Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TALK AMERICA, INC. *v.* MICHIGAN BELL TELEPHONE CO. DBA AT&T MICHIGAN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 10–313. Argued March 30, 2011—Decided June 9, 2011*

The Telecommunications Act of 1996 requires incumbent local exchange carriers (LECs)—*i.e.*, providers of local telephone service—to share their physical networks with competitive LECs at cost-based rates in two ways relevant here. First, 47 U. S. C. §251(c)(3) requires an incumbent LEC to lease "on an unbundled basis"—*i.e.*, a la carte—network elements specified by the Federal Communications Commission (FCC) to allow a competitor to create its own network without having to build every element from scratch. In identifying those elements, the FCC must consider whether access is "necessary" and whether failing to provide it would "impair" the competitor's provision of service. §251(d)(2). Second, §251(c)(2) mandates that incumbent LECs "provide . . . interconnection" between their networks and competitive LECs' to ensure that a competitor's customers can call the incumbent's customers, and vice versa. The interconnection duty is independent of the unbundling rules and not subject to impairment analysis.

In 2003, the FCC issued its *Triennial Review Order* deciding, contrary to previous orders, that §251(c)(3) did not require an incumbent LEC to provide a competitive LEC with cost-based unbundled access to existing "entrance facilities"—*i.e.,* transmission facilities (typically wires or cables) that connect the two LECs' networks—because such facilities are not network elements at all. The FCC noted, however, that entrance facilities are used for both interconnection and backhauling, and it emphasized that its order did not alter incumbent

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*Together with No. 10–329, *Isiogu et al.* v. *Michigan Bell Telephone Co. dba AT&T Michigan,* also on certiorari to the same court.

LECs' §251(c)(2) obligation to provide for interconnection. Thus, the practical effect of the order was only that incumbent LECs were not obligated to unbundle entrance facilities for backhauling purposes.

In 2005, following D. C. Circuit review, the FCC issued its *Triennial Review Remand Order*. The FCC retreated from the view that entrance facilities are not network elements, but adhered to its previous position that cost-based unbundled access to such facilities need not be provided under §251(c)(3). Treating entrance facilities as network elements, the FCC concluded that competitive LECs are not impaired without access to such facilities. The FCC again emphasized that competitive LECs' §251(c)(2) right to obtain interconnection had not been altered.

In the *Remand Order*'s wake, respondent AT&T notified competitive LECs that it would no longer provide entrance facilities at cost-based rates for either backhauling or interconnection, but would instead charge higher rates. Competitive LECs complained to the Michigan Public Service Commission that AT&T was unlawfully abrogating their §251(c)(2) right to cost-based interconnection. The Michigan Public Service Commission agreed and ordered AT&T to continue providing entrance facilities for interconnection at cost-based rates. AT&T challenged the ruling. Relying on the *Remand Order*, the Federal District Court ruled in AT&T's favor. The Sixth Circuit affirmed, declining to defer to the FCC's argument that the order did not change incumbent LECs' interconnection obligations, including the obligation to lease entrance facilities for interconnection.

Held: The FCC has advanced a reasonable interpretation of its regulations—*i.e.,* that to satisfy its duty under §251(c)(2), an incumbent LEC must make its existing entrance facilities available to competitors at cost-based rates if the facilities are to be used for interconnection—and this Court defers to the FCC's views. Pp. 6–16.

(a) No statute or regulation squarely addresses the question. Pp. 6–7.

(b) Absent an unambiguous statute or regulation, the Court turns to the FCC's interpretation of its regulations in its *amicus* brief. See, *e.g., Chase Bank USA, N. A.* v. *McCoy*, 562 U. S. ___, ___. The FCC proffers a three-step argument why its regulations require AT&T to provide access at cost-based rates to existing entrance facilities for interconnection purposes. Pp. 7–10.

(1) Interpreting 47 CFR §51.321(a), the FCC first contends that an incumbent LEC must lease "technically feasible" facilities for interconnection. Pp. 8–9.

(2) The FCC contends, second, that existing entrance facilities are part of an incumbent LEC's network, 47 CFR §51.319(e), and

therefore are among the facilities that an incumbent LEC must lease for interconnection, if technically feasible. P. 9.

(3) Third, says the FCC, it is technically feasible to provide access to the particular entrance facilities at issue in these cases—a point AT&T does not dispute. P. 10.

(c) Contrary to AT&T's arguments, the FCC's interpretation is not "plainly erroneous or inconsistent with the regulation[s]." *Auer* v. *Robbins*, 519 U. S. 452, 461. First, it is perfectly sensible to read the FCC's regulations to include entrance facilities as part of incumbent LECs' networks. Second, the FCC's views do not conflict with 47 CFR §51.5's definition of interconnection as "the linking of two networks for the mutual exchange of traffic[, but not] the transport and termination of traffic." Pp. 10–12.

(d) Nor is there any other "reason to suspect that the [FCC's] interpretation does not reflect the agency's fair and considered judgment on the matter in question." *Auer, supra*, at 462. AT&T incorrectly suggests that the FCC is attempting to require under §251(c)(2) what courts have prevented it from requiring under §251(c)(3) and what the FCC itself said was *not* required in the *Remand Order*. Pp. 12–16.

597 F. 3d 370, reversed.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the cases. SCALIA, J., filed a concurring opinion.