

§51.315

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§51.315 Combination of unbundled network elements.

(a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.

(b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination:

(1) Is technically feasible; and

(2) Would not undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

(d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

(e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.

(f) An incumbent LEC that denies a request to combine unbundled network elements pursuant to paragraph (c)(2) of this section must demonstrate to the state commission that the requested combination would undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

[61 FR 45619, Aug. 29, 1996, as amended at 68 FR 52294, Sept. 2, 2003]

§51.316 Conversion of unbundled network elements and services.

(a) Upon request, an incumbent LEC shall convert a wholesale service, or group of wholesale services, to the equivalent unbundled network element, or combination of unbundled network elements, that is available to the requesting telecommunications

carrier under section 251(c)(3) of the Act and this part.

(b) An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

(c) Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, reconnect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.

[68 FR 52294, Sept. 2, 2003]

§51.317 Standards for requiring the unbundling of network elements.

(a) *Proprietary network elements.* A network element shall be considered to be proprietary if an incumbent LEC can demonstrate that it has invested resources to develop proprietary information or functionalities that are protected by patent, copyright or trade secret law. The Commission shall undertake the following analysis to determine whether a proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

(1) Determine whether access to the proprietary network element is "necessary." A network element is "necessary" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting telecommunications carrier or acquiring an alternative from a third-party supplier, lack of access to the network element precludes a requesting telecommunications carrier from providing the services that it seeks to offer. If access is "necessary," the Commission may require the unbundling of such proprietary network element.

(2) In the event that such access is not "necessary," the Commission may