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## Competing Local Exchange Carriers

As we noted in the introduction to this book, CLECs are creations of the Telecommunications Act of 1996. Before the 1996 Act became law, the states generally refused to license new telephone companies to compete with the BOCs and other incumbents in the market for local exchange service [1]. The 1996 Act brought an abrupt end to this exclusionary practice. Today, state and local governments may not prohibit “the ability of any entity to provide any interstate or intrastate telecommunications service” [2].

Although CLECs may provide the same local exchange services and exchange access services as the BOCs and other incumbents, they are subject to different—and substantially less rigorous—regulatory constraints than the ILECs. Notably, once a CLEC has satisfied the certification requirements of its state commission and obtained its authorization to provide service, it may conduct its business without regulatory interference so long as it contributes to universal service and other funds, files state tariffs, and makes informational reports to regulators where required. Most importantly, CLECs are effectively free from direct regulation of their rates and earnings, either on a rate-of-return or price-cap basis, and lack the detailed interconnection obligations of ILECs.

This relative freedom from regulatory constraint, however, does not mean that CLECs can afford to ignore regulatory developments. In fact, the rules and decisions of the FCC and the state PUCs critically affect the ability of CLECs to obtain the ILEC facilities and services—including interconnection, access to unbundled network elements, and services offered for

resale—without which local exchange competition would be largely illusory. Those commissions also have attempted to define the terms on which CLECs may obtain access to poles, conduits, and other rights-of-way, including access to shopping centers, office buildings, and other multiple tenant properties. Accordingly, the CLECs' interest in their regulatory environment has been no less intense than that of their incumbent competitors.

This chapter describes the principal concerns that state and federal regulation presents for CLECs. We begin with the requirements the states impose for CLEC certification and the conduct of CLECs' operations; after which we describe the evolving rules under which CLECs obtain needed access to ILEC facilities, ILEC services, and poles, conduits, and other rights-of-way.

## **I. State Certification of CLECs**

Although the states may not prohibit CLECs from operating, they may impose reasonable requirements intended to “preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers” [3]. Pursuant to this authority, all of the states require CLECs to satisfy certification requirements before providing service. (Some states hold formal hearings on some or all CLEC applications for certification, while other states conduct only “paper” proceedings.) Although certification requirements vary from state to state, they all include some combination of the following elements.

### **A. Election of Facilities-Based or Resale Authority**

All states require applicants for CLEC authority to state whether they will operate as facilities-based carriers or resellers. These categories are often ill-defined, but a general account of the differences between them is possible.

Facilities-based CLECs, as the name suggests, provide service wholly or partly through equipment and facilities that the CLECs own or control. In most states, ownership or control of a switch will qualify a CLEC as facilities-based. Similarly, a CLEC that will use unbundled network elements (UNEs) obtained from ILECs will be classified as facilities-based and may, in fact, need a facilities-based certification before an ILEC will permit it to obtain UNEs.

CLECs doing business as resellers purchase services from ILECs at a discount and sell those services to the CLECs' customers. Resellers typically "brand" the service, market the service, provide customer support, and set the rates at which the service is sold. Resellers are to be distinguished from sales agents, which sell telephone services on a commission basis and do not brand the service, set the rates for the service or provide customer support after the sale is made. Sales agents are not CLECs, do not require certification, and do not file tariffs or comply with other common carrier obligations.

## **B. Specification of Services to Be Offered**

The states generally require applicants for CLEC certification to specify the services they will offer. If the CLECs later propose to add or eliminate services, they generally will be required to amend their applications accordingly.

This modest requirement raises a larger issue. After passage of the 1996 Telecommunications Act, state public utilities commissions received requests for certification from CLECs that had no intention of offering the full range of traditional telephone services. In fact, the commissions received requests from companies that planned to provide "data-only" services to business customers and avoid the voice and residential markets altogether. In all states, these proposals departed from past practice and the common carrier principle to which traditional carriers were expected to adhere. In some states, these proposals also violated regulations that expressly required carriers to provide basic telephone service to the public at large [4].

In spite of its novelty and inconsistency with past practice, the "data CLEC" concept did not meet with outright rejection by the state commissions. Some state commissions accommodated data CLEC applications by waiving the usual service requirements. Other commissions granted "conditional" data CLEC authority pending further review of the public-interest implications of permitting CLECs to offer a limited menu of business-oriented services [5]. As data CLECs become more entrenched and businesses become dependent on their services, states are unlikely to require CLECs to provide a full range of telecommunications services as a condition of certification [6].

## **C. Specification of Area to Be Served**

A number of states certify all applicants for CLEC authority to serve the entire state, without necessarily requiring CLECs to exercise that authority in all areas of the state. Other state commissions require CLEC applicants to

specify each local exchange they propose to serve, and grant authorization only for the exchanges so specified. Where a certification is for a specific service area, the CLEC's certificate may include a "build-out" requirement, providing that the carrier's service must be available throughout the service area within a specified time.

#### **D. Financial Ability to Serve**

Most states require some showing of the CLEC applicant's financial ability to serve. California, for example, requires an applicant to show that it has \$100,000 cash, or cash equivalent, available at the time the application is made. Texas imposes a complex formula, requiring the applicant to show that it possesses either:

1. The greater of \$100,000 cash or cash equivalent *or* enough cash or equivalent to meet startup expenses, working capital requirements, and capital expenditures for the first two years of operations in Texas; or
2. That it is an established business entity and has shown a profit for two years preceding the date of application, as demonstrated by:
  - (a) a long-term debt-to-capitalization ratio of less than 60%,
  - (b) a return-on-assets ratio of at least 10%, and
  - (c) \$50,000 cash or cash equivalent.

Missouri also imposes alternative tests. Specifically, an applicant in Missouri must show that it has either:

1. A total debt-to-capital ratio no greater than 62% and a pretax interest coverage of at least 2.3 $\times$ ; or
2. A cash balance of four months operating expenses inclusive of interest expense and taxes.

Most states also require applicants to file financial statements with the state commission. Pennsylvania, for example, requires a number of filings including a tentative operating balance sheet and projected income statement for the first year of operations in Pennsylvania. Georgia requires extensive submissions, including the most recent certified report on examination of the applicant's financial statements, a current year operating budget and

proposed budget for the next year, and current and next-year gross revenues and employment for the applicant's Georgia operations.

### **E. Construction Plans and Environmental Impact Statements**

The principal difference between applying for certification as a facilities-based CLEC and applying as a resale CLEC is that facilities-based applicants may be required to submit detailed construction plans and environmental impact statements to their state commissions. These requirements are not very exacting when the applicant proposes only to install switches within existing buildings, but can be quite extensive when the applicant will install optical fiber or other facilities that require excavation or construction of new structures [7].

### **F. Tariff Filings**

As we discuss in the next section, the states continue to require local exchange carriers to publish tariffs that set out the rates and other conditions of their intrastate services. Depending upon the state's regulations, tariff filings may be due as part of the application for certification, within a specified time after the application is granted, or before commencing service to any exchange area.

## **II. Ongoing CLEC Regulatory Obligations**

Most, but not all, of the CLECs' regulatory obligations are imposed by state PUCs rather than the FCC, which has effectively deregulated CLECs' access charges and has taken no role in certification of CLECs to provide any service, whether interstate or intrastate [8]. In fact, the principal involvement of federal regulators in CLEC affairs—besides defining the interconnection obligations owed to CLECs by ILECs—is in the administration of certain “universal service” and other funds to which CLECs contribute and from which some CLECs obtain benefits.

The following identifies and summarizes the principal, ongoing regulatory obligations of CLECs under state and federal regulations.

### **A. Contributions to Universal Service and Other Funds**

As we discuss at length in Chapter 10, providers of telecommunications services in the United States contribute to an array of state and federal funds that

finance or subsidize services and activities related to the telecommunications industry and its customers. Some of these funds are used to subsidize particular services or service providers, including basic, residential service for low-income customers, providers of service to high-cost areas and persons with hearing and speech disabilities. Other funds underwrite the entire cost of numbering plan administration and the number of portability databases that permit customers to change service providers without changing their telephone numbers. CLECs contribute to all of these funds.

The most significant of the federal funds to which CLECs contribute is the high-cost fund of the FCC's universal service system. This fund, which subsidizes telephone companies that serve high-cost (chiefly rural and remote) areas of the country, is supported by contributions from every "telecommunications carrier that provides interstate telecommunications service" [9]. Specifically, a CLEC that provides interstate access or other interstate services must pay to the fund a percentage of its total interstate and international end-user telecommunications revenue [10]. The contribution factor (i.e., percentage of revenues that the CLEC must contribute) is calculated quarterly by the Administrator of the Universal Service Administrative Company (USAC). The contribution factor tends to be set in the range of 5% to 6% of end-user interstate telecommunications revenues [11].

All carriers that provide interstate telecommunications service also must contribute to the federal fund for Telecommunications Relay Service (TRS), an operator-assisted telephone service provided to the speech and hearing impaired. At this writing, the contribution factor for the TRS fund is .00038 of each contributor's end-user, interstate telecommunications revenues.

The FCC also oversees funds that support the administration of the North American Numbering Plan (NANP) and the regional databases that permit customers to transfer their telephone numbers from one local carrier to another. Contributions to the NANP fund are based on the contributor's end-user telecommunications revenues from both interstate and intrastate services, with a contribution factor at this writing of .0000577. Each carrier's contribution to the number portability fund depends upon the costs of the regional database from which that carrier is served. For each region, the FCC's Common Carrier Bureau sets a contribution factor that is assessed against carriers' end-user telecommunications revenues, both interstate and intrastate. Like the NANP fund contributions, payments to the number portability fund tend to be quite modest as a percentage of revenue.

The states also subsidize local residential service and service provided to high-cost customers. Some states rely for this purpose on the traditional

system of so-called “implicit subsidies,” in which certain services are required to be priced above cost in order to support below-cost rates for other services. An increasing number of states, however, have instituted universal service funds similar to the federal fund. These funds tend to be supported by contributions collected through a surcharge on end-users’ bills for intrastate services.

The contribution factors for these state funds vary. Texas, for example, imposes a contribution factor of 3.6% of an end-user’s bill for intrastate service. Similarly, Utah imposes a contribution factor of 1%; Nebraska collects 7%; and Kansas takes 7.9%.

States also may maintain separate funds for TRS service, service to low-income customers and other purposes. A California Public Utilities Commission order entered in February, 2000, for example, requires a newly certified CLEC to make the following contributions:

1. A .5% surcharge on all intrastate services for Universal Lifeline Telephone Service (a subsidy program for low-income customers);
2. A 1.92% surcharge for the California Relay Service and Communications Devices Fund (intrastate TRS);
3. A 2.6% surcharge on all intrastate services to support the California High-Cost Fund;
4. A .05% surcharge on a defined set of intrastate services for the California Teleconnect Fund (providing discounted service to qualifying libraries, schools, hospitals, health clinics, and community organizations) [12].

As noted earlier, the various state and federal funds are assessed only against revenues earned from telecommunications services. Accordingly, CLECs will not contribute to those funds on the basis of Internet access and other enhanced, or information, services.

## **B. Tariffs and Informational Filings**

The states generally apply tariffing obligations to CLECs for their intrastate telecommunications services. However, some states permit CLECs to obtain relief from those obligations upon a showing that such relief will not harm the public interest.

The states also generally require CLECs to file reports with the state commission at prescribed intervals. Connecticut, for example, requires each

CLEC to file annual reports that include, at a minimum, the following information:

1. The number of customers for each service offered under the CLEC's certificate;
2. The number of lines subscribed to the CLEC's services;
3. Total intrastate revenues;
4. The intrastate minutes of use on a total service basis;
5. A description of physical changes in or additions to existing facilities expected for the next fiscal year and any expected change in use of those facilities;
6. Any changes in the information filed with the state commission at the time of the CLEC's certification [13].

### **C. Interconnection and Related Obligations**

Because CLECs were not incumbent monopolists at the time of passage of the 1996 Telecommunications Act, they are not subject to the pervasive obligations imposed upon ILECs by Section 251(c) of the Act. Notably, CLECs are not required to make unbundled elements of their networks available to competitors, or to permit collocation of other carriers' facilities with theirs, or to sell their services to other carriers at a discount. The CLECs are, however, subject to the less exacting requirements of Sections 251(a) and 251(b) of the 1996 Act, which apply, respectively, to all telecommunications carriers and all local exchange carriers.

The obligations imposed by Section 251(a), which apply to all telecommunications carriers (including ILECs, CLECs, and mobile telephone companies) are straightforward. A telecommunications carrier must interconnect, either directly or indirectly, with the facilities of other telecommunications carriers; and a telecommunications carrier must not install network features or capabilities that frustrate use by persons with disabilities or interoperability among networks. The first of these requirements is effectively met by any carrier that connects with the public switched telephone network; the second requirement is further defined by Sections 255 and 256 of the Act and the Commission's rules adopted pursuant to those sections.

Section 251(b), which applies to all local exchange carriers (including both ILECs and CLECs), imposes five obligations.

The first of the 251(b) obligation is that of *resale*. Specifically, a LEC must not prohibit the resale of its telecommunications services or impose



unreasonable or discriminatory conditions or limitations upon such resale [14]. This requirement does not mean, however, that a CLEC (as opposed to an ILEC) must offer its services at a discount to those who intend to resell those services [15]. It means only that LECs must sell their services at their customary retail rates to end users and resellers alike, without imposing conditions designed to frustrate the development of a resale market for the LECs' services.

The second of the 251(b) obligations is that of *number portability*. As the name suggests, LECs are required, to the extent feasible, to permit their customers to take their telephone numbers with them when they switch to other carriers [16]. The FCC has adopted rules to govern number portability, and regional databases have been established to facilitate the porting of numbers among carriers.

The third of the 251(b) obligations is that of *dialing parity*. This requirement means that a LEC must permit its customers to reach the customers of other carriers without dialing extra digits [17]. LECs also must permit all providers of telephone exchange and toll service to "have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays" [18].

The fourth requirement is that all LECs must afford competing telecommunications service providers with access to their poles, ducts, conduits, and rights-of-way [19]. This requirement, which affects only facilities-based carriers with their own transmission facilities, is more fully defined in Section 224 of the Act and the FCC's rules adopted pursuant to that section. These requirements are discussed more fully in the following section and, as they affect ILECs, in Chapter 3.

Finally, Section 251(b) requires all LECs to establish "reciprocal compensation arrangements" with other carriers for the "transport and termination of telecommunications" [20]. This language refers to the terms upon which local carriers compensate each other for transporting and delivering the calls of each carriers' customers to customers of the other carrier. This obligation, also, is discussed at greater length in Chapter 3 and Section III of this chapter.

### **III. CLEC Access to ILEC Facilities, ILEC Services, and Rights-of-Way**

For a CLEC, the most important regulatory obligations are not its own, but are those of the ILECs that still control the local telephone exchange

everywhere in the United States. As we discussed at greater length in Chapter 3, if ILECs refused to interconnect with CLECs' networks, the CLEC industry would be nothing more than an archipelago of closed networks, offering their customers only the ability to communicate with each other. As we also discussed, if ILECs did not give their CLEC competitors access to unbundled network elements and sell services to CLECs at a discount, local competition would take much longer to develop. For these reasons, the 1996 Telecommunications Act imposed detailed obligations on ILECs in each of these areas, and made the opening of their networks to competition the condition for entry of the Bell operating companies into the interexchange marketplace.

The following discussion will not repeat the descriptions, in Chapters 3 and 4, of the obligations owed to CLECs by BOCs and other ILECs. It is worth noting here, however, some issues and requirements that have been of particular concern to CLECs as they have attempted to secure the cooperation of their (often reluctant) incumbent competitors.

### **A. Interconnection and Reciprocal Compensation**

As we discussed in Chapter 3, the 1996 Act requires all ILECs and their CLEC competitors to negotiate arrangements under which ILECs pay CLECs for completing calls from ILEC customers to CLEC customers, and CLECs pay ILECs for completing calls from CLEC customers to ILEC customers. The Commission has determined that this reciprocal compensation obligation applies only to completion of local calls, and the interconnection agreements negotiated between ILECs and CLECs generally state that the parties will compensate each other for completion of calls between points within the same local calling area.

When the first interconnection agreements were negotiated, the parties generally did not address the question whether seven-digit calls placed to ISPs were local calls [21]. When CLECs acquired ISPs as local service customers, the CLECs took the position that calls placed to ISPs by ILEC customers should result in payment of reciprocal compensation to the CLECs.

The ILECs discovered, however, that ISPs were accounting for a significant share of the CLECs' customer base. Because ISP traffic tends to flow from end users to the ISP and not in the other direction, CLECs with a large number of ISP customers relative to non-ISP customers were entitled to receive more compensation money from ILECs than they were paying to the ILECs. The ILECs' response to this phenomenon was to refuse to pay reciprocal compensation for calls placed by their customers to ISPs served by

CLECs. As a rationale for this refusal, the ILECs argued that when end users place seven-digit calls to ISPs they are not making local calls but instead are initiating communications that extend from the customers' premises to Internet sites located outside the exchange—and even outside the state or country—in which the calling party is located. Accordingly, the ILECs simply declared that calls to ISPs are not local and should be classified as interstate traffic under the interconnection agreements.

The ILECs' refusal to pay reciprocal compensation for ISP traffic resulted in a petition to the FCC by the Association for Local Telecommunications Services (ALTS), requesting a declaration that ISPs still are classified as end users under the Commission's decisions and that seven-digit calls to ISPs therefore are local rather than interstate. CLECs requested similar rulings from state regulatory commissions, which are empowered to interpret and enforce interconnection agreements between ILECs and CLECs. The FCC did not act on the ALTS petition, but over 20 state regulatory commissions ruled that local calls placed to ISPs are eligible for payment of reciprocal compensation under existing interconnection agreements.

In March of 1999, the FCC entered a decision finding that seven-digit calls to ISPs are jurisdictionally interstate and should not, therefore, be classified as local traffic for purposes of eligibility for reciprocal compensation [22]. (The Commission did not, however, attempt to overturn those state decisions that had reached a contrary result.) The Commission also pursued a parallel proceeding to determine whether it should develop a separate system of compensation for termination of ISP-bound traffic. At this writing, that proceeding is still pending. A federal appellate court then added to the confusion by vacating the FCC's reciprocal compensation decision and remanding the issue (i.e., sending it back to the FCC) for further consideration [23].

The issue of reciprocal compensation for ISP-bound traffic continues to be contentious and confused. Besides the ongoing FCC proceedings, the reciprocal compensation question continues to be the subject of negotiation between individual ILECs and CLECs, as well as arbitration proceedings before state regulatory commissions.

## **B. Access to Unbundled Network Elements**

The 1996 Act requires ILECs to provide their local competitors with access to "unbundled network elements" to be used "for the provision of a telecommunications service," but does not specify the particular network elements that must be provided [24].

The Commission addressed this question in 1996, when it directed the ILECs to provide access to the following elements of their networks to competing carriers:

1. Loops, including loops used to provide high-capacity and advanced telecommunications services;
2. Network interface devices;
3. Local circuit switching (except for larger customers in major urban markets);
4. Dedicated and shared transport;
5. Signaling and call-related databases;
6. Operations support systems;
7. Operator and directory assistance services [25].

The Supreme Court, however, determined that the FCC had applied an improper legal standard in generating this list and remanded the matter to the Commission for further proceedings [26]. Accordingly, the Commission undertook a new proceeding and determined that all of the elements on its list except the seventh (i.e., operator and directory assistance service) were necessary in order for CLECs to provide competitive local service and must be provided by ILECs as unbundled network elements [27].

Subsequent to its identification of this basic list of unbundled network elements, the Commission was presented with an additional problem by the rapid deployment of digital subscriber line (DSL) technology, which permits telephone customers to combine voice and high-speed data communications on a single subscriber line. Although CLECs were entitled to obtain end-users' subscriber lines as unbundled network elements, it was not clear that they were entitled to obtain access to just the upper frequencies of ILEC local loops conditioned for DSL. Without such access, customers that wanted to obtain DSL from CLECs would have to combine that service with the CLEC's voice service, or (if they wished to purchase CLEC DSL service without discontinuing their ILEC voice service) purchase a second line.

Fortunately for the CLECs, the FCC determined that ILECs must provide the upper frequency portions of their DSL-conditioned loops to CLECs as unbundled network elements [28]. This "line sharing" decision did not, however, resolve the question of how much ILECs could charge for shared lines provided to CLECs. Several state commissions have received petitions from CLECs, arguing that upper frequency portions of loops should be

provided without charge because ILECs incur no incremental cost to transmit data on a line that already carries voice. (At least one Verizon employee apparently conceded this point with an incautious statement that the incremental cost of providing DSL over a voice line is zero.) CLECs have negotiated rates for shared lines that range from just over \$5.00 per-line-per-month to over \$8.00 per-line-per-month, and at least one state commission (Minnesota) has established a line-sharing rate of \$6.05 per month.

### **C. Poles, Conduits, and Rights-of-Way**

Section 224 of the 1996 Act provides that utilities, including local telephone companies, must “provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it” [29].

Under the authority granted in Section 224, the Commission has adopted extensive rules that amplify the meaning of “nondiscriminatory” access and establish principles for setting prices that telecommunications carriers (including CLECs) and cable television companies must pay for access to these facilities.

Some of the most troubling questions under Section 224 have involved access to multitenant environments such as apartment buildings, office buildings, office parks, and shopping centers. In most of these environments, telephone service is provided by the incumbent carrier. In order to reach individual tenants within these multitenant premises, the ILEC uses a distribution network that runs through conduit, risers, and other facilities controlled by the ILEC directly or by the owner of the premises.

The distribution facilities within these multitenant environments presented, potentially, a formidable obstacle to local competition. Without mandated access to these facilities, CLECs either could not offer their service to tenants or could not do so without paying exorbitant fees to premises owners.

Responding to these concerns, in 1999 the FCC asked for comment on a proposed rule that CLECs must be granted access to rights-of-way and riser conduit that public utilities own or control in multiple tenant environments [30]. In that same notice, the Commission asked for comment on a more difficult question (i.e., whether it has the jurisdiction to require building owners to grant CLECs access to building areas that are controlled, not by a public utility, but by the building owner himself) [31]. Although an affirmative answer to this question will pose obvious benefits for CLECs, adoption of an FCC rule that effectively imposes access obligations on

property owners, rather than telecommunications service providers already subject to the Communications Act, might raise constitutional issues and certainly would start a long campaign of appellate litigation.

## Conclusion

When Congress opened the local telephone exchange to competition, it gambled that new entry into local markets could be more than a niche business serving the specialized needs of business customers in urban areas. To the extent regulators can affect the outcome of this gamble, they generally have done so by regulating CLECs lightly and requiring ILECs to open their networks to competition to an extent that has no precedent in any other industry. The gamble's ultimate outcome will depend, in large part, on the vigor with which regulators can enforce the market-opening commitments of the ILECs, and especially of those BOCs that already have obtained entry into interexchange markets and have reduced incentives to demonstrate their cooperativeness.

## Endnotes

- [1] Before the 1996 Act became law, a number of states had certified competitive access providers (CAPs) to offer exchange access and specialized services primarily to business customers. The states continued, however, to protect the incumbents' monopoly over ordinary local exchange telephone service.
- [2] 47 U.S.C. § 253(a).
- [3] *Id.* § 253(6).
- [4] Providers of nonvoice services also do not provide services, such as emergency 911 calling, that are required of all telephone companies. Unless the state commission has adopted rules that eliminate these requirements for data CLECs, applicants must request and obtain waivers before providing service.
- [5] *See* Application of Northpoint Communications, Inc. for a Certificate of Public Convenience and Necessity Docket No. 990504 (Csm. OPUC Sep. 30, 1999); Application of DSLnet Communications, LLC for a Certificate of Public Convenience and Necessity, Docket No. 990119 (Conn. OPUC June 16, 1999).
- [6] State commissions, however, limit eligibility for state universal service supports to those CLECs that provide basic telephone service to all who request it.
- [7] *See, e.g.,* Application of Intermedia Communications, Inc. for Reinstatement of Its Lapsed Certificate of Public Convenience and Necessity to Operate as a Facilities-Based

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Competitive Local Exchange Carrier and to Offer Resale of Local Exchange Services in California, Decision No. 00-02-013 (Cal. PUC 2000).

- [8] Although the FCC has jurisdiction over the CLECs' interstate access services, the Commission has exercised its forbearance authority to relieve CLECs of the obligation to file tariffs for their access services provided to IXCs in connection with interstate calls. However, in response to IXC complaints of price-gouging by CLECs, the Commission is considering whether some scrutiny of the relationship between CLEC access charges and the CLECs' cost of providing interstate access might be appropriate.
- [9] 47 U.S.C. § 254(d).
- [10] Still more precisely, the individual company's contribution is a product of: (1) the contributor's individual interstate and international end-user telecommunications revenues; and (2) a contribution factor that is equal to the ratio of total projected quarterly expenses of the fund to the total interstate and international end-user telecommunications revenues of all contributors. CLECs do not contribute to the FCC universal service fund on the basis of their interstate access charges to IXCs, but do contribute to the fund to the extent they impose access charges on their local service customers.
- [11] CLECs and other telecommunications carriers also contribute, on the basis of revenues from interstate end-user telecommunications services, to a fund that subsidizes advanced telecommunications services to qualifying schools, libraries, and health care providers. 47 U.S.C. § 254(b)(6).
- [12] Application of Intermedia Communications, Inc. for Reinstatement of Its Lapsed Certificate of Public Convenience and Necessity to Operate as a Facilities-Based Competitive Local Exchange Carrier and to Offer Resale of Local Exchange Services in California, Decision No. 00-02-013 (CPUC 2000).
- [13] Application of DSLnet Communications, LLC for a Certificate of Public Convenience and Necessity, Docket No. 99-01-19 (CDPUC 1999).
- [14] 47 U.S.C. § 251(b)(1).
- [15] ILECs, of course, are required by Section 251(c) of the Act to provide telecommunications services to resellers at wholesale rates. *Id.* § 251(c)(4).
- [16] *Id.* § 251(b)(2).
- [17] *Id.* § 251(b)(3).
- [18] *Id.*
- [19] *Id.* § 251(b)(4).
- [20] *Id.* § 251(b)(5).
- [21] MFS Communications Company, however, took the precaution of filing a Petition for Partial Reconsideration and Clarification of the FCC's Local Competition Order, requesting that the Commission clarify that traffic destined for ISPs is eligible for reciprocal compensation under the 1996 Act. The FCC has not acted on the MFS petition, which was filed in September of 1996. *See Ex Parte Procedures Regarding Requests for*

- Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CC Docket No. 96-98, Public Notice released Aug. 17, 1998.
- [22] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 14 FCC Rcd. 3689 (1999).
- [23] *Bell Atlantic Telephone Companies v. Federal Communications Commission*, 206 F.3d 1 (D.C. Cir. 2000).
- [24] 47 U.S.C. § 251(c)(3).
- [25] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499.
- [26] *AT&T Corp., et al. v. Iowa Utilities Board, et al.*, 525 U.S. 366 (1999).
- [27] "FCC Promotes Local Telecommunications Competition; Adopts Rules on Unbundling of Network Elements," FCC Report No. CC9941 (Sept. 15, 1999).
- [28] Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 14 FCC Rcd. 20912 (1999).
- [29] 47 U.S.C. § 224(f)(1).
- [30] Promotion of Competitive Networks in Local Telecommunications Markets, 14 FCC Rcd. 12673 (1999).
- [31] *Id.*