



# Restoring Section 271 to its Intended Role

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## Remember Section 271?

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- Outlined “grand bargain” of interLATA and information services entry in exchange for sharing network with competitors.
- Specific additional obligations on BOCs to provide:
  - Loops
  - Transport
  - Switching
  - Database access



## 271 Elements are Growing in Importance

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- Section 251 Elements constrained by use restrictions.
  - No mobile
  - No interexchange/data
- Section 251 Elements removed from key markets
  - Overreaching “impairment” analyses
  - Forbearance
- Uneconomic network duplication slows broadband – Berkman Study



## Where oh where are those 271 elements?

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- There is a continuing legal obligation.
- There is a strong and critical market need
- These are **additional** obligations, particular only to BOCs.
- The Act stated that 271 elements be offered in IAs, approved pursuant to 252 .... **but**,
- The Courts have ruled that only the FCC has jurisdiction.



## Petition for Expedited Rulemaking

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- 1) Establish the principal administrative device – a **federal SGAT** filed with FCC – to comply with Section 271's ongoing obligations;
- 2) Define requirements for Checklist Elements to be **nondiscriminatory** in practice and effect; and,
- 3) Viable process to determine if rates for Checklist Element rates are **just and reasonable**.



## Rules Prohibiting Nondiscrimination

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- Based on comparable rules applicable to Section 251 Elements.
- Key difference:

**NO USE RESTRICTIONS**



## FCC Pricing Standard for 271 Elements

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“...the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes...”

*TRRO* at ¶ 663



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- The just and reasonable standard will be applied using the FCC's "New Services Test."
- $NST = \text{Direct Cost} + \text{reasonable contribution.}$
- Direct cost based on state-reviewed UNE costs (less contribution).
- Safe harbor for reasonable contribution of 22%, based on average markup for RBOCs overall (2007).



## Avoiding the hideous irony ...

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“It would be a hideous irony if the incumbent LECs, simply by offering a service, the pricing of which falls largely within their control, could utterly avoid the structure instituted by Congress to, in the words of the Supreme Court, “give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents’ property.””