adopt the analysis and definitions set forth in the FRFA in our *Local Competition Order.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules we have adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees. Consistent with our FRFA and prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of ''small entity'' and ''small business concern.'' While such a company may have 1500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term ''small incumbent LECs'' to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

44. In addition, for purposes of this Supplemental FRFA, we adopt the FRFA estimates of the numbers of telephone companies, incumbent LECs, and competitive access providers (CAPs) that might be affected by the *Local Competition Order.* In the FRFA, we determined that it was reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that might be affected. We further estimated that there are fewer than 1,347 small incumbent LECs that might be affected. Finally, we estimated that there were fewer than 30 small entity CAPs that would qualify as small business concerns.

45. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* As a result of the rules adopted in the *Third Order on Reconsideration*, we require incumbent LECs to provide requesting carriers with access to the same shared transport for all transmission facilities connecting incumbent LECs' switches. No party to this proceeding has suggested that changes in the rules relating to access to unbundled network elements would affect small entities or small incumbent LECs. We determine that complying with this rule may require use of engineering, technical, operational, accounting, billing, and legal skills. For example, a new entrant may be required to combine its own interoffice facilities with those of the incumbent LEC, or be required to combine purchased unbundled network elements into a package unique to its own needs.

46. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As stated in our FRFA, we determined that our decision to establish minimum national requirements for unbundled elements should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. National requirements for unbundling may allow new entrants, including small entities, to take advantage of economies of scale in network design, which may minimize the economic impact of our decision in the *Local Competition Order.* As stated above, no petitioner has challenged this finding. We further find that our new rules, which clarify the definition of ''shared transport,'' will likely ensure that small entities obtain the unbundled elements that they request.

47. *Report to Congress:* The Commission will send a copy of the *Third Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). A copy of the *Third Order on Reconsideration* and this supplemental FRFA (or summary

thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Ordering Clauses

48. *Accordingly, it is ordered* that, pursuant to sections 1–4, 201–205, 214, 251, 252, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 251, 252, and 303(r), the Third Order on Reconsideration is adopted.

49. *It is further ordered* that changes adopted on reconsideration and the rule amendments will be effective September 29, 1997.

50. *It is further ordered,* pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.106 of the Commission's rules, 47 CFR 1.106 (1995), that the petitions for reconsideration filed by WorldCom, Inc. and the Local Exchange Carriers Coalition are denied in part and granted in part to the extent indicated above.

51. *It is further ordered,* that the Commission shall send a copy of this Third Order on Reconsideration and Further Notice of Proposed Rulemaking, including the associated Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications common carriers, Network elements, Transport and termination.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 51 of title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 225–27, 251–54, 271, unless otherwise noted.

2. Section 51.319 is amended by revising paragraph (d)(1) to read as follows:

§ 51.319 Specific unbundling requirements.

* * * * *

(d) * * *

(1) Interoffice transmission facilities include:

(i) Dedicated transport, defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers;

(ii) Shared transport, defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network;

* * * * *

3. Section 51.515 is amended by adding paragraph (d) to read as follows:

§ 51.515 Application of access charges.

* * * * *

(d) Interstate access charges described in part 69 shall not be assessed by incumbent LECs on each element purchased by requesting carriers providing both telephone exchange and exchange access services to such requesting carriers' end users.

[FR Doc. 97–22734 Filed 8–27–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[FCC 97–163]

Implementation of Section 254(k) of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission implements section 254(k) by codifying its prohibitions in part 64 of the Commission's rules. The Commission revises § 64.901 to establish a new section (c) to reflect section 254(k) of the Telecommunications Act of 1996 (1996 Act). Section 254(k) states that ''a telecommunications company may not use services that are not competitive to subsidize services subject to competition.''

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Mulitz, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0827.

SUPPLEMENTARY INFORMATION: The opening of the local exchange and exchange access markets to competition as well as the ability of the Bell Operating Companies (BOCs) to enter new markets and engage in previously proscribed activities creates the potential for incumbent local exchange carriers' (ILECs) to misallocate costs in ways that our current rules may not restrict because these rules are focused on the allocation of costs between regulated and nonregulated activities. New section 254(k), however, establishes two dichotomies that are not explicitly addressed by our existing rules. Section 254(k) requires additional scrutiny of the allocation of costs between competitive and noncompetitive activities, both regulated and nonregulated, and between universal services and all other services.

Section 254(k) states that ''a telecommunications company may not use services that are not competitive to subsidize services that are subject to competition.'' The Commission concludes that this provision of section 254(k) places an obligation on telecommunications carriers that supplements our existing rules. This provision of section 254(k) addresses the concern that ILECs may attempt to gain an unfair market advantage in competitive markets by allocating to their less competitive services, for which subscribers have no available alternative, an excessive portion of the costs incurred by their competitive operations.

Section 254(k) also directs the Commission, with respect to interstate services, to ''establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

For ILECs, the Commission concludes that codifying section 254(k)'s prohibitions in part 64 of our rules will give the fullest effect to the Act's prohibitions. In this way, our rules will reflect the intent of the Act and reinforce our commitment to enforcing this mandate. Because this rule change merely codifies the requirements of the Act and involves no discretionary action by the Commission, we find good cause to conclude that notice and comment procedures are unnecessary.

Ordering Clause

Accordingly, *It is ordered* that, pursuant to sections 1, 4, 201–205, 218, 220, 251, 252 and 254(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154, 201–205, 218, 220, 251, 252 and 254(k), and