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February 6, 1998

Ms. Blanco Bayo, Director
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Betty Easley Conference Center
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Tallahassee, Florida 32399-0850

via Hand Delivery

Re: Petition to Initiate Rulemaking Pursuant to Section 120.54(5), Florida Statutes to Incorporate "Fresh Look" Requirements to all Incumbent Local Exchange Company (ILEC) Contracts
Docket No. ____________________

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of the Petition for Initiate Rulemaking Pursuant to §120(54(5) F.S. by time Warner AxS of Florida, L.P. You will also find a copy of this letter enclosed. Please date-stamp this copy to indicate that the original was filed and return a copy to me.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance in processing this filing.

Respectfully,

Barbara D. Auger

BDA/kab

Enclosures: As noted

ACK ✓
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Initiate Rulemaking Pursuant to Section 120.54(5), Florida Statutes to Incorporate "Fresh Look" Requirements to all Incumbent Local Exchange Company (ILEC) Contracts
____________________________/

Docket No._______
Filed: February 16, 1998

PETITION TO INITIATE RULEMAKING PURSUANT TO §120.54(5), F.S., BY TIME WARNER AxS OF FLORIDA, INC.

Time Warner AXS of Florida, L.P. ("Time Warner"), pursuant to Rule 25-22.012, F.A.C., and Section 120.54(5) F.S., by and through undersigned counsel, hereby petitions the Florida Public Service Commission (the "Commission") to Initiate Rulemaking to include the "fresh look" requirements described herein ("Fresh Look"). Fresh Look will provide customers of incumbent local exchange companies ("LECs") a one-time opportunity to opt out of extended contracts with LECs entered into in a monopoly environment so as to avail themselves of competitive alternatives now offered or to be offered in the future by alternate local exchange companies ("ALECs"). To make this Fresh Look opportunity meaningful, termination liabilities in such contracts should be either cancelled or substantially limited, and the other requirements set forth below should be adopted. In support of this petition, Time Warner shows the Commission as follows:

PARTIES AND JURISDICTION

1. Time Warner was granted a certificate to provide services as an ALEC in Docket 95-0906. Time Warner is presently providing exchange access and local exchange telecommunications services in Florida.

2. Time Warner's address is shown below:

2301 Lucien Way, Suite 300
Maitland, Florida 32751

3. The name and address of the persons to whom copies of all correspondence, notices, orders and other documents in this proceeding should be sent are as follows:

On behalf of Time Warner:

Peter M. Dunbar, Esquire
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Pennington, Moore, Wilkinson
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(615) 673-1192 (facsimile)

4. Petitioner Time Warner is a facilities-based carrier operating or preparing to begin operations as ALECs in Florida.

5. The Commission has jurisdiction to adopt the rule requested herein pursuant to Section 120.54(5), Section 364.19, Section 364.01(3), Section 364.01(i), F.S.

THE HISTORY OF FRESH LOOK

7. The Federal Communications Commission ("FCC") has used the fresh look doctrine in a variety of contexts to spur competition and to benefit customers.[1] Prior to the enactment of TA96, the FCC adopted fresh look in its expanded interconnection

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[1]See e.g., Implementation of the Local Competition Provisions in the Telecommunications Acto of 1996, First Report and Order, CC Docket 96-98 at ¶ 1095 (Released August 8, 1996), *partially stayed on other issues,* Iowa Utilities Board v. FCC, No. 96-3321 (8th Cir. Oct. 15, 1996).

docket "to make it easier for an incumbent LEC's established customers to consider taking service from a new entrant [competitive access providers]." In the Matter of Expanded Interconnection With Local Telephone Company Facilities, Memorandum Opinion and Order, CC Docket No. 91-141 (the "Interconnect Order"), July 14, 1994, ¶ 197 (Attached as Exhibit A). The FCC concluded that obligations under long-term arrangements entered into before the advent of competition "may prevent customers from obtaining the benefits of the new, more competitive access environment." Id. In the Interconnect Order, the FCC reaffirmed its "conclusion that the limited termination liabilities enable customers to benefit sooner from completion generated by [its] expanded interconnection policies...and reaffirm[ed] [its] conclusion that fresh look does not place an unreasonable burden on the LECs..." Id, ¶ 204 (emphasis added).

8. In 1992, the FCC employed fresh look to promote completion in the 800 segment of the interstate interexchange market.[2] The FCC permitted certain customers to terminate 800 service within 90 days of the time 800 numbers became portable without early termination liability.

9. In 1991, the FCC adopted fresh look in connection with its allocation of 800 Mhz bands for use in the air-ground radiotelephone market.[3] This docket was initiated by a cellular carrier which complained that the number of airlines free to negotiate

[2] In the Matter of Competition in the Interstate Interexchange Marketplace, Memorandum and Order on Reconsideration, CC Docket No. 90-132, April 16, 1992 (Attached as Exhibit B).

[3] In the Matter of Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 Mhz Band, Memorandum and Order, GEN Docket No. 88-96, June 25, 1991 (the "Air-ground Order") (Attached as Exhibit C).

contracts with new entrants into this market was "severely depleted as a result of contracts made with GTE during the term of GTE's experimental license." Air-ground Order, ¶ 4 (GTE held an experimental license before the service was opened to competition.) The FCC found that "important public interest concerns of promoting competition and customer choice in air-ground service would be impeded by the long-term contracts negotiated" before competition. Id. ¶ 7. To alleviate these concerns, the FCC ordered that airlines could terminate their long-term contracts without regard to the termination liability provisions of the their pre-competition contracts. Id. ¶ 8.

10. Since the enactment of TA96 and related state legislation, at least four (4) state utilities commissions have taken up the fresh look doctrine as a means of opening up the local telephone monopoly to competition. The Public Utility Commission of Ohio has adopted a comprehensive fresh look policy and associated procedures.[4] The Public Service Commission of Wisconsin has concluded that fresh look "with abolition of termination penalties, serves the public interest by promoting competition" and has commenced a proceeding on the issue. Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin, Supplemental Findings of Fact, Conclusions of Law and Second Final Order, March 27, 1997, p. 4 (Attached as Exhibit F). In April 1997, the New Hampshire Public

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[4]See, In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues, Finding and Order, Case No. 95-845-TP-COI, June 12, 1996 (the "Local Competition Order"); Local Competition Order, Entry on Rehearing, February 20, 1997, Appendix A, Guideline VI.J.2 (Attached as composite Exhibit D) In the Matter of Commission Approval of Fresh Look Notification, Finding and Order, Case No. 97-717-TP-UNC, July 17, 1997 (Attached as Exhibit E).

Utilities Commission initiated a proceeding to consider Fresh Look for customers of LECs who wish to take advantage of new competitive alternatives.[5] On April 23, 1997 the Maine Public Utilities Commission opened an inquiry into rules providing Fresh Look requirements for LEC customers with extended contracts.[6]

11. Upon information and belief, other state utilities commissions are also considering Fresh Look as a means of furthering competition in the local exchange telecommunications market.

IMPLEMENTATION OF FRESH LOOK

12. Petitioner requests the Commission to adopt the following guidelines for implementation of Fresh Look in Florida.

Contracts Subject to Fresh Look

13. Fresh Look should be applied to contracts between customer and incumbent LECs with terms of six months or more. Fresh Look should commence on the date on which the first interconnection agreement is operational, as verified by the Commission, in each incumbent LEC market as defined below.

14. In calculating the remaining term of a contract, optional renewals should not be considered unless the customer is subject to termination liability for not exercising the

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[5] In re Petition Requesting that Incumbent LECs Provide Customers With A Fresh Look Opportunity, Order Granting Intervention and Setting Procedural Schedule, DR-96-420, Order No. 22,539, April 1, 1997.

[6] Inquiry Into Whether Incumbent Local Exchange Carriers Should be Required to Provide Their Customers with an Opportunity to Terminate Social Contracts, Pursuant to Request For Rulemaking by Freedom Ring Limited Liability Company, Notice of Inquiry, Docket No. 96-699, April 23, 1997.

option to renew.

15. Fresh Look should apply to portions of contracts involving basic local exchange service or to entire contracts where local termination liability is not severable from non-local services.

16. LEC markets should be defined by NXX prefixes in which ALECs can originate service to customers and the corresponding LEC exchanges involved.

17. Disputes concerning contracts subject to Fresh Look should be resolved by the Commission through its complaint process.

The Fresh Look Window

18. The Fresh Look "window" should commence after (i) notification by a ALEC and verification by the Commission that the first interconnection agreement in the LEC's exchange is operational, and (ii) the affected LEC has provided the ALEC requesting verification with a list of contracts eligible for Fresh Look in the relevant exchange(s).

19. An interconnection agreement should be considered operational based on the following criteria:

* Certification of the competitive provider as a ALEC by the Commission;

* Filing by ALEC of a price list pursuant to Commission Rules;

* Filing with the Commission of an executed, approved interconnection agreement or the ability to purchase from a Commission approved Schedule of Generally Available Terms as provided under 47 U.S.C. 252(f); and

* Completion by the ALEC of its first commercial call within a LEC exchange.

20. Notification by the ALEC that these criteria have been met should be filed

by the ALEC with the Commission. Subject to such verification as the Commission deems appropriate, it should then issue an order declaring the date of commencement of the Fresh Look window.

21. The Fresh Look window should remain open for twelve (12) months after Commission certification that an interconnection agreement is operational.

22. LEC customers who choose to take advantage of Fresh Look must execute contracts with ALECs within the 12-month Fresh Look window.

23. Upon receipt of a complaint by the Commission concerning the eligibility of a contract for Fresh Look, the 12-month Fresh Look period should be automatically tolled. The Fresh Look period should begin again only upon Commission order after withdrawal or Commission resolution of the complaint.

24. The concept of operational interconnection used herein is distinct from and should not be considered as compliance with the competitive checklist in 47 U.S.C. §271(c)(2)(B).

Public Notice of Fresh Look

25. LECs should give a one-time notice to all of their customers in Florida the first time Fresh Look is declared by the Commission in any of the individual LEC's exchanges. This notice should be in the form of a bill insert approved by the Commission.

26. In addition to the bill insert notice described above, the Commission should use public information mechanisms at its disposal, including the issuance of press releases to inform the public about Fresh Look. Also, the Commission should adopt a

neutral notice describing Fresh Look, its purpose and operation for use in informing consumers.

27. Upon inquiry by a customer about Fresh Look, LECs should be required to provide the Commission's Fresh Look Notice to the customer by mail.

28. LECs should be directed to designate one point of contact within each company to which all Fresh Look inquiries should be directed.

Termination Liability

29. When a customer chooses to terminate an eligible LEC contract, any termination liability either should be cancelled or, in any event, limited to unrecovered and non-recurring costs actually incurred by the LECs.

30. Upon notification by a customer that it intends to terminate a contract under Fresh Look, the LEC should be responsible for determining the termination liability, if any. The customer should be able to communicate his intention to terminate orally or in writing.

31. The LEC should be required to inform the customer of any termination liability within three (3) business days of the request.

32. Disputes concerning termination liability should be resolved by the Commission through its complaint process.

33. LECs should bear the burden of justifying any termination liability in disputes.

34. The Commission has authority to adopt rules to implement Fresh Look requirements in a manner consistent with the public interest. The Commission has the authority to prohibit and/or restrict CSA provisions concerning termination liability.

THE PUBLIC INTEREST

35. Adoption of the requested rule will promote the public interest by enhancing development of a competitive market in Florida for local exchange telecommunications services. Fresh Look will help mitigate the anti-competitive effect of extended LEC contracts with customers entered into before the advent of competition. The opportunity afforded ALECs by Fresh Look will provide an incentive for ALECs to invest more throughout Florida to provide competitive alternatives to the monopoly providers.

36. Fresh Look will afford consumers the benefits of competitive alternatives from the outset of competition. The benefits of competition would otherwise be delayed for several years for many customers. Thus, Fresh Look will materially advance the achievement of the Commission's objectives to enhance competition.

37. TA96 conditions the grant of in-region interLATA long distance authority to Bell Operating Companies ("BOCs") on a finding that such authority is in the public interest. 47 U.S.C. §271(d)(3)(C). In its most recent decision on Section 271 application,[7] the FCC held that "it is the BOC's willingness to open its local telecommunications markets to competition" that will determine whether such applications are approved. Ameritech Order, ¶ 23. The FCC concluded that in order to grant such authority it "must make certain that the BOCs have taken real, significant and irreversible steps to open their markets" Id. ¶ 8 (emphasis added). Petitioners believe that BOC

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[7] In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA services in Michigan Memorandum Opinion and Order, CC Docket No. 97-137)"Ameritech Order.)

support of Fresh Look would be a meaningful step toward opening LEC monopolies and is consistent with the public interest standards of Section 271 of TA96.

38. In the Ameritech Order, the FCC also stated that in its public interest evaluation it wanted "to know about state and local laws, or other legal requirements, that may constitute barriers to entry into the local telecommunications marek...." Ameritech Order, ¶ 396 (emphasis added). Extended contracts entered into by customers in a monopoly environment are "legal requirements" which constitute a barrier to competition. Fresh Look would serve the Public interest by removing the anti-competitive effect of these contracts.

WHEREFORE, Petitioner respectively requests the Commission to:

(1) Request comments from LECs, ALECs and other interested parties as to the proposed Fresh Look rules;

(2) Hold an evidentiary hearing, if the Commission deems a hearing appropriate and necessary to consider Fresh Look Rules;

(3) Develop a rule to include Fresh Look requirements; and

(4) Grant such other relief as it may deem just and proper.

RESPECTFULLY submitted this 16th day of February, 1998.

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16TH ITEM of Level 1 printed in FULL format.

In the Matter of Expanded Interconnection with Local Telephone Company Facilities

CC Docket No. 91-141

FEDERAL COMMUNICATIONS COMMISSION

9 FCC Rcd 5154; 1994 FCC LEXIS 3662; 75 Rad. Reg. 2d (P & F) 1040

RELEASE-NUMBER: FCC 94-190

July 25, 1994 Released; Adopted July 14, 1994

ACTION: [**1] MEMORANDUM OPINION AND ORDER

JUDGES:

By the Commission: Commissioners Quello, Barrett, and Chong issuing separate statements.

OPINION:

[*5155] I. INTRODUCTION

A. Summary

1. In a series of orders in the past two years, we have adopted and implemented an expanded interconnection policy that creates new opportunities for the competitive provision of access services that the local telephone companies traditionally have provided on a monopoly basis. n1 Our decisions mandating expanded interconnection and collocation are fundamental to opening the interstate special access and switched transport markets to greater competition. Our simultaneous grant of greater pricing flexibility to the local telephone companies enables those companies to compete more vigorously as well, while assuring that we retain necessary controls on dominant access providers. We believe that expanded interconnection, by fostering increased competition in interstate access markets, should increase economic growth. Competition should lead to lower special access and switched transport charges, n2 which in turn will make it possible for long-distance companies to offer service at lower rates, thus stimulating demand for communications [**2] services. Lower prices for communications services not only benefit consumers directly, they also make resources available for productive investment elsewhere in the economy. Competition also gives local telephone companies, as well as their competitors and customers, incentives to invest in advanced telecommunications technologies, develop innovative services, and provide existing services more efficiently. Expanded interconnection creates greater opportunities for new entrants to compete by enabling them to rely in part on the telecommunications facilities of established service providers, and thereby promotes broader access to communications networks and services by all users. The competition that expanded interconnection makes possible should give users a greater range of choices in telecommunications services and increase opportunities for users to obtain redundant facilities, thus contributing to network reliability.

n1 See infra notes 11-13.

EXHIBIT

"A"

n2 Interstate access is a service traditionally provided by local telephone companies that enables interexchange carriers and other customers to originate and terminate interstate telephone traffic. Special access is a form of interstate access that uses dedicated transmission lines between two points, without switching the traffic on those lines. Switched transport is another form of interstate access comprising the transmission of traffic between interexchange carriers' (or other customers') points of presence and local telephone companies' end offices, where the traffic is switched and routed to end users. [**3]

2. On June 10, 1994, the U.S. Court of Appeals for the District of Columbia Circuit issued an order stating that it would vacate in part the first two of our expanded interconnection orders on the grounds that the Commission does not have authority under the Communications Act of 1934, as amended, to require local exchange carriers (LECs) to provide expanded interconnection through physical collocation. n3 The court held that Section 201 of the Act, which authorizes the Commission to order carriers "to establish physical connections with other carriers," does not empower the Commission "to grant third parties a license to exclusive physical occupation of a section of the LECs' central offices." n4 Underlying the court's statutory construction was its concern that our physical collocation requirement constituted a "taking" of property. n5 The court also stated that it would remand [*5156] our orders to permit us to consider whether and to what extent to impose virtual collocation requirements in the absence of a physical collocation requirement. Finally, the court stated that it would remand the question of whether we would impose a "fresh look" requirement in the absence of mandatory physical [**4] collocation. The court stated that "[t]he orders are vacated insofar as they require physical collocation; in all other respects the orders are remanded to the Commission for further proceedings." n6

n3 Bell Atlantic Telephone Companies v. FCC, No. 92-1619, 1994 WL 247134 (D.C. Cir., June 10, 1994) (Bell Atlantic v. FCC). For definitions of "expanded interconnection," "physical collocation," and "virtual collocation," see P 7 infra.

n4 Id., slip op. at 9.

n5 Id.

n6 Id., slip op. at 11.

3. We are acting expeditiously to preserve the substantial public interest benefits of expanded interconnection. We here establish the rights and obligations of affected parties under a modified expanded interconnection regime that takes the court's decision into account. By responding quickly to the court's decision, our goal is to ensure uninterrupted availability of expanded interconnection services. We seek to avoid the disruption to competition that would result if new rules and tariffs implementing our expanded interconnection policy are not in place at the time the court's decision takes effect. Thus, even though the court's mandate has not yet issued, n7 and even though the court's [**5] decision applies only to expanded interconnection for special access, we adopt in this order rules designed to speed the process so as to ensure that local telephone companies offer expanded interconnection for both special access and switched transport through generally available virtual

collocation services no later than December 15, 1994. We will exempt from this requirement companies that choose instead to offer physical collocation subject to the standards we set forth below. Under this order, the LECs are required to file tariffs implementing our new mandatory virtual collocation policy on September 1, 1994; in other respects, the rules and regulations adopted here will become effective on December 15, 1994. December 15 is the earliest date by which we can ensure that the new tariffs will have undergone adequate review by the Commission's staff. To prevent any lapse in the effectiveness of our overall expanded interconnection policy, we intend to seek a stay of the issuance of the court of appeals' mandate until December 15, 1994, by which time tariffs implementing our new mandatory virtual collocation rules can be effective. We also reaffirm our fresh look requirements [**6] in connection with the mandatory virtual collocation regime, in light of the court's decision to remand this issue. Pending further judicial action or possible legislation, we leave in place for the present our mandatory physical collocation rules, but will replace those rules with new mandatory virtual collocation rules on December 15, 1994.

n7 Under the local rules of the U.S. Court of Appeals for the District of Columbia Circuit, parties may file petitions for rehearing within 45 days of the issuance of an order. D.C. Cir. R. 35. The Federal Rules of Appellate Procedure provide that the mandate of the court will be stayed pending the filing of a petition for rehearing, unless otherwise ordered by the court, and that the mandate shall issue 7 days after entry of an order denying a petition for rehearing. The mandate also may be stayed pending application to the Supreme Court for a writ of certiorari. See Fed. R. App. P. 41(a) & (b). In Bell Atlantic v. FCC, the court of appeals stayed the issuance of the mandate until 7 days after the denial of a timely-filed petition for rehearing, or 7 days after the end of the 45 day period, whichever happens sooner. Thus, the earliest possible date that the mandate could issue is August 1, 1994. [**7]

4. In this order we consider the entire extensive record already assembled in this proceeding, n8 including that compiled in response to the pending petitions for reconsideration of all of our earlier orders. n9 We find that the existing record is fully sufficient to support our decision here, and find no policy reason to supplement the record before moving forward, nor any legal requirement to do so. After reviewing the court's order, we conclude that, for the most part, our decisions in earlier orders in this proceeding on standards, tariffing, rate structure, pricing, and other aspects of the provision of expanded interconnection services should apply with equal force under the new mandatory virtual collocation regime. In particular, we grant increased pricing flexibility to local telephone companies that have implemented expanded interconnection through either virtual or physical collocation. In certain respects, however, we are modifying our requirements to reflect the use of mandatory virtual collocation and to reflect policy changes that we conclude are in the public interest based on petitions for reconsideration of [*5157] our earlier orders. Because we envision, under the [**8] new collocation policy, that some local telephone companies may voluntarily provide physical collocation as a regulated common carrier service, we are also reaffirming many of our rules relating to the rates, terms, and conditions of physical collocation offerings, and are addressing certain issues regarding physical collocation raised in pending petitions for reconsideration of earlier orders in this proceeding. We deny a petition for declaratory ruling filed by Teleport regarding restrictions on pricing flexibility for LECs that do not opt to

offer physical collocation. We also reaffirm our density zone pricing system and other pricing flexibility rules under the new policy, but modify those rules to condition such pricing flexibility on expanded interconnection being operational under the rules we adopt in this order.

n8 The positions of the parties in earlier phases in this proceeding are summarized at length in the Special Access Expanded Interconnection Order, the First Reconsideration Order, the Second Reconsideration Order, and the Switched Transport Expanded Interconnection Order. While we do not duplicate those comment summaries in this order, we take that record into account in reaching our decisions here.

n9 See Appendix A infra. [**9]

B. Background

5. In earlier orders in this proceeding, we required the Tier 1 local exchange carriers (LECs), n10 other than participants in National Exchange Carrier Association (NECA) pools, to permit third parties to interconnect their transmission facilities with those of the LECs. In most cases, we gave interconnectors the right to obtain these connections by physically collocating their own terminating equipment in LEC central offices. We permitted all parties, including competitive access providers (CAPs), interexchange carriers (IXCs), and users, to obtain expanded interconnection. We required the LECs to set rates for expanded interconnection services based on direct costs plus reasonable overhead loadings. We also authorized additional pricing flexibility for LECs that are actually providing expanded interconnection.

n10 Tier 1 LECs are companies having annual revenues from regulated telecommunications operations of $ 100 million or more for a sustained period of time.

6. We introduced our expanded interconnection policy in stages. We decided in September 1992 to require the LECs to provide expanded interconnection with their interstate special access services, [**10] primarily through physical collocation. n11 In August 1993, we required the LECs to provide expanded interconnection with the switched network, again primarily through physical collocation, to enable interconnectors to compete more fully for the provision of switched transport service. n12 We also adopted reconsideration orders that modified certain aspects of the Special Access Expanded Interconnection Order in December 1992 and August 1993. n13 The LECs' special access expanded interconnection tariffs became effective in June 1993. Their switched transport expanded interconnection tariffs became effective in February 1994. Both sets of tariffs are currently under investigation. n14 [*5158] As noted above, on June 10, 1994, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion stating that it would vacate the Special Access Expanded Interconnection Order and the First Reconsideration Order insofar as they require physical collocation for special access services, and would remand other aspects of the orders to the Commission for further proceedings. n15

n11 Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) ("Special Access Expanded Interconnection Order"), recon., 8 FCC Rcd 127 (1992), vacated in part and remanded sub nom. Bell Atlantic v. FCC, No.

92-1619 (D.C. Cir., June 10, 1994); recon., 8 FCC Rcd 7341 (1993).

n12 Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase I, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) ("Switched Transport Expanded Interconnection Order"), pet. for review pending sub nom. Bell Atlantic v. FCC, No. 93-1743 (D.C. Cir., filed Nov. 12, 1993).

n13 Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 8 FCC Rcd 127 (1992) ("First Reconsideration Order") (modifying the set of offices at which we required expanded interconnection to be tariffed initially), vacated in part and remanded sub nom. Bell Atlantic Telephone Cos. v. FCC, No. 92-1619 (D.C. Cir., June 10, 1994); Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341 (1993) ("Second Reconsideration Order") (modifying requirements regarding "fresh look," non-recurring charges, the extent of the tariffing requirement for virtual collocation, and the rate structures used for expanded interconnection). See infra PP 197-208 for a definition and discussion of our "fresh look" policy.

n14 Ameritech Operating Companies, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com. Car. Bur. 1993) (instituting investigation into special access expanded interconnection tariffs); Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Order Designating Issues for Investigation, 8 FCC Rcd 6909 (Com. Car. Bur. 1993); Phase I, First Report and Order, 8 FCC Rcd 8344 (1993) (prescribing interim maximum overhead loading factors); Supplemental Designation Order and Order to Show Cause, DA 94-556 (Com. Car. Bur., released May 31, 1994); Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Switched Transport, Memorandum Opinion and Order, 9 FCC Rcd 817 (Com. Car. Bur. 1994) (instituting investigation into switched transport expanded interconnection tariffs).

n15 Bell Atlantic v. FCC, supra note 3. [**11]

II. PUBLIC POLICY ANALYSIS

7. Orders/Background. Expanded interconnection is a LEC offering that enables parties, by interconnecting their circuits with those of the LEC at a LEC central office through either physical collocation or virtual collocation, to compete on a facilities basis with certain LEC access services. Physical collocation, as defined by the Commission in this proceeding, is an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of a LEC central office. The interconnector pays a tariffed charge to the LEC for the use of that central office space, and may enter the central office to install, maintain, and repair the collocated equipment. n16 The specific details of virtual collocation could be defined in a number of different ways, as described further below in paragraphs 43-46. For purposes of this order, however, we define virtual collocation as an offering in which the LEC owns (or may lease) and exercises exclusive physical control over the transmission equipment, located in the central office, that terminates the interconnector's circuits. The LEC dedicates this equipment to the exclusive use of the [**12] interconnector, and provides installation, maintenance, and repair services on a non-discriminatory basis. Under our virtual collocation policy, the interconnector has the right to designate its choice

of central office equipment, and to monitor and control the equipment remotely. n17 The LEC connects this equipment to the interconnector's circuit outside the central office, with an interconnection point between LEC-owned facilities and interconnector-owned facilities as close as possible to the office. n18 The standards governing physical collocation and virtual collocation arrangements are discussed in detail below.

n16 47 C.F.R. @ 64.1401(f) (redesignated in this order as @ 64.1401(d)); Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd 3259, 3262, P 19 (1991) (First Notice); Special Access Expanded Interconnection Order, 7 FCC Rcd at 7390, P 39.

n17 "Monitoring and control" is a term of art that describes a party's ability to track circuit functions, reconfigure circuits, and otherwise supervise the operation of communications circuits terminating in such equipment. As discussed above, the LEC exercises exclusive physical control of the equipment used in virtual collocation arrangements, and is solely responsible for installing, maintaining, and repairing the equipment.

n18 47 C.F.R. @ 64.1401(g) (redesignated as @ 64.1401(e)); First Notice, 6 FCC Rcd at 3262, P 20; Special Access Expanded Interconnection Order, 7 FCC Rcd at 7392-94, PP 44-46. [**13]

8. Earlier orders in this proceeding have required the Tier 1 LECs to provide expanded interconnection for interstate special access and switched transport. We found that expanded interconnection would promote greater competition in the special access and switched transport markets, and thereby produce substantial public interest benefits. We concluded that such competition, like competition in the markets for long distance and customer-premises equipment (CPE), should encourage LECs and their competitors to operate more efficiently, deploy new technologies facilitating innovative service offerings, increase the choices available to access customers, and reduce the prices of services subject to competition. We found that, given the pricing flexibility we granted to the LECs and (in the case of switched transport) the application of the transport interconnection charge to both LECs' and interconnectors' customers, expanded interconnection would not have any significant adverse impact on universal service. Thus, based on the record, we concluded that the likely benefits of expanded interconnection outweighed any potential disadvantages. n19

n19 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7376-81, PP 8-18; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7378-86, PP 6-20. [**14]

9. Discussion. In response to the court's decision, we first reaffirm our analysis and conclusion in the Special Access Expanded Interconnection [*5159] Order and the Switched Transport Expanded Interconnection Order that expanded interconnection for special access and switched transport is in the public interest. n20 Our expanded interconnection policy is designed to facilitate competition for special access and switched transport services, essentially by making it possible to buy only those LEC transmission and distribution links that a customer wants, and to combine those links with the services of a competitor. This policy enables the LECs' competitors to offer

transmission segments that can substitute for the previously bundled segments offered by the LECs, and to connect their own transmission segments with transmission and distribution links that the LECs continue to provide. As our experience with the long-distance and customer-premises equipment markets demonstrates, increased competition among interstate special access and switched transport service providers should increase customer options, reduce rates, and speed the introduction of new technologies, and thereby stimulate [**15] economic growth. We reaffirm that these benefits of expanded interconnection outweigh any disadvantages of the policy.

n20 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7378-81, PP 13-18; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7383-86, PP 13-20.

10. We next conclude that, although expanded interconnection through physical collocation is the optimal means to realize these benefits, expanded interconnection through virtual collocation also produces these benefits and is in the public interest. Both virtual collocation and physical collocation enable electronic equipment dedicated to an interconnector's use to terminate that interconnector's transmission links and to interconnect them with the LECs' network equipment inside LEC central offices. Without dedicated network equipment located in the central office, interconnectors would be required to buy LEC transmission links that are not needed with collocation. This would make it much more costly to provide competitive access, inhibit interconnectors' ability to price competitively with LECs, and limit the extent of competition for transmission services. Specifically, interconnectors [**16] would be required to buy LEC transmission service between interconnector equipment located outside the central office and the central office itself, which is a key point of network traffic aggregation. Dedicated network equipment in the central office allows interconnectors to provide their own transmission facilities to gain access to the traffic aggregated at the central office, and fosters competition in the provision of such transmission facilities.

11. Moreover, the technical parameters of the equipment currently used in communications networks make it necessary in most situations to locate the circuit terminating equipment dedicated to an interconnector's use in the LEC central office. To interconnect two communications circuits (e.g., that of the LEC and that of the competitor), the electronic equipment that terminates each of the circuits must be connected together, or "cross-connected." The technical standards for currently available cross-connect technology require that a cross-connecting cable be no longer than 450 feet, including cable bends. n21 In most LEC central office buildings, all cable enters the building through underground conduits, runs into a cable vault, [**17] climbs up risers and sometimes passes through distribution frames, into a secure, properly conditioned room that is often located on the second or higher floor of the building. There are substantial practical obstacles to interconnectors' obtaining space for their equipment in buildings close enough to LEC central office buildings to meet the 450 foot constraint. Thus, the current limitation on the length of cross-connect cables imposes a critically important technical constraint. In most cases, it is not feasible to install a cross-connect cable between the electronic equipment terminating LEC circuits and the equipment terminating a competitor's circuits without duplicative equipment, such as additional repeaters, unless all the equipment is located in the same building -- the LEC central office.

n21 Expanded Interconnection with Local Telephone Company Facilities, Comments of Metropolitan Fiber Systems, Inc. at 48-49 & n.69 (Aug. 6, 1991).

12. Thus, for the reasons set forth above and in our earlier orders, n22 we conclude that collocation of circuit terminating equipment within LEC central offices serves the public interest and is necessary to satisfy our policy goals [**18] fully. In our earlier orders, we concluded that physical collocation best ensures that our objectives are fulfilled. n23 If physical collocation is unavailable, however, we conclude that virtual collocation is the best alternative [*5160] to serve our public interest objectives. We reaffirm and incorporate herein our reasoning and conclusion in the Special Access Expanded Interconnection Order and the Switched Transport Expanded Interconnection Order that we have authority, pursuant to Sections 1, 4(i), 201,202, 205, 214(d), and 218 of the Communications Act, to mandate expanded interconnection and impose the related requirements specified in this order. n24

n22 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7378-81, PP 13-18; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7383-86, PP 13-20.

n23 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7389-90, P 39.

n24 47 U.S.C. @@ 151, 154(i), 201, 202, 205, 214(d), and 218. See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7472-75, PP 219-26; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7445, P 144. As discussed below, we are imposing mandatory virtual collocation requirements in this order. [**19]

III. INTERCONNECTION ARCHITECTURE

A. Physical and Virtual Collocation

13. Orders/Background. Our previous orders in this proceeding required the LECs to provide expanded interconnection through physical collocation in all central offices for which interconnectors make a bona fide request. n25 We allowed LECs to apply for exemptions from this requirement and provide virtual collocation instead of physical collocation in central offices in which space for physical collocation is unavailable, and in states that had adopted specified virtual collocation policies. n26 We found that the provision of central office space used for physical collocation is incidental to communications, thus rendering it a communications service under Section 3(a) of the Communications Act, n27 and that provision of such space is a common carrier service. We therefore concluded that we have authority to impose Title II regulation, including tariffing requirements, on the provision of such space. n28 We justified our mandatory physical collocation rules as an exercise of our authority under Section 201(a) of the Act to "establish physical connections with other carriers." n29 We also concluded that the [**20] physical collocation requirement is not a "taking" under the Fifth Amendment of the Constitution, and that even if it were, such a taking would constitute a lawful exercise of our statutory authority. n30 Our conclusions with respect to our statutory authority to mandate physical collocation, however, were rejected by the court in Bell Atlantic v. FCC.

n25 For summaries of the parties' comments on this point, see Special Access Expanded Interconnection Order, 7 FCC Rcd at 7382-89, PP 20-38; Switched Transport Expanded Interconnection Order; 8 FCC Rcd at 7390-91, PP 27-28.

n26 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7389-94, PP 39-46; First Reconsideration Order, 8 FCC Rcd at 128-29, PP 7-18; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7391-96, PP 29-35. We also permitted LECs to negotiate interstate virtual collocation arrangements with interconnectors at specific central offices and required them to offer the same arrangements to other customers at those offices. Special Access Expanded Interconnection Order, 7 FCC Rcd at 7390-94, PP 40-46; Second Reconsideration Order, 8 FCC Rcd at 7365-67, PP 56-59; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7391-96, PP 29-35.

n27 47 U.S.C. @ 153(a).

n28 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7444-47, PP 161-63.

n29 47 U.S.C. @ 201(a).

n30 Id., 7 FCC Rcd at 7476-83, PP 230-40. But see Bell Atlantic v. FCC, slip op. at 9-10. [**21]

14. Positions of the Parties on Reconsideration. In petitions for reconsideration of the Special Access Expanded Interconnection Order and other orders in this proceeding, the LECs reiterate their arguments against mandatory physical collocation and the CAPs and other parties reiterate their arguments in [*5161] favor of it. n31 Some CAPs, however, believe that expanded interconnection through properly structured virtual collocation is an effective alternative to promote increased local access competition. n32 The non-dominant IXCs (i.e., IXCs other than AT&T) argue that under the mandatory physical collocation regime, LECs should also be required to offer virtual collocation on a generally tariffed basis at every point at which they offer physical collocation, pointing out some of the potential advantages of virtual collocation. They contend that many interconnectors may prefer virtual collocation, LECs may be able to provide central office equipment and services more efficiently than interconnectors, virtual collocation would conserve central office space and enable more interconnectors to enter, and widespread virtual collocation would enable more IXCs to obtain services comparable [**22] in total cost to those obtained by AT&T. n33

n31 See, e.g., USTA Special Petition at 2-8; Centel Special Petition at 2-3, 5-8; United Special Petition at 2-4; GTE Special Petition at 9-12; Rochester Special Petition at 11-14; USTA Special Reply at 8; USTA Switched Petition at 2-3; MFS Special Opposition at 7-9, 13-15; ALTS Special Opposition at 13-15; ALTS Switched Opposition at 1-3; MCI Special Opposition at 17-20; Ad Hoc Special Opposition at 3-5, 8-10; API Special Opposition at 4. See also P 42 infra and ex parte submissions cited therein.

n32 Expanded Interconnection with Local Telephone Company Facilities, Comments of Teleport Communications Group at 20-37 (Aug. 6, 1991). See also "FCC Studies Options in Wake of Interconnection Ruling; LEC Willingness to Offer Physical Collocation Erodes," Telecommunications Reports (June 20, 1994) at

19, 20 (quoting Andrew Lipman, Senior Vice-President -- Legal and Regulatory Affairs, MFS).

n33 WilTel Special Petition at 4-7; WilTel Special Reply at 6; CompTel Special Opposition at 4-6; MCI Special Reply at 9-10.

15. Ameritech and USTA argue that LECs should be allowed to choose whether to offer physical or virtual collocation. They [**23] assert that virtual collocation entails substantial, burdensome implementation problems and costs (such as providing rapid installation intervals demanded by interconnectors and training technicians to repair and maintain different types of interconnector equipment). They assert that, if LECs are already required to provide physical collocation, it would be unreasonably burdensome for the LECs to be required to incur the unique implementation problems and costs associated with virtual collocation (e.g., training technicians to maintain and repair interconnector equipment at short intervals) even in offices where there is no demand. n34

n34 Ameritech Special Opposition at 4-5; USTA Special Opposition at 14-15; see also USTA Special Petition at 2 & n.3 (noting that interconnection without any collocation is possible).

16. Discussion. Remand and New Mandatory Virtual Collocation Policy. The Bell Atlantic v. FCC decision presents practical difficulties for interconnectors and their customers even before the issuance of the court's mandate. For example, interconnectors (or their customers) may be reluctant to activate new circuits to their physical collocation nodes in LEC central [**24] offices before the issuance of the mandate since some LECs may discontinue their physical collocation offering if and when the mandate issues. n35 At the same time, many LECs have not tariffed a generally available virtual collocation offering as an alternative for interconnectors.

n35 See also MFS Ex Parte (July 5, 1994), Appendices B & C (alleging obstacles to continued functioning of physical collocation imposed by some LECs since the court's decision).

17. Accordingly, in light of the D.C. Circuit's Bell Atlantic v. FCC decision and in anticipation of remand, we are adopting a new expanded interconnection policy that will facilitate the continued, uninterrupted provision of expanded interconnection and will reduce the practical problems that could arise in the wake of the court's decision. As we explain in greater detail below, we believe that this new expanded interconnection policy is fully consistent with the court's view of our authority. Accordingly, we will require, as of September 1, 1994, that Tier 1 LECs (other than NECA pool members) file generally available tariffs offering expanded interconnection through virtual collocation. The standards that will govern [**25] virtual collocation arrangements are discussed in detail below. LECs will be exempted from this requirement in central offices where they opt to provide physical collocation subject to the standard described in detail below.

18. Legal Authority. We find primary authority for the modified expanded interconnection requirements adopted in this order in Section 201(a) of the Communications Act of 1934, as [*5162] amended. n36 That provision authorizes the Commission, where necessary or desirable in the public interest, to order common carriers to establish physical connections with other

carriers, whether or not the common carriers might choose to do so voluntarily. n37 As applicable here, the LECs are "common carriers," the expanded interconnection arrangements required under the terms of this order are forms of "physical connections," and most interconnectors -- including CAPs and IXCs -- are "carriers" within the meaning of Section 201(a). Moreover, as set out in detail above, n38 we have concluded that the provision of the expanded interconnection services required in this order will produce substantial public interest benefits by removing unnecessary barriers to increased competition. [**26] Such public interest benefits have lawfully formed the basis for past mandatory interconnection orders, n39 and we find that such benefits justify the interconnection requirements adopted here with respect to interconnectors that are carriers.

n36 47 U.S.C. @ 201(a).

n37 See, e.g., Lincoln Tel. & Tel. Co. v. FCC, 659 F.2d 1092, 1103-06 (D.C. Cir. 1981); Bell Telephone Co. of Pa. v. FCC, 503 F.2d 1250, 1268-73 (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

n38 See supra PP 9-12.

n39 See supra n. 37.

19. We find, in addition, that the separate language in Section 201(a) requiring telephone companies to "furnish communications service upon reasonable request" gives the Commission authority to order the LECs to provide expanded interconnection services to non-carrier interconnectors. In this regard, it has been established Commission policy -- informed by the statutory requirements that rates and terms for communications service be just and reasonable and not unreasonably discriminatory n40 -- to prohibit differences in service rates and terms that are predicated upon the type of customer involved. n41 We see no reason to depart from that general policy, particularly [**27] where, as here, we find affirmative public interest benefits in the broad availability of expanded interconnection services. n42

n40 See 47 U.S.C. @@ 201(b) & 202(a).

n41 See, e.g., MTS and WATS Market Structure, CC Docket No. 78-72, 97 FCC 2d 682, 722 (1983); Private Line Rate Structure and Volume Discount Practices, 97 FCC 2d 923, 932-32 (1984). See also Atlantic Richfield Co., 3 FCC Rcd 3089, 3091, P 16 (1988), aff'd, Public Utility Comm'n of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989) (noting long-established FCC policy that carriers and non-carriers alike have a federal right to interconnect to the public telephone network in ways that are privately beneficial if they are not publicly detrimental). Accord Hush-A-Phone Corp. v. United States, 238 F.2d 266 (D.C. Cir. 1956).

n42 See supra PP 9-12.

20. We also conclude that Sections 1, 4(i) and 214(d) of the Communications Act n43 buttress further our legal authority to order the expanded interconnection services set out in this order, including the requirement that LECs provide, for a just and reasonable charge, dedicated circuit terminating equipment designated by the interconnector. Section 1 of the Act states that

[**28] the purpose of the Commission is to regulate "interstate and foreign commerce in communications by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service." Section 4(i), the FCC's "necessary and proper clause," n44 grants us broad power to take actions necessary to meet our statutory mandate. Finally, Section 214(d) authorizes the Commission "to require by order any carrier . . . to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier." We find that, to the extent that there is any doubt whether Section 201(a) alone fully authorizes all aspects of our expanded interconnection order, these sections of the Act provide that supplemental authority.

n43 47 U.S.C. @@ 151, 154(i), & 214(d).

n44 New England Tel. & Tel. Co. v. FCC, 826 F.2d 1101, 1108 (D.C. Cir. 1987), cert. denied, 109 S. Ct. 1942 (1989); North American Telecomm. Ass'n v. FCC., 772 F.2d 1282, 1292 (7th Cir. 1985).

21. The foregoing discussion largely coincides with the analysis of legal authority that the Commission undertook [**29] in the Special Access Expanded Interconnection Order. n45 We recognize that the D.C. [*5163] Circuit, in Bell Atlantic v. FCC, vacated the mandatory physical collocation rules adopted in that order. However, there are differences between those rules and our new regime of mandatory virtual collocation (with an exemption for LECs choosing to offer physical collocation) that are fundamental to the court's analysis in that case.

n45 See 7 FCC Rcd at 7472-75, PP 219-226.

22. The court's core finding in Bell Atlantic was that Section 201(a) did not "grant third parties a license to exclusive physical occupation of a section of the LECs' central offices." n46 While noting that our power to "order 'physical connections' [was] undoubtedly broad of scope," n47 the court refused to grant our interpretation the deference normally accorded agencies under Chevron U.S.A. Inc. v. NRDC, n48 because it believed that such a physical occupation "would seem necessarily to 'take' property" under the Fifth Amendment standard established by the Supreme Court in Loretto v. Teleprompter Manhattan CATV Corp. n49 While we do not share the D.C. Circuit's apparent view that mandatory physical collocation requirements [**30] would constitute a "taking" of property, or its view that Chevron deference was unwarranted, factual differences between the mandatory physical collocation regime at issue in Bell Atlantic and the modified requirements we are adopting here completely distinguish this order from the facts of Loretto.

n46 Bell Atlantic v. FCC, slip op. at 9 (emphasis added).

n47 Id.

n48 467 U.S. 837 (1984).

n49 458 U.S. 419, 426 (1982). Bell Atlantic v. FCC, slip op. at 6, 9 (emphasis added).

23.. In Loretto, the Supreme Court found that a New York statute that required landlords to permit cable television companies to install facilities on their buildings effected a Fifth Amendment taking of the landlords' property for which just compensation was due. The Court noted that a takings analysis usually involves essentially ad hoc, factual inquiries regarding factors such as the degree of interference with investment-backed expectations, the economic impact of the regulation, and the character of the governmental action. n50 However, it distilled from earlier takings jurisprudence a pattern that when the character of the regulation reaches the form of a "permanent physical occupation," that factor [**31] alone becomes determinative and a taking has occurred. n51 While cautioning that its holding was a very narrow one, n52 the Court explained that a permanent physical occupation of property "effectively destroys" the bundle of rights usually associated with property ownership -- including the right to exclude others. n53

n50 Loretto, 458 U.S. at 426 (citing Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124, reh'g denied, 439 U.S. 883 (1978)).

n51 Loretto, 458 U.S. at 426; see also id. at 426-35.

n52 Id., 458 U.S. at 441.

n53 Id., 458 U.S. at 435.

24. We continue to believe that the mandatory physical collocation requirements we previously adopted should not properly be seen to create a takings issue under Loretto, both because, under the technological and competitive circumstances that we previously advanced to support such a regime, telephone companies have no reasonable historically rooted expectation of being able to exclude interconnectors, and because the telephone companies were permitted to recover and just and reasonable rates for the mandated service. n54 In any event, however, the "permanent physical occupation" analysis that is central to Loretto has [**32] no bearing on the modified expanded interconnection rules that we are adopting here, which require only virtual collocation (with an exemption for carriers voluntarily choosing to offer physical collocation subject to full regulation as a communications common carrier service).

n54 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7478, 7479-83, PP 233, 236, 237, & 240.

25. The mandatory virtual collocation policy we adopt here in no way constitutes a taking of property. Under virtual collocation, unlike physical collocation, interconnectors have no right to enter LEC-owned premises or to install their own equipment at such locations. Instead, the LECs purchase or lease equipment designated by the interconnector, and install, maintain, and repair this [*5164] equipment themselves (or through their designees) n55 in their central offices. While the interconnector-designated equipment is dedicated to the use of a particular interconnector, such dedication is not unusual in the telecommunications industry, particularly where, as here, the interconnector does not exert physical control over such equipment. (The monitoring and control functions that the LECs must permit interconnectors [**33] to perform are conducted from remote locations and involve only the interconnector's ability to track, reconfigure, and otherwise supervise the

operation of the communications circuits terminating in the designated equipment.) For example, telephone companies generally dedicate equipment to the use of particular customers in providing private line service. Even local exchange service involves the use of certain pieces of equipment that are dedicated to the exclusive use of a particular customer, such as the line cards used in LEC switches and wire "drops" extending from the LEC's distribution cable to the customer's residence. The expanded interconnection requirement that LECs dedicate circuit terminating equipment to particular customers may -- as with such other "dedicated" services -- affect the use to which the telephone company can apply its property, but it in no way constitutes a physical occupation of the LECs' property within the contemplation of Loretto. n56

n55 See infra PP 58-60 (if LECs use outside contractors to install and maintain their other equipment, they must do so for the equipment dedicated to the use of interconnectors as well; LECs are not, however, required to permit interconnector personnel to enter central offices).

n56 Indeed, the Court in Loretto gave similar examples of use requirements, in the landlord-tenant context, that could be imposed without creating a per se taking:

[O]ur holding in no way alters the analysis governing the State's power to require landlords to comply with building codes and provide utility connections, mailboxes, smoke detectors, fire extinguishers, and the like in the common area of a building. . . . [Indeed], if [the pertinent statute had] required landlords to provide cable installation if a tenant so desires, the statute might present a different question from the question before us, since the landlord would own the installation.
458 U.S. at 440 & n. 19. [**34]

26. We also note that the physical collocation standards we are adopting for telephone companies that voluntarily choose to implement expanded interconnection through physical collocation (thereby gaining an exemption from the virtual collocation requirements) do not implicate Loretto. Loretto's per se rule, where applicable at all, applies only to physical "invasions." n57 Here, the choice to incur physical collocation obligations is voluntary and allows the carrier to avoid the virtual collocation requirements that the Commission otherwise would lawfully impose. This flexibility was not available to LECs under the expanded interconnection regime reviewed by the Bell Atlantic court. Thus, the availability of the exemption for carriers choosing physical collocation makes the regulatory regime we are adopting less burdensome, rather than more so. We find, moreover, that the requirements we are imposing for carriers making that choice are necessary to the pro-competitive purposes of our expanded interconnection policy.

n57 See Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886, 2893 (1992); see also Yee v. City of Escondido, 112 S. Ct. 1522, 1530 (1992) ("Because they voluntarily open their property to occupation by others, petitioners cannot assert a per se right to compensation based on their inability to exclude particular individuals."); FCC v. Florida Power Corp., 480 U.S. 245, 251-53 (1987) (the element of "required acquiescence is at the heart of the concept of occupation" under Loretto). [**35]

27.. Finally, we find -- and the court in Bell Atlantic did not suggest otherwise -- that the modified rules we are adopting easily survive the more factually sensitive standards applicable in "regulatory takings" analysis. Indeed, we read the court's decision as encouraging the Commission to "consider whether and to what extent virtual co-location should be imposed" in the absence of physical collocation. n58 In determining what constitutes a regulatory taking, the courts focus on three main factors: (1) the character of the government action; (2) the regulation's interference with investment-backed expectations; and (3) its [*5165] economic impact. n59

n58 Bell Atlantic v. FCC, slip op. at 11.

n59 Penn Central Transp. Co., 438 U.S. at 123-24. See also Lucas v. South Carolina Coastal Council, 112 S. Ct. at 2893.

28. With respect to the first factor, the Supreme Court has stressed that "[a] 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, . . . than when the interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." n60 As already discussed, [**36] the regulations at issue here do not constitute a physical invasion of the LECs' property. Rather, they adjust somewhat the "benefits and burdens of economic life to promote the common good." n61 In particular, our expanded interconnection requirements are designed to and, we believe, will increase competition, lower prices, lead to varied new services, and help improve the productivity of our economy as a whole. n62 While the new rules impose some increased regulatory burdens on the LECs, they also provide those carriers with offsetting pricing flexibility with which to compete in the more competitive environment. n63

n60 Penn Central Transp. Co., 438 U.S. at 124.

n61 Id.

n62 See supra PP 1, 9-12.

n63 See supra P 8.

29. Our action, moreover, in no way interferes with the LECs' reasonable investment-backed expectations concerning the use of their property. As a general matter, private property used for common carrier purposes has always been imbued with a public character. n64 Given their position as common carriers controlling bottleneck facilities, the LECs must expect that they will be subject to non-streamlined regulation as dominant carriers. Indeed, as already noted, [**37] this Commission frequently has ordered common carriers to provide access to bottleneck facilities in order to increase competition and facilitate the development of new services. n65 The Commission has also taken steps to require telephone companies to provide new service features and technologies that we have found would promote competition and improve the functioning of the public telephone network. n66 The LECs here are exchanging compliance with lawful Commission regulation for the privilege, with attendant licenses and franchises, of providing telephone service to the public as interstate dominant common carriers. The Supreme Court has employed similar analysis in finding that no taking has occurred in other heavily-regulated

industries. n67

n64 Munn v. Illinois, 94 U.S. 113, 126 (1876).

n65 See, e.g., Lincoln Tel. & Tel. Co. v. FCC, 659 F.2d 1092; MCI Telecommunications Corp. v. FCC, 580 F.2d 590 (D.C. Cir.), cert. denied, 439 U.S. 980 (1978); Bell Tel. Co. of Pennsylvania v. FCC, 503 F.2d 1250; Cellular Communications Systems, 86 FCC 2d 469 (1981), recon., 89 FCC 2d 58 (1982).

n66 See, e.g., Provision of Access for 800 Service, CC Docket No. 86-10, 6 FCC Rcd 5421, 5425-27, PP 19-29 (1991), petitions for review pending sub nom. GTE Service Corp. et al. v. FCC, D.C. Circuit No. 91-1507 (and consolidated cases) (requiring LECs to meet enhanced 800 database service performance standards).

n67 See, e.g., Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1007-08 (1984) (regulation requiring disclosure by chemical companies of confidential research and development data in exchange for the right to register and market pesticides in this country held not a taking). [**38]

30. Finally, we find under the last prong of the "regulatory takings" analysis, that virtual collocation does not result in a total, or even a substantial, economic deprivation of the LECs' economic property interests. n68 The LECs will continue to be able to use their property, including the equipment dedicated to interconnectors, in the provision of common carrier services for which they are entitled to charge just and reasonable rates. The new, more competitive environment that expanded interconnection will foster will undoubtedly present the LECs with increased competitive challenges, but the LECs have no property right to continuation of a monopoly or quasi-monopoly environment for the provision of interstate access service. Our decision specifically permits LECs to recover from interconnectors the cost of providing expanded interconnection. We are also granting the Tier 1 LECs continued pricing flexibility in conjunction with expanded interconnection. We do not expect that [*5166] our virtual collocation requirements will impose undue burdens on the LECs, and have structured our requirements to avoid unnecessary difficulties. n69 To the extent that virtual collocation requirements [**39] may be shown, in specific central offices in which space is extremely limited, to be prohibitively burdensome, the waiver process is available as a safety valve. n70

n68 See Lucas, 112 S. Ct. at 2893-95, 2899-2902.

n69 See, e.g., PP 44, 53, 58, 95, 98, & 208 infra.

n70 See P 65 infra.

31. Physical Collocation Exemption. A LEC will be exempted from our mandatory virtual collocation requirement at any specific central office or offices for which the LEC opts to offer under tariff expanded interconnection through physical collocation, subject to full regulation by the Commission as a communications common carrier service, including the standards we adopt below for such offerings. We believe that both LECs and interconnectors can benefit from the flexibility provided by such an exemption. We conclude that physical collocation provides an adequate substitute for virtual collocation only if it

is offered on a tariffed basis, with generally available rates, terms and conditions, in order to protect interconnectors from potential anti-competitive LEC behavior. Therefore, a LEC's physical collocation offering will exempt it from the general requirement to offer virtual collocation [**40] under tariff only if the LEC explicitly consents to offer physical collocation as a communications common carrier offering under non-streamlined Title II regulation.

32. A LEC will qualify for an exemption from the mandatory virtual collocation requirement only if it voluntarily provides physical collocation subject to all the rules relating to physical collocation that are set forth in this order. As part of that regulation, a LEC that has chosen to provide physical collocation at particular central offices will not be permitted to withdraw its physical collocation offering for customers' existing physical collocation nodes at those offices, for either current or new circuits, without Commission certification pursuant to Section 214 of the Communications Act that such a discontinuation of service will not adversely affect the present or future public convenience and necessity. n71 The exemption from the virtual collocation requirement will apply as long as the LEC offers physical collocation. If a LEC has offered physical collocation pursuant to this exemption, and subsequently withdraws its physical collocation offering for new customers at a given location, it will no longer [**41] qualify for the exemption, and will be required to offer virtual collocation on a generally available, tariffed basis at that location. Similarly, if a LEC has offered virtual collocation on a generally available, tariffed basis, and later wants to withdraw that offering in a particular central office because it qualifies for the physical collocation exemption in that office, it may withdraw the offering for new interconnectors. In such a case, however, the LEC must continue to make virtual collocation available for existing and new circuits of interconnectors that are already using virtual collocation in that office, unless it obtains Commission certification that such a discontinuation of service will not adversely affect the present or future public convenience and necessity.

n71 47 U.S.C. @ 214(a).

33. We find that we have authority to impose these common carriage standards on the LECs' voluntary physical collocation offerings. As previously explained in our Special Access Expanded Interconnection Order, n72 all elements of physical collocation are "communications services," including the provision of central office space, which falls within the statutory definition [**42] because it is "incidental" to communications. n73 Moreover, absent the common carriage standards we are imposing on the provision of physical collocation, LECs could undermine the pro-competitive objectives of our expanded interconnection policies, either by charging unreasonably high rates to interconnectors, or by giving special discounts to favored customers. In these circumstances, where we are allowing physical collocation as a substitute for the mandatory virtual collocation requirements that we otherwise would lawfully impose, our Title I powers n74 allow us to impose common carriage conditions on that choice. n75 Moreover, because the LECs are voluntarily choosing to employ physical collocation, we find that that choice constitutes a voluntary holding out so as to [*5167] confer common carriage status under Title II of the Act. n76

n72 7 FCC Rcd at 7443-47, PP 160-63.

n73 See 47 U.S.C. @ 153(a).

n74 47 U.S.C. @@ 151, 152, & 154.

n75 See, e.g., Southwestern Bell Tel. Co. v. FCC, 19 F.3d 1475, 1483 (D.C. Cir. 1994); Lincoln Tel. & Tel. Co. v. FCC, 659 F.2d at 1107-09; Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198, 212-14 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

n76 See National Ass'n of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 641 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976) (NARUC I); National Ass'n of Regulatory Utility Commissioners v. FCC, 533 F.2d 601, 608 (D.C. Cir. 1976) (NARUC II) (common carrier status can arise either from a voluntary holding out or from legal compulsion). [**43]

34. In Southwestern Bell Telephone Co. v. FCC, n77 the D.C. Circuit remanded an order of the Commission requiring LECs to continue offering under general tariff "dark fiber" services that the carriers had voluntarily initiated under individual case basis (ICB) tariffs. The Commission in that case, however, had never made an affirmative finding that the dark fiber services that the carriers had initiated on a limited, individually negotiated basis, needed to be offered on a common carriage basis in order to advance the public interest objectives of the Communications Act. Rather, the Commission had simply found that because the carriers had documented their limited offerings by filing ICB tariffs, those filings alone conferred common carriage status upon the offerings under the voluntary "holding out" test established in NARUC I and NARUC II. n78 The court in Southwestern Bell held that the mere fact of such filings, standing alone, was insufficient to impose general common carriage obligations on the LECs. By contrast, in this proceeding, we have explicitly determined, pursuant to Section 201(a) and other provisions of the Communications Act, that the expanded interconnection [**44] services we are requiring are necessary or desirable in the public interest, and that any carrier choosing the physical collocation option must provide such service as a common carrier. n79 This affirmative finding on the basis of an extensive record fully distinguishes this case from Southwestern Bell.

n77 19 F.3d 1475 (D.C. Cir. 1994).

n78 NARUC I, 525 F.2d at 641; NARUC II, 533 F.2d at 608-09.

n79 See supra PP 31-32.

35. Alternative Interconnection Offerings. Although we are moving forward now with the mandatory virtual collocation regime defined herein in response to the court's order, we remain open to alternative interconnection arrangements that telephone companies may propose in waiver petitions, if those proposals satisfy the public interest objectives achieved by our virtual collocation requirements. Moreover, LECs are free to tariff alternative virtual collocation, physical collocation, or other arrangements that interconnectors may want to take in addition to the baseline arrangements satisfying the LECs' basic obligations under the rules adopted herein. Such alternatives may be negotiated between the parties, although such negotiated arrangements must be

filed [**45] as tariffs to enable other interconnectors desiring the same arrangement in the same central office to obtain them. While LECs are not required to offer such negotiated arrangements, we envision that LECs and interconnectors will be able to cooperate in developing particular arrangements that meet their mutual needs.

36. Implementation. The LECs subject to expanded interconnection requirements shall file tariffs offering virtual collocation as defined herein on September 1, 1994, to be effective on December 15, 1994. Given our previous experience with expanded interconnection tariffs, and the likely complexity and need for detailed review of these new tariffs, December 15 is the earliest date by which we can ensure that the tariffs will have undergone adequate review by the Commission's staff. LECs must amend their initial tariff filings by October 3, 1994 if they are required to tariff rates for services using additional interconnector-specified circuit terminating equipment. n80 Petitions to reject or suspend and investigate any of these tariffs should be filed by October 14, 1994; replies will be due on October 31, 1994. LECs that wish to be exempted from the virtual collocation [**46] requirement must, on September 1, 1994, file any necessary tariff revisions to implement physical collocation in accordance with the rules set forth in this order, or notify the Chief, Tariff Division, Common Carrier Bureau, in writing that no such revisions are necessary and explain the basis for that conclusion. Unlike the procedure for obtaining exemptions from the current physical collocation requirement, we are not requiring LECs to obtain our advance approval before making use of the physical collocation exemption from the virtual collocation requirement. LECs will, however, be held to the rules set forth herein concerning physical collocation offerings made in lieu of the mandatory virtual collocation requirement.

n80 See infra P 51.

37. We also emphasize that the mandatory physical collocation requirement adopted in our earlier orders, which the Bell Atlantic v. FCC court [*5168] has stated it would vacate with respect to special access expanded interconnection, remains in effect until the court issues the mandate in that case, and the LECs may not propose to withdraw, suspend, or otherwise abrogate their current special access physical collocation offerings until then. [**47] Assuming the mandate does not issue before December 15, 1994, our rules requiring that LECs offer both special access and switched transport expanded interconnection through physical collocation will remain in effect until December 15, 1994.

B. Locations Where Expanded Interconnection Must Be Made Available

38. Orders/Background. In the Special Access Expanded Interconnection Order, we required LECs to make expanded interconnection for special access available in all end offices, serving wire centers, and remote nodes used as rating points for special access. n81 In the First Reconsideration Order, we modified this requirement, and decided that LECs must tariff expanded interconnection for special access initially only in a subset of offices that took account of interconnectors' needs, as reflected in lists they submitted to the LECs. LECs were required to provide interconnection in additional offices upon bona fide request. n82 In the Switched Transport Expanded Interconnection Order, we adopted the same approach as the First Reconsideration Order, and extended the requirements for switched transport expanded interconnection, on a bona fide

request basis, to tandem offices [**48] and remote nodes or switches that serve as rating points for switched transport and that have the necessary space and technical capabilities. n83

n81 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7417-18, PP 103-104.

n82 First Reconsideration Order, 8 FCC Rcd at 128-29, PP 7-18.

n83 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7407-09, PP 53-57.

39. Discussion. For purposes of implementing our mandatory virtual collocation regime, we require, as we did in the First Reconsideration Order, that LECs provide expanded interconnection in a subset of their central offices in their initial tariffs. In this instance, LECs should initially tariff expanded interconnection in all offices in which it is currently tariffed. Under either virtual collocation or physical collocation, this approach reduces the burdens on the LECs, while making expanded interconnection available in all central offices in which interconnectors have a realistic interest in the near future. Under the mandatory virtual collocation rules, if a LEC receives a bona fide request to make expanded interconnection available in additional central offices, the LEC must file tariff revisions [**49] offering virtual collocation (or, if it qualifies for an exemption, physical collocation) in such offices within 45 days of receipt of such a request. Such tariff revisions shall be effective on 45 days notice or less. We also reaffirm that, under the policies adopted in this order, LECs must provide: (1) both special access and switched transport expanded interconnection at central offices that are classified as end offices and service wire centers, (2) special access expanded interconnection at remote nodes that are rating points for special access; n84 and (3) switched transport expanded interconnection on a bona fide request at "stand-alone tandems" n85 and at remote nodes that serve as rating points for switched transport and have the necessary space and technical capabilities to originate and terminate switched traffic. n86

n84 A "rating point" is a point used in calculating the length of interoffice links. Special Access Expanded Interconnection Order, 7 FCC Rcd at 7417, P 103.

n85 A "stand-alone tandem" is defined as a LEC tandem office that is not collocated with a LEC end office or serving wire center. Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7409, P 56.

n86 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7417-18, PP 103-04; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7407-09, PP 53-57. [**50]

IV. STANDARDS

40. Overview. In this section, we address the detailed standards that will govern mandatory virtual collocation. We also address the standards that will apply to physical collocation when it is offered to obtain an exemption from the virtual collocation requirement. Except for the policy changes described below, we conclude on the basis of the record previously compiled that the virtual collocation standards adopted in earlier orders in this proceeding should

continue to apply under the new mandatory virtual collocation requirement. We also find that the standards we adopted as part of our mandatory physical [*5169] collocation requirement remain appropriate in the context of physical collocation provided voluntarily under the new rules. n87

n87 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7391-94, 7409-18, PP 43-46, 84-104; Second Reconsideration Order, 8 FCC Rcd at 7391-96, PP 29-35; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7392-96, 7407-16, PP 30-35, 53-69.

A. Standards Governing Virtual Collocation

1. In General

41. Orders. In the Special Access Expanded Interconnection Order, we rejected some LECs' contentions that [**51] the Commission should establish general interconnection goals or principles in lieu of detailed rules. Instead, we concluded that the adoption of detailed standards would speed the implementation of expanded interconnection by clarifying the rights and obligations of LECs and interconnectors, thereby reducing the disputes that could arise during the implementation process. n88

n88 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7405-06, PP 69-72.

42. Positions of the Parties. In recent ex parte filings, CAPs have argued that virtual collocation should be defined to impose more stringent obligations on the LECs. For instance, some CAPs urge that the Commission require virtual collocation arrangements to be "technically and economically comparable to actual collocation." n89 Other CAPs argue that any expanded interconnection arrangement should be "technically and economically comparable" to the LEC's own internal interconnections. n90 Bell Atlantic, by contrast, argues that the Commission's existing virtual collocation standards are fully adequate. n91 Ameritech asserts that the Commission should not mandate any specific interconnection arrangement, but should just [**52] set general standards with the choice among alternatives left strictly to the LECs. n92 US West argues that it should be required to offer only a standardized list of central office equipment under virtual collocation, rather than permitting interconnectors freedom to designate any equipment they choose. n93

n89 Teleport Ex Parte (July 1, 1994) at 1-3; U S Signal Corp. Ex Parte (July 7, 1994) at 1-3; ALTS Ex Parte (July 6, 1994) at 2-3; Electric Lightwave, Inc. Ex Parte (July 7, 1994) at 2.

n90 MFS Ex Parte (July 5, 1994) at 3; Intermedia Communications of Florida, Inc. Ex Parte (July 6, 1994) at 2.

n91 Bell Atlantic Ex Parte (July 7, 1994) at 2.

n92 Ameritech Ex Parte (July 7, 1994) at 1.

n93 U S West Ex Parte (July 6, 1994), Attachment.

43. Discussion. The specific details of virtual collocation could be defined in a number of different ways. We here consider a range of different standards. At one extreme, we could adopt the CAPs' proposal to require virtual collocation offerings to be technically and economically comparable to physical collocation, from the perspective of the interconnector. n94 In our view, this standard would impose burdens on the LECs that are unnecessary [**53] to protect interconnectors' interests, and in some cases may be unenforceable. n95 Moreover, a court applying the Bell Atlantic v. FCC decision could construe mandatory virtual collocation under this standard to be an unauthorized taking of property, because this standard would appear to impose requirements that, in practice, are equivalent to mandatory physical collocation.

n94 See supra P 42 and ex parte submissions cited therein.

n95 See infra P 62.

44. Under the approach we choose here, we adopt rules governing mandatory virtual collocation that are similar to the rules we adopted in earlier orders in this proceeding to govern virtual collocation. n96 Under these rules, LECs will be required to dedicate to interconnectors' use in terminating the interconnectors' circuits any kind of central office basic transmission equipment reasonably specified by the interconnector. LECs will be required to install, maintain, and repair this equipment, at a minimum, under the same time intervals and with the same failure rates that apply to comparable LEC equipment not dedicated to interconnectors. Interconnectors will be [*5170] entitled to monitor and control this equipment remotely. LECs [**54] will be exempt from the virtual collocation requirement if they provide physical collocation offerings that satisfy our requirements. Tariffing, rate structure, and pricing requirements will ensure that virtual collocation is generally available on a non-discriminatory basis and fulfills our public interest objectives. As explained in detail elsewhere in this order, we conclude that these standards ensure that interconnectors have a realistic opportunity to compete with LEC special access and switched transport services, while also minimizing burdens on the LECs and satisfying the strictures on our authority announced in Bell Atlantic v. FCC. n97

n96 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7392-94, PP 44-46; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7392, P 30; 47 C.F.R. @ 64.1401(g) (redesignated in this order as @ 64.1401(e)).

n97 See supra PP 16-37, infra PP 49-53, 57-62.

45. Under a less detailed approach, rather than giving interconnectors the right to designate their choice of central office transmission equipment, we could require LECs and interconnectors to negotiate a limited array of equipment that would satisfy both of [**55] their needs. Under an even less specific approach, we could allow the LECs to provide virtual collocation by offering a limited array of central office transmission equipment reasonably selected by the LEC, not the interconnector. Interconnectors would have the right only to select one of the types of equipment offered by the LEC. Under either of these approaches, the requirements discussed in this order would apply in other respects: remote monitoring and control by interconnectors; LEC installation, maintenance, and repair standards; and rate structure and pricing principles. We conclude that these approaches are less satisfactory than the standards we

adopt in this order, because any restrictions in the choice of equipment limits interconnectors' ability to determine the configuration of circuits in their network.

46. On the other hand, in the unlikely event a court were to hold that we lack authority to require that interconnectors be able to specify the virtually collocated equipment dedicated to their use, we intend that this requirement be replaced by the first approach described in the preceding paragraph, under which LECs and interconnectors would negotiate the range [**56] of equipment available for virtual collocation. We find this to be an acceptable alternative that promotes most of our public interest objectives, and we would adopt it in place of the requirements set forth herein. If a court were to hold that we lack authority to impose even that approach, we intend that the second approach described in the preceding paragraph, under which the LEC specifies the equipment that the interconnector could select, be used as a replacement. Moreover, if a court were to hold that we lack authority to impose any of the other specific requirements included in the standards described in paragraph 44, we intend that the offending provision be removed. We find that these approaches would be acceptable, although substantially less desirable, options.

2. Equipment Designation

47. Orders/Background. Our existing rules define virtual collocation as "an offering that enables interconnectors to designate or specify equipment needed to terminate basic transmission facilities." n98

n98 47 C.F.R. @ 64.1401(g)(1) (redesignated as @ 64.1401(e)(1)).

48. Positions of the Parties. US West argues that it should be required to offer only a standardized list of [**57] central office equipment under virtual collocation, rather than permitting interconnectors freedom to designate any equipment they choose. n99 The CAPs generally argue for imposing more stringent requirements regarding interconnectors' rights to specify equipment under a mandatory virtual collocation regime. n100 MFS argues that it should not be required to use LEC-specified equipment, arguing that this would require it to modify its centralized network management system to accommodate the unfamiliar equipment. n101

n99 U S West Ex Parte (July 6, 1994), Attachment.

n100 See supra P 42 and comments cited therein.

n101 MFS Ex Parte (July 5, 1994) at 14.

49. Discussion. We reaffirm that under our virtual collocation policy, interconnectors have the right to select the type of central office equipment dedicated to their use. The right to designate equipment is critical to enable interconnectors to determine the configuration of their circuits that terminate in such equipment. In many cases, CAPs and other parties may deploy equipment in their networks that differs from the types of equipment in LECs' networks. Under current technology, a circuit cannot function unless compatible [**58] equipment, typically of the same type and made by the same manufacturer, is deployed on both ends. Thus, a broad interconnector [*5171] right to designate equipment helps ensure that virtual collocation provides a realistic

opportunity for access competition.

50. In addition to our requirement that LECs offer virtual collocation of any type of transmission equipment reasonably requested by interconnectors, we also require that LECs offer virtual collocation through generally available tariffs. We are specifying tariffing procedures for the LECs' service offerings involving virtual collocation equipment to ensure that both these requirements are satisfied. The procedures we adopt are comparable to the process we designed in the First Reconsideration Order to govern the tariffing of central offices, which accommodated both the LECs' need for certainty in devising their physical collocation tariffs and the interconnectors' desires that expanded interconnection be offered in specified locations. In that order, we directed the LECs to publish lists of central offices in which physical collocation would be offered, authorized the interconnectors to request that the lists be expanded to include [**59] additional offices, and required the LECs to file tariffs that took into account the interconnectors' submissions. We also required the LECs, after the initial physical collocation tariffs took effect, to revise their tariffs to offer physical collocation in additional central offices upon bona fide requests from interconnectors. We conclude that an analogous process would be useful in assuring that interconnectors' needs for particular types of equipment are satisfied, while also giving the LECs greater certainty about the range of equipment likely to be used initially, and facilitating a smooth process of filing and reviewing virtual collocation tariffs.

51. Prospective users of virtual collocation may request that LECs include specific types of equipment that they are likely to use initially, and would like to have included in the tariffs. If they submit such requests to the LECs by August 1, 1994, the LECs are required to include specific rates for the requested equipment in their virtual collocation tariffs filed on September 1, 1994. Prospective users of virtual collocation may continue to give the LECs requests for tariffing specific equipment through September 1, 1994. [**60] By October 3, 1994, LECs must amend their initial tariff filings to include specific prices for all of the equipment identified by interconnectors by September 1. During the period from September 1 to December 15, interconnectors may continue to submit equipment requests, although in order to facilitate an orderly tariffing process, we will permit LECs to treat those requests as if they were received on the day after the tariffs become effective, subject to the procedure outlined in the next paragraph.

52. After the initial tariffs become effective, interconnectors will continue to have the right to specify additional types of virtual collocation equipment. An interconnector may request that a LEC modify its virtual collocation tariffs to offer additional types of transmission equipment. The LEC will be required to modify its tariff accordingly within 30 days of receiving such a request. Such tariff changes should be scheduled to become effective on 30 days notice. This procedure will ensure that interconnectors can make rapid modifications to their networks and obtain corresponding additions to the LEC's offerings of central office equipment that is dedicated to their use. [**61] The requirement ensures that interconnecting parties can upgrade their networks to take account of technological improvements, and will help achieve our objective that access competition through virtual collocation spurs technological progress.

53. These equipment designation requirements are unlikely to impose substantial burdens on the LECs. We anticipate that in most cases, LECs will not be called on to serve more than a few interconnectors in any given central office, and the number of different types of dedicated transmission equipment is likely to be reasonably limited given that there is a relatively small number of manufacturers of such equipment. In addition, we reaffirm that, under our new expanded interconnection policy, LECs may proscribe the use of interconnector-designated equipment or practices that represent a significant and demonstrable technical threat to the LEC network. We will scrutinize any such allegations brought to our attention carefully, however, and expect them to be rare. n102

n102 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7392, P 44 n.101.

3. Installation, Maintenance, and Repair

54. Orders/Background. Virtual collocation [**62] requires that the LEC install, maintain, and repair the central office electronic equipment dedicated to an interconnector's use. Existing rules require the LECs, at a minimum, to install, maintain, and repair this equipment under the same time intervals and with the same failure rates that apply to the performance of similar functions for comparable LEC equipment. We have required LECs to keep records and file annual reports on the installation, maintenance, and repair times and failure rates for comparable LEC and interconnection [*5172] equipment and circuits. n103

n103 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7393-94, PP 45-46; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7392, P 30.

55. Positions of the Parties. In petitions for reconsideration, Teleport and ALTS argue that the LECs should be required to install, maintain, and repair virtual collocation equipment to meet the interconnector's standards rather than the LEC's standards, so that CAPs can control the quality of their services and so that virtual collocation can be technically and economically equivalent to physical collocation. n104 The LECs respond that the absolute equivalence [**63] standard requested by the CAPs is unworkable and could disadvantage LEC customers other than interconnectors. The LECs further assert that such a standard is unnecessary because either interconnectors accept LEC performance standards for the LEC-provisioned transmission segment to which the interconnector is connecting or they can bypass the LEC entirely rather than interconnecting. The LECs add that the existing virtual collocation standard prevents discrimination and ensures efficient service to interconnectors. n105

n104 Teleport Special Petition at 17-18; Teleport Special Reply at 6-7; ALTS Special Petition at 20-21; ALTS Special Reply at 13.

n105 Ameritech Special Opposition at 10-11; Bell Atlantic Special Opposition at 7; GTE Special Opposition at 20-22; United Special Opposition at 8-9; USTA Special Opposition at 19; Ameritech ex parte (styled "Further Opposition to Petitions for Reconsideration") at 2-6 (Feb. 18, 1993).

56. In more recent filings, CAPs argue that LEC charges for installation, maintenance, and repair under their current virtual collocation tariffs are excessive. MFS asserts that LECs have charged interconnectors large sums for training multiple shifts [**64] of LEC personnel in each office to install, maintain, and repair interconnector-designated equipment. MFS also states that LECs have required interconnectors to purchase "excessive amounts" of spare parts to ensure prompt repair, and have then charged for the storage of those parts. The solution the CAPs propose is to require all LECs that certify third parties to install, maintain, and repair equipment in their central offices to certify interconnectors as well on a non-discriminatory basis, and to allow the interconnectors to perform these functions themselves. n106 LECs have also indicated concerns about being held responsible for installing, maintaining, and repairing unfamiliar equipment. n107

n106 MFS Ex Parte (July 5, 1994) at 12, 17-20; see also Electric Lightwave, Inc. Ex Parte (July 7, 1994) at 3; Intermedia Ex Parte (July 6, 1994) at 2-3.

n107 SW Bell Ex Parte (July 7, 1994) at 1; U S West Ex Parte (July 6, 1994), Attachment.

57. Discussion. In our virtual collocation regime, the LECs are responsible for installing, maintaining, and repairing the central office equipment that they own and dedicate to the use of interconnectors. In general, we reaffirm our conclusion [**65] in earlier orders that LECs must provide these services, at a minimum, under the same time intervals, and with the same failure rates, that apply to the performance of similar functions for comparable LEC equipment. Failure to provide these functions on equipment dedicated to interconnectors in a manner that is at least as timely and efficient as the service the LECs provide themselves for services that compete with interconnectors' offerings constitutes an unreasonable practice under Section 201(b) of the Communications Act. We conclude, contrary to the arguments of the LECs, that this standard will not impose disproportionate burdens on the LECs.

58. Evidence in the record shows that many LECs have procedures for certifying or approving equipment manufacturers and independent contractor personnel to install electronic equipment, and in some cases, to maintain and repair such equipment. n108 Use of outside contractors can reduce LEC costs, particularly in cases when LEC employees do not routinely install, maintain, or repair particular types of equipment, or are not qualified to do so. Using outside contractors could reduce or eliminate a LEC's need to train employees to provide [**66] service on types of interconnector-designated equipment that are not typically deployed elsewhere in the LEC's network. Similarly, use of outside contractors would allow interconnectors to avoid the substantial costs that might be incurred to train LEC personnel to install, maintain, and repair interconnector-designated equipment with which LEC personnel are unfamiliar. Thus, LECs, as well as interconnectors, may benefit from the use of outside contractors. Of course, if an interconnector designates equipment that [*5173] a LEC currently uses in a given central office, the LEC will not need to provide training to its employees and therefore will not be permitted to charge the interconnector for training LEC personnel to service that equipment.

n108 MFS Ex Parte (July 5, 1994) at 17-18 and Appendices E & F.

59. Virtual collocation customers should not be required to pay for costly training of LEC employees if the LEC uses qualified outside contractors to install, maintain, and repair other equipment in its offices. We therefore conclude that LECs that permit outside service representatives to enter their central offices to install, maintain, or repair LEC equipment must permit outside [**67] representatives to provide these services for the equipment dedicated to interconnectors' use under virtual collocation. If LECs can choose from a range of levels of service quality offered by outside service representatives (e.g., repair times), the LECs must offer the same range of service options to virtual collocation customers in their tariffs. LECs may impose conditions, including certification and bonding requirements, on the contractors that provide service for equipment dedicated to interconnectors, but these requirements must be the same as the requirements that apply to contractors that provide service for other LEC equipment. If LECs use outside contractors to install, maintain, or repair equipment, they must reasonably consider both price and service quality in selecting contractors to provide these services.

60. If an interconnector meets the LEC's standards for outside service representatives, then the interconnector should be certified as a possible outside contractor. Indeed, we see mutual benefits to the LEC and interconnector deriving from use of a certified interconnector's representative for these functions, potentially simplifying the operation of virtual [**68] collocation. However, in light of the D.C. Circuit's decision striking down arguably similar requirements in Bell Atlantic v. FCC, we do not here require a LEC to select the interconnector to provide these services for the LEC's equipment dedicated to the interconnector. Although LECs are generally required to consider cost in selecting a contractor, a LEC will not be required to choose an interconnector to perform installation, maintenance, and repair on this basis alone. We therefore do not adopt MFS's proposal to give interconnectors the right to perform installation, maintenance, and repair of the LEC equipment dedicated to their use. LECs that do not permit outside contractors to enter their central offices are not required to permit such contractors to provide service for equipment dedicated to interconnectors' use, although they are permitted to do so, and may find it the most advantageous way of implementing virtual collocation. Thus, any decision to grant physical access to certified interconnector representatives will be voluntary on the part of the LEC.

61. To provide a basis for monitoring compliance with our prohibition of discrimination in the installation, maintenance, [**69] and repair of virtual collocation equipment, we require the LECs to report on the timing and failure rates for providing such services for comparable LEC and interconnector-dedicated equipment and circuits. In light of the importance of non-discriminatory installation, maintenance, and repair under our new mandatory virtual collocation policy, we increase the frequency of these required reports from annually, as currently required, to quarterly. We delegate authority to the Chief, Common Carrier Bureau, to specify the format and timing of these reports. LECs are not subject to this reporting requirement if they are exempt from the virtual collocation requirement because they provide physical collocation in all central offices in which they provide expanded interconnection.

62. We find no reason to impose more stringent installation, maintenance, or repair standards upon LECs. Specifically, we decline to require the LECs to

install, maintain, and repair interconnectors' virtual collocation equipment to meet the interconnectors' time intervals. We reaffirm our conclusion in the Special Access Expanded Interconnection Order that such a requirement would be difficult or impossible [**70] to enforce, because it could require LECs to maintain and repair their competitors' equipment faster and more effectively than the LECs maintain and repair their own. n109 Moreover, such a requirement would be of limited utility because the interconnectors already essentially acquiesce to LEC performance standards on the LEC circuits to which interconnector circuits are connected, and because interconnectors can achieve a high level of reliability through the use of electronics with redundant components and remote monitoring and control rather than through expedited repair procedures.

n109 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7393-94, P 45 n. 103.

4. Other Requirements for Virtual Collocation

63. Orders/Background. In earlier orders in this proceeding, we held that the cross-connect element, covering short cable connections from the LEC distribution frame to the central office electronic [*5174] equipment dedicated to or owned by the interconnector, should be tariffed at a study-area-wide averaged rate under both virtual collocation and physical collocation. We concluded that certain other charges, such as labor and materials charges for installation, maintenance, [**71] and repair services, may differ in different central offices due to cost variations, but should be uniform for all interconnectors in each individual central office. We allowed LECs and interconnectors to negotiate the rates, terms, and conditions for the use of different types of central office electronic equipment dedicated to interconnectors' use in order to address particular interconnectors' needs, but required such negotiated arrangements to be made available to similarly situated interconnectors in the same central office under tariff. n110

n110 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7441-43, PP 156-59; Second Reconsideration Order, 8 FCC Rcd at 7365-67, PP 56-59; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7421-22, P 86.

64. Discussion. Except as stated elsewhere in this order, we reaffirm our existing rules on the tariffing of virtual collocation offerings, for the reasons stated in our original orders. We reaffirm that the cross-connect element must be tariffed at a study-area-wide averaged rate that is the same for both virtual collocation and physical collocation for LECs that choose to offer physical collocation. In addition, [**72] because we now recognize that the cost of transmission equipment does not vary in different locations, we require that LECs' rates for particular types of equipment offered to interconnectors may not vary within a study area. While we are permitting certain cost-based variations in the rates for specific types of equipment used by different interconnectors, as described below, n111 such rate differences are not dependent on the characteristics of particular central offices or locations within a study area. We also reaffirm, in the context of our mandatory virtual collocation policy, that rates for elements of virtual collocation other than the cross-connect element and elements recovering the cost of central office equipment may reasonably vary in different locations corresponding to cost differences.

n11 See infra PP 124-127.

65. In unusual circumstances, space may be so limited in particular central offices that even virtual collocation is infeasible in those locations. As noted in our earlier orders, n112 we will entertain requests for waiver of the requirement that virtual collocation be made available in such offices.

n112 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7417, P 103 n. 240. [**73]

66. Finally, SW Bell argues that the requirement in our earlier orders that it take interconnector needs into account in planning its space needs for the future converts virtual collocation into a taking of its property. n113 SW Bell contends that virtual collocation requires LECs to reserve central office space anticipated to be requested by interconnectors and refrain from using that space for their own purposes, and asserts that these requirements effectively deprive the LECs of all interest in that reserved space. n114 SW Bell seems to have misinterpreted the language of our earlier order as requiring LECs affirmatively to set aside space in new and existing central offices to meet anticipated virtual collocation requests. We now clarify that LECs need not set aside segregated space, which they could not then use for their own purposes, in anticipation of virtual collocation requests. Virtual collocation arrangements do not involve the reservation of segregated central office space for the use of interconnectors. LECs must consider the needs of virtual collocation customers, just as they consider the demand for other services in planning space usage. We will not tolerate [**74] any discrimination against interconnectors vis-a-vis other customers, however.

n113 Southwestern Bell Telephone Company's Petition for Stay, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141 (filed Nov. 18, 1992) at 5-8, citing Special Access Expanded Interconnection Order, 7 FCC Rcd at 7392-93, 7403, 7408 & n. 191, 7490 n. 605, PP 44, 65, 77, 79 & n. 191, 259 n.605.

n114 SW Bell Petition for Stay at 7.

B. Standards Governing Physical Collocation

1. Space Allocation and Exhaustion

67. Orders/Background. Our existing rules require the LECs to offer space for physical collocation on a first-come, first-served basis, and to provide virtual collocation in central offices in which space for physical collocation is unavailable or [*5175] becomes exhausted. n115 We did not require LECs to expand their facilities or relinquish space reserved for their future use in order to offer physical collocation, but we did state that we expected the LECs to consider interconnector demand for central office space when remodeling or constructing new central offices. n116

n115 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7407-08, PP 77-80; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7403, P 47.

n116 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7407-08, PP 77-80; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7403, P 47. [**75]

68. Positions of the Parties on Reconsideration. USTA suggests that the Commission permit LECs to initiate lotteries, or combinations of "first-come, first-served" and lottery mechanisms, in appropriate circumstances, rather than requiring use of a "first-come, first-served" mechanism. n117 MCI opposes USTA's idea, citing the Commission's experience with the abuse of lotteries in the mobile service context by speculators. n118 Rochester argues, and MFS agrees, that waivers should be available for certain situations in which space is so limited that neither physical nor virtual collocation is feasible, particularly if the LEC makes alternative arrangements available. n119

n117 USTA Special Petition at 10 n. 27; USTA Special Reply at 9.

n118 MCI Special Opposition at 9 n. 8.

n119 Rochester Special Petition at 7-10; MFS Special Opposition at 212.

69. MFS and ALTS argue that to justify an exemption from the physical collocation requirement due to exhaustion of space in particular central offices, LECs should be required to make a specific showing, including affidavits detailing the planned uses of space within the 24 months following the petition filing date. n120 The LECs [**76] respond that such micro-management of LEC central office usage would amount to an unnecessary intrusion into LEC long-range planning, could interfere with other Commission and state regulatory policies, might require them to reveal confidential and proprietary information about LEC business plans such as growth projections and equipment upgrades, and essentially elevates the CAPs' interest in LEC central office space over the LECs' interest in their own property to serve their customers' future needs. n121

n120 ALTS Special Petition at 17-18; MFS Special Petition at 20, 21.

n121 Ameritech Special Opposition at 12-13; Bell Atlantic Special Opposition at 5; GTE Special Opposition at 18-20; NYNEX Special Opposition at 11-12; USTA Special Opposition at 18.

70. Discussion. The exemption from the physical collocation requirement due to space limitations will generally not be relevant under our new mandatory virtual collocation rules. LECs that are providing physical collocation on a voluntary basis and have been exempted from the virtual collocation requirements may exhaust the space available for interconnection in a central office. In that case, just as under the original rules, [**77] upon Commission approval of a showing that space is unavailable, the LEC will be required to provide generally available, tariffed virtual collocation to subsequent interconnectors. For the same reasons set forth in our earlier orders, n122 we conclude that under our new policy, if physical collocation is the only generally tariffed expanded interconnection offering, permitting LECs to turn away interconnectors when space for physical collocation is exhausted could prevent interested parties from interconnecting in offices where space is limited. In most cases, requiring LECs to provide a virtual collocation alternative when space has been exhausted in such offices will ensure that all potential interconnectors can

be accommodated, without imposing unreasonable burdens on the LECs.

n122 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7407-08, PP 77-80.

71. We conclude that the same standards and procedures will apply to such requests based on space limitations that apply to such requests under our existing rules. n123 We decline to adopt the extensive requirements proposed by the CAPs regarding the processing of requests to govern space limitations. The CAPs [**78] filed these proposals before the Common Carrier Bureau processed the LECs' petitions for exemptions due to space limitation. In the proceedings initiated by those petitions, the LECs provided detailed information regarding central office space availability, in many cases including floor plans and statements regarding future plans. We believe that [*5176] in general, the existing procedures worked well and CAPs' concerns regarding possible manipulation were unfounded. If additional information in a particular case is needed to analyze fully a LEC request for exemption due to space limitations, the Common Carrier Bureau can require the LEC to submit such information when the need arises.

n123 Id.

72. We conclude that, for LECs that choose to offer physical collocation pursuant to the terms of this order, a first-come, first-served process appears to be the most equitable manner to allocate space. In general, we do not believe that a sufficient number of prospective interconnectors are likely to request interconnection in central offices with limited space at any one time to make lotteries a reasonable way to allocate space, and we are concerned that LECs could use a lottery process [**79] to delay fulfilling an early request for interconnection until a sufficient number of other requests were received to permit a lottery. LECs that qualify for exemptions to provide physical collocation in lieu of virtual collocation need not expand their facilities or relinquish space reasonably reserved for their future use, for the same reasons stated in the Special Access Expanded Interconnection Order. n124 We also reaffirm our conclusion that LEC tariffs may reasonably include provisions prohibiting interconnectors from warehousing central office space. n125

n124 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7408, P 79.

n125 Id., P 80.

2. Tariffing Requirements for Physical Collocation

73. In earlier orders in this proceeding, we held that the cross-connect element should be tariffed at a study-area-wide averaged rate under both virtual collocation and physical collocation. We concluded that cost differences among central offices may justify different charges for central office space, power, environmental conditioning, and labor and materials charges for installing physical collocation arrangements, but charges should be uniform for all interconnectors [**80] in each individual central office. n126 We now conclude, for the reasons given in our prior orders, that the same tariffing requirements should apply to physical collocation provided pursuant to exemption from the virtual collocation requirement.

n126 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7441-43, PP 156-59; Second Reconsideration Order, 8 FCC Rcd at 7365-67, PP 56-59; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7421-22, P 86.

C. Standards that Apply to Both Virtual Collocation and Physical Collocation

1. State Expanded Interconnection Policies

74. In our earlier orders, we allowed the LECs to apply for exemptions from the mandatory physical collocation requirement, and to provide virtual collocation instead, if the states in which they operated had adopted policies requiring LECs to offer intrastate expanded interconnection. n127 The state policy exemption from the physical collocation requirement does not apply under our mandatory virtual collocation policy. Of course, LECs operating in a state with an expanded interconnection policy that favors physical collocation may obtain an exemption from the interstate virtual collocation [**81] tariffing requirement by offering physical collocation subject to the terms set forth in this order.

n127 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7391, P 41; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7393-94, P 31.

75. We reaffirm our conclusion in the Special Access Expanded Interconnection Order that if a LEC offers both interstate and intrastate expanded interconnection, it should do so in a manner that satisfies both federal and state requirements to the extent possible, and should provide mechanisms to avoid double payment for facilities used for both interstate and intrastate collocation. n128 As we stated in the Special Access Expanded Interconnection Order, we believe that this requirement should reduce the potential for federal/state conflict and should prevent manipulation of different approaches to expanded interconnection to disadvantage unfairly interconnectors (i.e., requiring interconnectors to pay for different facilities for federal and state interconnection due to slightly differing requirements, when the same facilities could serve both purposes and satisfy both sets of requirements).

n128 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7488-89, PP 254-55. [**82]

2. Reporting Requirements

[*5177] 76. Orders/Background. We have required the BOCs and GTE to report biennially on the customers using special access expanded interconnection and the locations at which they are interconnected. n129 We have also required the BOCs and GTE to report annually on the customers using switched transport expanded interconnection and the locations at which they are interconnected. n130

n129 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7492, P 263.

n130 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7444, P 142.

77. Positions of the Parties on Reconsideration. USTA takes issue with the reporting requirements applicable solely to the BOCs and GTE. USTA claims that these LECs have no unique ability to gather or provide the data and should not be treated differently from other competitors. Instead, USTA contends that the Commission should require all special access competitors to provide information regarding the growth of access competition. n131 GTE argues that interconnectors, rather than LECs, should be required to report on collocation as well as quantities of circuits, number and location of network nodes, and numbers [**83] of customers, to give the Commission data necessary to conduct a reasoned analysis of the extent of competition. n132

n131 USTA Special Petition at 29-30; USTA Special Reply at 10; see also NYNEX Special Opposition at 12-13.

n132 GTE Special Petition at 30-31; GTE Special Reply at 6-7; GTE Switched Petition at 17-18.

78. ALTS and MCI respond that the existing requirement will assist in identifying possible discrimination, involves a minimal burden, and is appropriately imposed only on the LECs because it relates to the interconnection services they provide. n133 In addition, MCI argues that the BOCs should be required to file quarterly reports identifying the parties using expanded interconnection and the offices in which they are interconnected, in order to enforce the new restrictions it recommends imposing on interconnection by AT&T. n134 Sprint contends that the information that the LECs propose requiring -- the location of interconnection customers' network nodes and the number of their users -- is irrelevant to monitoring the development of local competition. n135 NARUC submits that the Commission should collect data on collocation expenses, revenues, and deployment [**84] activity to facilitate Joint Board decisionmaking. n136

n133 ALTS Special Opposition at 15-16; MCI Special Opposition at 12-13 (also noting that it does not object to requiring submission of additional useful information by the CAPs).

n134 MCI Special Petition at 10. See supra P 37 for a description of the restrictions MCI proposes.

n135 Sprint Special Opposition at 10.

n136 NARUC Special Petition at 23.

79. Discussion. We now conclude that a broader information collection program is necessary to monitor the development of access competition. The extent to which access competition develops is a significant gauge of the success of our expanded interconnection policy. In addition, the extent to which competition actually develops is an important factor in considering LEC requests for additional pricing flexibility in the future. The existing reporting requirements were designed to monitor the limited question of which customers are using expanded interconnection and at what locations they are interconnected. We conclude that a broader monitoring program is needed to gather empirical data that will better enable us to monitor the development of competition in interstate [**85] access markets. We delegate authority to the Chief, Common Carrier Bureau, to formulate the detailed elements of this

reporting program, decide which carriers must provide information, and specify the format and timing of these reports.

3. Dispute Resolution

80. Orders/Background/Positions of the Parties on Reconsideration. We concluded in our initial order in this proceeding that existing dispute resolution procedures -- our standard tariff and complaint processes, as well as our new alternative dispute resolution mechanisms n137 -- are adequate to [*5178] resolve disagreements regarding the implementation of expanded interconnection. n138 MFS argues that the Commission should delegate authority to specific staff members to facilitate expeditious, informal, and binding resolution of implementation disputes. n139 The LECs respond that MFS's request unjustifiedly presupposes bad faith on behalf of the LECs, would unnecessarily tax the Commission's scarce resources, and could discourage negotiated resolution and encourage parties to resort to the FCC to settle disputes. n140

n137 Use of Alternative Dispute Resolution Procedures in Proceedings Before the Commission in Which the Commission is Not a Party, GC Docket No. 91-119, Initial Policy Statement and Order, 6 FCC Rcd 5669 (1991); Notice of Proposed Rulemaking and Second Notice of Inquiry, 7 FCC Rcd 2874 (1992); 47 C.F.R. @ 1.18.

n138 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7493, P 266.

n139 MFS Special Petition at 18-19.

n140 Ameritech Special Opposition at 11-12; NYNEX Special Opposition at 7-9. [**86]

81. Discussion. We recognize that the implementation of mandatory virtual collocation carries with it the potential for more disputes than arose under the physical collocation regime. In particular, disagreements could arise regarding the installation, maintenance, and repair of the virtually collocated central office electronic equipment that terminates interconnectors' circuits. We encourage LECs and interconnectors to work together to resolve these disputes amicably. In cases that the parties are unable to resolve, however, special dispute resolution mechanisms could expedite the resolution of these disagreements and could help ensure that our new expanded interconnection regime works smoothly. We delegate to the Chief, Common Carrier Bureau, authority to develop special dispute resolution mechanisms, possibly including the designation of a Commission representative to work personally with the parties to mediate disputes and ensure that they are settled expeditiously, fairly, and consistently.

4. Interconnection to LEC Facilities

a. Microwave

82. Orders/Background. The Special Access Expanded Interconnection Order required LECs to permit interconnection with microwave [**87] transmission facilities where reasonably feasible. n141 The Common Carrier Bureau granted LECs a waiver of this tariffing requirement to permit microwave expanded

interconnection to be tariffed on an individual case basis (ICB) in response to bona fide requests. n142 The Commission adopted the same approach for microwave switched transport interconnection in the Switched Transport Expanded Interconnection Order, pending resolution of the issue on reconsideration of the Special Access Expanded Interconnection Order. n143

n141 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7416, P 98.

n142 Ameritech Operating Companies, 8 FCC Rcd at 4603, PP 78-79 (Com. Car. Bur. 1993).

n143 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7415, P 68.

83. Positions of the Parties on Reconsideration. USTA and GTE seek clarification that microwave collocation "where reasonably feasible" must be tariffed only through an office-specific bona fide request process, and only in central offices in which there are no safety or engineering risks and the costs are not unreasonable. n144 API responds that interconnection by microwave transmission facilities will be the principal [**88] cost-effective means for sophisticated end users to obtain expanded interconnection, particularly in low-density rural areas, and argues that the LECs should be directed to make every reasonable effort to accommodate requests for microwave interconnection arrangements. n145

n144 USTA Special Petition at 23-25; GTE Special Petition at 31-33; USTA Special Reply at 7-8.

n145 API Special Opposition at 7-9; see GTE Special Reply at 8 (stating that it stands ready to work cooperatively with parties desiring microwave interconnection).

84. Discussion. We agree with the Bureau's conclusion that microwave interconnection must be so tailored to specific interconnectors and to particular central offices that it does not readily lend itself to uniform tariff arrangements. n146 We therefore modify our requirements to specify that the LECs must tariff microwave interconnection on a central office-specific, individual case basis, in response to bona fide requests. Such tariffed arrangements must be made available to other similarly situated parties at the same central office on non-discriminatory terms, and must be [*5179] offered under general tariff at a given central office if the LECs gain [**89] sufficient experience to do so and if such arrangements can reasonably be standardized. n147 Microwave interconnection should be offered through virtual collocation (using microwave transmission equipment that is owned by the LEC and dedicated to the interconnector's exclusive use) or, if the LEC wishes to qualify for an exemption, through physical collocation. We expect the LECs to make reasonable efforts to accommodate requests for microwave interconnection arrangements. Of course, the LECs may charge rates that reasonably recover the costs of offering such arrangements.

n146 Ameritech Operating Companies, 8 FCC Rcd at 4603, PP 78-79 (Com. Car. Bur. 1993).

n147 See supra P 34.

b. Copper or Coaxial Cable

85. Orders/Background. Because the interconnection of copper or coaxial cable could rapidly exhaust available conduit and riser space, we held in our earlier orders that interconnection of such cable facilities is permitted in specific cases only upon the approval of the Common Carrier Bureau. n148

n148 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7416, P 99; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7415-16, P 69.

86. Positions [**90] of the Parties on Reconsideration. Penn Access argues that interconnectors should be able to use coaxial cable facilities for interconnection. It asserts that contrary to the Commission's conclusion, interconnection with coaxial cable can use space more efficiently and require less maintenance than fiber because it eliminates the need for interconnector optical terminals and electronic equipment on LEC premises. n149 Penn Access adds that small- to medium-sized CAPs in particular can avoid unnecessary costs by using coaxial cable when they have lower capacity needs. n150 Penn Access suggests that rather than placing a burden on coaxial interconnectors to make a showing to the Bureau, the LECs, which have more information and monopoly power, should have the burden of showing that a specific coaxial interconnection would significantly limit conduit or riser space. n151

n149 Penn Access Special Petition at 3-7, Attachment B (stating that a 1 1/4 inch innerduct can house 19 coaxial cables).

n150 Penn Access Special Reply at 2-10.

n151 Penn Access Special Petition at 7-8.

87. The LECs respond that coaxial cable is not widely favored by communications providers, is becoming less [**91] prevalent throughout the industry, and would consume entrance space and user ducts far more rapidly than fiber due to differences in capacity and the larger physical diameter of coaxial cable. They contend that coaxial cable interconnection is costly and could crowd out fiber interconnection and force LECs to reconfigure central offices, potentially leaving LECs with an unusable investment when interconnectors change over to fiber. n152 WilTel, concerned about interconnection by AT&T, recommends prohibiting interconnection with copper coaxial cable without Commission approval. n153

n152 USTA Special Opposition at 21-22; Ameritech Special Opposition at 8-9 (noting that a one-inch coaxial cable could accommodate up to 16 DS3s, while a one-inch fiber cable could accommodate over 1,000 DS3s); GTE Special Opposition at 15-17 (noting that at least four fiber cables are typically put in the same duct and riser space occupied by one or two coaxial cables).

n153 WilTel Special Petition at 14-15.

88. Discussion. We reaffirm our decision that interconnection of copper or coaxial cable facilities will be permitted in specific cases only upon approval by the Common Carrier Bureau. Copper [**92] and coaxial cables use conduit

space much less efficiently than fiber. We remain concerned that if, under virtual collocation or physical collocation arrangements, interconnectors request that such cable be brought into LEC central offices, conduit or riser space might quickly be exhausted, which could impair the LECs' ability to serve their other customers or subsequent interconnectors. Most cable television companies (and other parties with substantial amounts of copper or coaxial cable in their networks) do not interconnect with the LECs at present and will have to install new facilities to establish collocated interconnection at LEC central offices. We believe it is in the public interest to encourage them to deploy fiber in making such interconnections in order to promote efficient use of available conduit and riser space and thereby facilitate access to central office interconnection by the greatest number of potential interconnectors. We also clarify that the restriction on interconnecting copper or coaxial cable refers to the interconnector's facilities, and does not restrict the type of LEC services to which interconnectors [*5180] are entitled to connect.

c. DS0 and Other [**93] Special Access Services

89. Orders/Background. In the Special Access Expanded Interconnection Order, we required the LECs initially to tariff interconnection to DS1 and DS3 services generally. We required the LECs to file tariffs within 45 days of bona fide requests for interconnection to other special access services. Such tariff revisions are to be filed on 45 days notice. n154

n154 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7489-90, P 259 & n.603.

90. Positions of the Parties on Reconsideration. Teleport submits that interconnection at the DS0 level should be generally tariffed like DS1 and DS3 interconnection. Teleport argues that this would enable interconnectors to provide their own multiplexing from high-capacity levels down to the DS0 level, rather than handing off DS1 circuits to the LECs and being dependent on (allegedly often overpriced) LEC multiplexing to obtain access to DS0 level circuits. Teleport contends that this would give CAPs more control over the speed of provisioning and service quality to their DS0 customers, and would facilitate greater competition for DS0 services. n155 The LECs, on the other hand, contend that universal tariffing [**94] of DS0 interconnection is unnecessary, would impose inefficiencies on LECs by requiring them to bypass their own multiplexers and route large quantities of cable through their buildings to terminate at interconnectors' multiplexers, and might require LECs to equip central offices with facilities for which there is no present demand. n156

n155 Teleport Special Petition at 19-20; Teleport Special Reply at 7-9.

n156 United Special Opposition at 13-14; USTA Special Opposition at 22.

91. GTE seeks clarification that cross-connect elements for DS1, DS3, and other services should be tariffed only if the LEC's corresponding special access service is available in a specific office. n157 MFS agrees, but states that the LEC should be required to permit interconnectors to cross-connect to any special access service offered out of a specific office. n158 ALTS, however, contends that this LEC argument amounts to an effort to limit artificially CAP innovation. n159

n157 GTE Special Petition at 33-34; GTE Special Reply at 7-8. Accord, USTA Special Reply at 9-10.

n158 MFS Special Opposition at 23.

n159 ALTS Special Opposition at 17 n.36.

92. GTE argues that the 45 day deadline for [**95] filing tariffs for the interconnection of services other than DS1 and DS3 is too short given the detailed engineering and costing activities necessary, and contends that it is unlikely that any interconnector could design and build transmission facilities to a central office in 45 days or less so that a reasonable extension would not delay interconnection in practice. n160 MFS argues that these tariffs are unlikely to be particularly complex and that 45 days should be more than sufficient. n161

n160 GTE Special Petition at 33; GTE Special Reply at 8.

n161 MFS Special Opposition at 24.

93. Discussion. We believe that interconnection to the broadest array of special access services is in the public interest because it facilitates competition for all these services. The initial tariffing requirement was limited to DS1 and DS3 services only to promote rapid implementation, because these are the services that we believed interconnectors desired most and for which competition would be most likely to develop in the short term. We conclude that, under our new rules, the LECs must provide interconnection to DS0 and all other special access services within 45 days of receiving a bona [**96] fide request for such a service. We conclude that more time is unnecessary and could impede competition, thereby unnecessarily delaying service to customers. Our expanded interconnection policies do not require a LEC to connect interconnectors' facilities with any given LEC service (e.g., DS3 service) at a particular central office if the LEC does not offer that service at that central office.

5. Other Standards Issues

94. Equipment in LEC Central Offices. In our earlier orders, we required LECs to permit interconnectors to place, or designate for placement, in LEC central offices only equipment needed to terminate basic transmission facilities, [*5181] including optical line terminating equipment and multiplexers. We concluded that the placement or dedication of other types of equipment, such as enhanced service equipment, in LEC central offices was unnecessary to foster competition in the provision of special access and switched transport services, and consequently we did not require the LECs to permit the collocation of such equipment in their central offices. n162 We conclude that the same principles should apply under the mandatory virtual collocation and physical collocation [**97] exemption policies we adopt in this order, for the reasons stated in our previous orders. Only central office equipment needed to terminate basic transmission facilities must be collocated pursuant to this order.

n162 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7413-14, PP 93-94; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at

7412-13, P 63.

95. Points of Entry. In our earlier orders, we required the LECs to offer interconnectors at least two separate points of entry to each central office if they have at least two entry points for their own cable. n163 USTA and GTE contend that the requirement should apply only when there is space available for new facilities at each of two points entering the central office, and that LECs should not be required to construct new entry points or reroute their own facilities to accommodate interconnectors. n164 MFS responds that LECs should be required to rearrange facilities or take other reasonable steps (short of installing new cable entrances) to provide diverse cable entrances upon an interconnector's request. n165 Under our new regime, we reaffirm the general requirement, but make the modification requested [**98] by USTA and GTE. We conclude that this revision reasonably advances our policy objective of ensuring that in most cases interconnectors desiring reliability can obtain diverse entry points, while avoiding undue burdens on the LECs.

n163 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7411-12, P 89; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7410-11, P 60. See also Ameritech Operating Companies, CC Docket No. 93-162, 8 FCC Rcd 4589, 4605, P 91 (Com. Car. Bur. 1993) (waiving application of this requirement when all entry points but one are at capacity).

n164 USTA Special Petition at 26; GTE Special Petition at 35; USTA Special Reply at 8-9.

n165 MFS Special Opposition at 24.

96. Network Reliability Council. GTE submits that the Commission should not let expanded interconnection proceed until the Network Reliability Council has developed standards and operational safeguards to ensure that network reliability is not compromised. n166 We decline to adopt GTE's suggestion under our new regime. The Network Reliability Council has not been delegated responsibility for developing specific technical guidelines. We reaffirm our conclusion that LECs [**99] are permitted to proscribe use of interconnector equipment or operating practices that would constitute a significant and demonstrable technical threat to LEC networks. n167

n166 GTE Special Petition at 26-27.

n167 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7392, n.101.

97. Insurance. MFS suggests that a LEC tariff requirement that an interconnector obtain $ 1 million in comprehensive general liability insurance should be presumed reasonable, and any more burdensome insurance requirement should be allowed only if the LEC provides specific factual justification for it. n168 The LECs respond that such a rule would be unprecedented, unnecessary, and overly intrusive into LEC property management. n169 NYNEX points out that liability insurance requirements will reasonably differ in different parts of the country and in different types of central office buildings, and contends that a $ 1 million policy would almost always prove inadequate because a central office fire or other casualty caused by an interconnector's negligence could easily result in far more than $ 1 million in damage. n170 We reaffirm our

conclusion that resolution of insurance issues is best [**100] addressed when we examine the reasonableness of specific LEC physical collocation tariff provisions. n171 We add, however, that unless a LEC makes a compelling case to the contrary, in general no liability insurance requirements should be imposed in [*5182] connection with virtual collocation offerings.

n168 MFS Special Petition at 20-21.

n169 USTA Special Opposition at 18-19.

n170 NYNEX Special Opposition at 10.

n171 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7407, P 77 n.189.

98. Customer Proprietary Network Information (CPNI). MFS argues that the Commission should impose CPNI protection rules on expanded interconnection arrangements to prevent LECs from using their control of bottleneck facilities to obtain unfair competitive advantages. n172 The LECs respond that CPNI rules are unnecessary because any competitor can easily identify potential access service customers, and contends that such rules would split LEC staffs into subgroups that are likely to be less efficient and perform redundant work, and could not be implemented at all due to the limited staff in many smaller business offices. n173 We are persuaded by the LECs' arguments on this point, and conclude [**101] that no special CPNI protection rules are necessary in the context of our new expanded interconnection regime. n174

n172 MFS Special Petition at 17.

n173 Ameritech Special Opposition at 14-15; Bell Atlantic Special Opposition at 9; USTA Special Opposition at 23.

n174 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7418, P 104 n.245.

99. Billing. In the Switched Transport Expanded Interconnection Order, we decided that the LECs should bill the interconnection charge to the customer of record, whether that party is a CAP or an IXC, even in cases where a CAP aggregates the traffic of several IXCs and the CAP is the customer of record. n175 Rochester seeks clarification that it may bill the transport interconnection charge and other switched access elements to the entity whose traffic it can measure, in circumstances where it cannot bill the customer of record. Rochester states that this may occur when a CAP aggregates the traffic of several IXCs, the CAP is the customer of record, and the carrier identification codes are associated with the IXCs. n176 MFS supports Rochester's petition, stating that the procedure Rochester proposes is technically unavoidable [**102] and permits the charges to be billed to the actual underlying user of switched access services. n177 Sprint opposes Rochester's proposed clarification, arguing that the customer of record should be billed, but states that it would not object to a waiver for Rochester limited to the circumstances described in its petition. n178 We will not issue Rochester's proposed clarification, because Rochester has presented no evidence persuading us that our decision in the Switched Transport Expanded Interconnection Order was incorrect or unworkable, and we reaffirm that decision. We concluded that

Billing the customer of record would enable the LECs to measure interstate minutes of use accurately and bill the charge to the appropriate party. The LEC, of course, must be able to bill for the services it provides to its customers, and we will consider granting waivers in circumstances meeting the normal waiver standard. n179

n175 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7441-42, PP 133-34.

n176 Rochester Switched Petition at 8-10; Rochester Switched Reply at 6.

n177 MFS Switched Opposition at 6.

n178 Sprint Switched Opposition at 5.

n179 In general, to qualify for a waiver, a party must demonstrate that enforcement of a generally applicable rule would not be in the public interest in the special circumstances under consideration. Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. @ 1.3. [**103]

100. Percentage of Interstate Use (PIU) Reporting. In the Switched Transport Expanded Interconnection Order, we concluded that in cases in which IXCs are able to report end users' PIU data, LECs may, in their tariffs, require them to do so. n180 Sprint submits that end users that are expanded interconnection customers of record -- not the IXCs serving those users -- should report their own PIU data to LECs. Sprint argues that requiring IXCs to report PIU data to LECs when the customer of record is an end user places an unwarranted and impractical burden on IXCs, because end users often split their traffic among several IXCs, and IXCs may not be able to segregate any particular user's traffic for the purposes of PIU measurement. n181 No party opposes Sprint's request. We reaffirm our decision in our earlier orders. If IXCs cannot accurately report end users' PIU data, it would be reasonable for LECs to require the end user [*5183] customer of record to report its PIU to the LEC. LECs may use the same PIU verification procedures for end user access customers that they now use for IXC customers.

n180 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7443, P 137.

n181 Sprint Switched Petition at 13. [**104]

101. Collocation of Data-Over-Voice (DOV) Equipment. The Special Access Expanded Interconnection Order and the Switched Transport Expanded Interconnection Order required LECs to permit interconnectors laying their own circuit facilities to a LEC central office to collocate any type of basic transmission equipment, including data-over-voice (DOV) equipment, but not switches or enhanced service equipment. n182 USTA and GTE argue that LECs should not be required to allow collocation of DOV equipment, because they assert that DOV equipment is not used to provide a basic transmission service in conjunction with interstate special access service (i.e., as a substitute for LEC channel terminations). Instead, USTA and GTE contend that DOV equipment is generally used in conjunction with switched service between copper-based local loops and split voice and data ports in the LECs' local switches, and constitutes

"equipment to be interconnected with LEC-provided transmission facilities" and not included in the scope of expanded interconnection. n183 IDCMA and ITAA respond that DOV is basic transmission equipment and note that several LECs offer tariffed services using such equipment. They [**105] assert that interconnectors could use DOV equipment in connection with special access services without connecting to the loop side of LEC switches and argue that GTE's and USTA's proposed restriction would be anticompetitive. n184 We reaffirm our conclusion that because DOV equipment is basic transmission equipment, expanded interconnection customers have a right to virtual collocation of DOV equipment in LEC central offices (or physical collocation for LECs that qualify for exemptions from the virtual collocation requirement). We clarify, however, that we have not required the LECs to unbundle their loopside switched access common line services.

n182 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7413-14, PP 93-94 & n.224; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7412-13, P 63.

n183 GTE Special Petition at 27-28; USTA Special Petition at 26-27; USTA Special Reply at 6; GTE Special Reply at 5-6. Accord, NYNEX Special Opposition at 14-15.

n184 IDCMA Special Opposition at 2-7; ITAA Special Opposition at 4-6.

V. AVAILABILITY OF EXPANDED INTERCONNECTION

A. Parties that Offer Expanded Interconnection: Reciprocity

102. Orders/Background. [**106] In our prior orders in this proceeding, we required all Tier 1 LECs, except NECA pool members, to provide expanded interconnection, but did not impose reciprocal obligations on interconnectors. n185

n185 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7398-99, 7403 n.167, PP 56-58, 65 n.167; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7399-7400, P 40.

103. Positions of the Parties on Reconsideration. GTE and USTA contend that the Commission should require at least those common carriers that seek expanded interconnection to offer expanded interconnection themselves on equivalent terms, as MFS had originally proposed. GTE and USTA submit that reciprocity would help facilitate a level playing field between competing carriers, particularly given the policymakers' goal of a "network of networks" in which LECs may wish to obtain fiber from CAPs or others, and given the evolution of special arrangements between CAPs, cable television operators, IXCs, and others. n186

n186 GTE Special Petition at 24-26; USTA Special Petition at 27-29; USTA Switched Petition at 10; USTA Switched Reply at 5-6.

104. MCI, Sprint, and AT&T oppose requiring reciprocal [**107] interconnection obligations, because the LECs, which possess bottleneck facilities, do not need access to interconnector facilities to provide their services. n187 MFS states that it is amenable to providing collocation or

equivalent interconnection to LECs upon request, as long as other common carriers using expanded interconnection (but not end-users) are subject to similar obligations, but adds that because it controls no bottleneck facilities, there is no need for the Commission to require reciprocal interconnection [*5184] rights. n188

n187 MCI Special Opposition at 11-12; Sprint Special Opposition at 9-10; Sprint Switched Opposition at 5; AT&T Switched Opposition at 2 n.2.

n188 MFS Special Opposition at 21-22; MFS Switched Opposition at 6-7.

105. Discussion. Section 201(a) of the Act already requires CAPs and other common carriers to provide interconnections with other common carriers upon request. We conclude that this general requirement is sufficient with respect to parties other than LECs, and that our detailed mandatory virtual collocation rules should apply only to the Tier 1 LECs other than NECA pool members. First, mandated expanded interconnection for parties other [**108] than LECs is beyond the scope of this proceeding, because we did not propose in either of the notices in this proceeding to impose interconnection obligations on parties other than the LECs. Second, mandated expanded interconnection requirements are necessary because the LECs are dominant carriers and control facilities to which other parties need access in order to provide service. In the absence of any other identified public interest benefits in mandating reciprocity, we find no reason to impose expanded interconnection requirements on parties that lack market power and do not control bottleneck facilities. MFS has indicated that it is willing to provide interconnection to its facilities voluntarily, and we believe that market forces are likely to induce other non-dominant interconnectors to do so to meet demand as well.

B. Parties that May Use Expanded Interconnection

106. Orders/Background. Currently, all parties, including CAPs, IXCs, and end users, can make use of expanded interconnection. We concluded in our earlier orders that AT&T and any other parties already located in the same building as a LEC central office could use expanded interconnection to interconnect [**109] with LEC facilities in the same manner, and at the same charges, as other parties. n189

n189 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7403-04, PP 65-68; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7402, P 44.

1. Restrictions on AT&T

107. Positions of the Parties on Reconsideration. MCI contends that AT&T can derive unique, unfair advantages from expanded interconnection using its collocated points of presence (POPs) that result from its historical relationship with the BOCs. MCI provides examples of ways it alleges AT&T could use interconnection arrangements to cut its access costs by over 90% in many cases. n190 MCI recommends that AT&T be required to continue paying channel termination charges in central offices where it currently has POPs until another party is taking expanded interconnection service in that office, although MCI does not object to AT&T obtaining expanded interconnection immediately in offices in which it did not have pre-existing collocated POPs. n191 WilTel and

CompTel argue that AT&T possesses monopsony power, and could use that power to gain windfall benefits from interconnection. They contend that AT&T may be [**110] the only IXC that can benefit from interconnection. They thus assert that AT&T should not become eligible for collocation pricing unless it installs an optical interface, and recommend prohibiting interconnection with copper coaxial cable without Commission approval. n192 WilTel submits a quantitative analysis purporting to show that, given the LECs' rates for physical collocation, an IXC or CAP located 1/2 mile from a central office could justify interconnecting only if it has enough traffic to fill at least 24 DS3s, while only 12 DS3s of traffic would be needed to justify physical collocation for an IXC whose POP is at the central office. n193

n190 MCI Special Petition at 3-9; MCI Switched Petition at 4-5; MCI Switched Reply at 6-7.

n191 MCI Special Petition at 9-11, 13-14; MCI Special Reply at 2-7; accord, CompTel Special Opposition at 6-8; Sprint Special Opposition at 10-11; WilTel Special Opposition at 15-17 (arguing that AT&T should not receive price reductions until a CAP is interconnected).

n192 WilTel Special Petition at 3-4, 14-15; WilTel Special Reply at 8-9; WilTel Switched Reply at 7-10; CompTel Special Opposition at 6-8.

n193 WilTel Switched Petition at 9-11. [**111]

108. AT&T responds that these arguments amount to attempts by its competitors to obtain advantages through the regulatory process, and asserts that by requiring AT&T to pay the same charges and use the same interconnection architecture as other interconnectors, the orders already eliminate any [*5185] possible advantages it may have. n194 GTE asserts that LEC pricing should not depend on the identity of an interconnecting party, and that such distinctions may not be consistent with Section 202 of the Communications Act. n195

n194 AT&T Special Opposition at 2-6; AT&T Switched Opposition at 2-6.

n195 GTE Special Reply at 3.

109. Discussion. In the context of our mandatory virtual collocation policy, we reaffirm our conclusion that AT&T may use expanded interconnection, and that if it does so, it must deploy the same facilities and pay the same charges as any other interconnector. n196 Restricting AT&T's ability to use expanded interconnection would impede the ability of the largest potential access competitor to the LECs to enter the market, which would not be in the public interest. Moreover, imposing such a restriction on AT&T would not promote cost-based interexchange competition. [**112] To the extent AT&T has any advantage over other IXCs because it has a larger number of POPs in closer proximity to LEC central offices, this advantage is offset by the added capital costs that AT&T incurred to deploy these facilities and the additional operating expenses that they cause. Finally, such a restriction could remove an important market check on above-cost pricing by the Tier 1 LECs in rural areas, where AT&T may be the only party that could compete with LEC access services in the foreseeable future.

n196 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7403-04, PP 65-68; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7402, P 44.

110. We are unconvinced by the non-dominant IXCs' arguments. In particular, WilTel has offered insufficient information to assess the validity of the assumptions underlying its quantitative analysis. Moreover, WilTel's analysis does not appear to take into account the internal network costs of the party located at the LEC central office (such as the costs of constructing and maintaining additional transmission facilities to reach the central office), as opposed to those of parties located 1/2 mile from the [**113] LEC central office, which should offset at least some of that party's benefits. Contrary to MCI's suggestions, AT&T cannot simply pay cross-connect charges instead of channel termination charges; if AT&T uses expanded interconnection, it must pay for and use the same collocation arrangements that other interconnectors use. In any case, for the policy reasons given above, we reaffirm our existing rules relating to AT&T's use of expanded interconnection.

2. Restrictions on End Users

111. USTA submits that there is no need to make collocation available to non-common carriers to avoid unreasonable discrimination, because Section 201(a) explicitly distinguishes carriers from others for interconnection purposes, and the Commission need not prejudge LECs' methods for responding to discrimination concerns. n197 We are unconvinced by USTA's argument, and reaffirm our decision that all parties, including non-common carriers, may use expanded interconnection offerings -- an approach that is consistent with our policy of not distinguishing between carriers and users in the application of access charges. n198

n197 USTA Special Petition at 6.

n198 See supra P 19 and authorities cited therein. [**114]

VI. EXPANDED INTERCONNECTION RATE STRUCTURE AND PRICING

A. Connection Charge Rate Structure

112. Orders/Background. Connection charges are the rates that LECs assess interconnectors for the provision of expanded interconnection services. In our earlier Expanded Interconnection decisions, we did not impose detailed rate structure requirements for connection charges, but did require that the connection charge rate structures that the LECs use reflect cost-causation principles, and be unbundled to ensure that interconnectors are not forced to pay for services that they do not need. n199

n199 Second Reconsideration Order, 8 FCC Rcd at 7368, P 61; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7417-18, PP 72-75.

113. Positions of the Parties on Reconsideration. In comments filed before the adoption of the Second Reconsideration Order, which mandated unbundling of expanded interconnection rate structures, WilTel asserted that to prevent discrimination with respect to individually negotiated virtual collocation offerings, LECs should be required to unbundle all rate elements for such

offerings to the [*5186] maximum extent possible and should be permitted to offer [**115] volume discounts only when justified by technology. n200 WilTel also submits that maximum unbundling could enable the Commission to ensure that virtual collocation offerings are priced consistently with physical collocation, and argues for pricing virtual collocation using physical collocation rates as a starting point, and then deducting the cost savings resulting from using a virtual arrangement. n201 Ameritech contends that virtual and physical collocation will be different services, and terms and conditions will justifiably differ. n202

n200 WilTel Special Petition at 7-10.

n201 WilTel Special Petition at 11-13.

n202 Ameritech Special Opposition at 15.

114. Discussion. In light of our decision to impose a mandatory virtual collocation requirement, and based on the record on reconsideration, we reaffirm and expand our requirements regarding the rate structure of connection charges. We conclude that we should not at this time impose a detailed rate structure for connection charges under our mandatory virtual collocation regime. For the reasons set forth in our earlier orders, n203 we conclude that such a structure could be overly inflexible. We have found in our experience [**116] in the ongoing investigation of the LECs' expanded interconnection tariffs, n204 however, that the use of disparate rate structures can complicate the ability of interested parties and our staff to evaluate the reasonableness of LEC rate structures and levels. Thus, we conclude that additional guidance could facilitate the tariff review process, and we set forth additional requirements to guide the LECs' choice of expanded interconnection rate structures.

n203 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7425-26, P 121; Second Reconsideration Order, 8 FCC Rcd at 7368, P 61; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7417-18, PP 72-75.

n204 See supra note 14.

115. First, we reaffirm for our new regime the rate structure principles adopted in the Second Reconsideration Order and the Switched Transport Expanded Interconnection Order, for the reasons stated in those orders. n205 Thus, we require the LECs to establish reasonable, disaggregated subelements for connection charges pursuant to rate structures that (1) reflect cost-causation principles, (2) are unbundled to ensure that interconnectors are not forced to pay for services that they [**117] do not need, and (3) establish a cross-connect element that applies uniformly to both physical and virtual collocation.

n205 Second Reconsideration Order, 8 FCC Rcd at 7368, P 61; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7417-18, PP 72-75.

116. In addition, the LECs' rate structures must be clear and easy to understand. Regardless of a LEC's individual choice of rate structure, the facilities and services provided under each rate element should be clear on the face of the tariff, and the tariff support information should identify the specific costs that are recovered by each rate element. In addition, each

rate element should logically relate to the service function provided under that rate element. For example, one of the basic functions of virtual collocation service is the provision of a cable running from the point of interconnection of the LEC's and interconnector's networks to the termination equipment in the LEC's central office. An entrance cable rate element, therefore, would logically recover the costs of cable running between these two locations.

117. Finally, we will require the LECs to provide cost support data for their September 1, [**118] 1994 virtual collocation tariff filings pursuant to a uniform Tariff Review Plan (TRP) format established by the Common Carrier Bureau. The TRP will disaggregate expanded interconnection service into broad categories, or "functions." For example, one TRP function might be the entrance cable function described above. Provision of basic cost data by TRP function permits Commission staff and the interested public to compare the LECs' various rate structures and levels more effectively. We delegate authority to the Chief, Common Carrier Bureau, to promulgate detailed requirements regarding the TRP format in a separate order.

B. Connection Charge Pricing

118. Orders/Background. In the earlier Expanded Interconnection orders, we concluded that LECs should recover the costs of providing expanded interconnection services through new connection charge elements. We required the LECs to set the initial rates for connection charges for expanded [*5187] interconnection based on direct costs plus a reasonable share of overhead loadings. We required the LECs to derive direct costs using a consistent methodology, and to justify any deviation from uniform overhead loadings that they propose for [**119] connection charges. The same cost justification standards apply to both initial rate levels and subsequent rate changes for connection charges. n206

n206 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7428-33, PP 127-131, 136-37; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7419-21, PP 79-81, 83.

119. Positions of the Parties on Reconsideration. ALTS requests clarification of the pricing standard to be used to justify connection charge elements, arguing that there are disparities between the application of overhead loadings to connection charges and to rates for services subject to competition, and that such differences are anti-competitive and should be eliminated. n207 ALTS argues that the current pricing standard enables the LECs to charge exorbitant rates for expanded interconnection and engage in a classic cost/price squeeze that stifles competition. n208 The LECs respond that they must be able to recover real overhead costs in their rates. n209

n207 ALTS Special Petition at 19-20.

n208 ALTS Switched Petition at 13-15.

n209 USTA Special Opposition at 5; United Special Opposition at 15-16.

120. Positions of the Parties in Recent [**120] Filings. The CAPs complain that the LECs have imposed excessive charges for equipment under their current virtual collocation tariffs. n210 The CAPs propose that the LECs

should be required to purchase equipment from interconnectors at $ 1 or other nominal amount, giving interconnectors the right of first refusal to buy back the equipment at any time for the same price. Under this approach, the CAPs assert that the LECs would have no capital investment in equipment, and therefore would be prohibited from marking up their costs to reflect depreciation, the cost of money, or ad valorem taxes. n211

n210 MFS Ex Parte (July 5, 1994) at 7-12.

n211 MFS Ex Parte (July 5, 1994) at 21-22; Electric Lightwave, Inc. Ex Parte (July 7, 1994) at 3; Intermedia Communications of Florida, Inc. Ex Parte (July 6, 1994) at 2-3.

121. Discussion. We continue to believe that the LECs must cost-justify the rate levels for connection charges, and that these rate levels must receive careful scrutiny by Commission staff. The same scrutiny will be required for both initial rate levels and subsequent rate changes in connection charges assessed both by price cap LECs and by rate-of-return LECs. We also [**121] reaffirm that expanded interconnection services covered by connection charges will be excluded from the LECs' price cap baskets indefinitely and are subject to non-streamlined tariff review. n212 We are making some changes to our pricing rules, however, in light of our adoption of a mandatory virtual collocation regime and our experience in reviewing the expanded interconnection tariffs filed under the existing rules. The LECs' cost-justified rates will be derived from the direct costs of providing expanded interconnection service plus a reasonable amount of overhead costs. We address these two types of costs in turn.

n212 47 C.F.R. @ 61.42(f). See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7432-33, PP 136-37; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7420-21, P 83.

122. Direct Costs. We reaffirm that price cap LECs must derive the direct costs of expanded interconnection offerings as provided under the price cap new services test. Rate of return LECs that provide expanded interconnection should provide the cost information required for new services under the applicable sections of our rules. n213 Thus, under our new mandatory virtual [**122] collocation policy, the LECs must justify the direct costs related to all services covered by connection charges (including those related to physical collocation provided pursuant to an exemption), for both the initial level of these charges and subsequent changes. Specifically, we require the price cap LECs to derive the direct cost of providing similar types of new offerings, including expanded interconnection services covered by the connection charge rate elements, based on consistent methodologies, unless they can justify [*5188] different methodologies. n214 This requirement reflects our policy for the pricing of new services adopted in the LEC Price Cap proceeding. n215 As noted in our earlier expanded interconnection orders, however, certain aspects of the new services test, such as risk premiums, are not applicable to expanded interconnection services. n216

n213 47 C.F.R. @@ 61.38 or 61.39.

n214 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7428-29, P 127; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7419, P

79.

n215 Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4531 (1991).

n216 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7429, n.290; see Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 7 FCC Rcd 5235, 5236-37 (1992). [**123]

123. The LECs' rates for virtual collocation services involving the central office equipment dedicated to the use of interconnectors are likely to be the most expensive rate elements in virtual collocation offerings. The purchase price of the equipment used to provide these services will, of course, be an important factor in computing the LECs' cost-based rates for these services, and we recognize that there will be different purchase prices for different types of equipment designated by interconnectors. We therefore require the LECs to include in their September 1 tariff filings a description of the methodology they use to compute their rates for services that require the use of optical line terminating multiplexers (OLTMs), and other equipment used to terminate, multiplex, and demultiplex circuits, based on the purchase prices of the equipment. This will ensure that the rates paid by all interconnectors are derived in the same manner, and will enable interconnectors that wish to offer to sell equipment to the LECs, or to designate equipment not previously tariffed, to predict their charges for the services that rely on the use of this equipment. The LECs' methodologies must [**124] be consistent with all the rate structure and pricing rules set forth in this order. In addition, the LECs must specify in their tariffs the actual charges for the equipment, calculated using the general methodology.

124. We are concerned about the reasonableness of the purchase prices of central office virtual collocation equipment, as the rates for services involving use of this equipment will be based on those purchase prices. For instance, LECs purchasing equipment that they do not ordinarily use in their networks may not be able to obtain the volume discounts available to interconnectors that regularly use such equipment in their networks. More importantly, in purchasing equipment, LECs do not have an incentive to obtain the lowest possible price, since their costs will be passed on to their competitors, the interconnectors. To counter this problem, we impose the following requirement on LEC pricing of OLTMs and other equipment with similar functions used in virtual collocation arrangements. LECs must base the direct costs of providing this equipment on the lowest purchase price reasonably available to them to serve an interconnector. In applying this standard, we would [**125] find probative the price at which an interconnector may offer to sell the desired equipment to the LEC. Any costs incurred above the lowest reasonably available price are not prudently incurred, and thus should not be reflected in the LECs' rates. The LECs, however, are not required to purchase the equipment from interconnectors.

125. This pricing approach will help ensure that LEC rates for use of this virtual collocation equipment will be reasonable, and will limit the LECs' ability to pay inflated prices and pass them on in charges to interconnectors. In addition, this approach will have the desirable collateral effect of easing

the transition from a mandatory physical collocation to a mandatory virtual collocation environment. Specifically, if a LEC were to stop providing physical collocation, causing its expanded interconnection customers to shift to virtual collocation arrangements, an interconnector that currently uses terminating equipment in its collocated cage may offer to sell that equipment to the LEC at a price lower than that otherwise available to the LEC.

126. LECs may reasonably charge different rates to different customers if they incur different costs to [**126] serve those customers. To be sure, even virtual collocation offerings designed to meet the needs of individual interconnectors must be made generally available to all similarly situated interconnectors, and the actual rate levels (as well as the general methodology) must be specified in the tariffs. In this context, however, an interconnector that relies on the LEC to purchase equipment from a third party at a price the LEC negotiates is not similarly situated to, and may not pay the same charges as, an interconnector that offers to sell the equipment to the LEC itself at a [*5189] lower price. Because the costs prudently incurred by the LECs to serve the different interconnectors are different in such cases, the difference in the rates charged to different customers does not constitute unreasonable discrimination under Section 202 of the Communications Act. n217 The LEC, however, must use the same basic methodology specified in its tariff to compute all customers' rates.

n217 47 U.S.C. @ 202. See Competitive Telecommunications Ass'n v. FCC, 998 F.2d 1058, 1062 (D.C. Cir. 1993), citing 1 Alfred E. Kahn, The Economics of Regulation: Principles and Institutions 63 (1970) (defining price discrimination as "charging different purchasers prices that differ by varying proportions from the respective marginal costs of serving them"); Sea-Land Service, Inc. v. ICC, 738 F.2d 311 (D.C. Cir. 1984) ("The core concern in the nondiscrimination area has been to maintain equality of pricing for shipments subject to substantially similar costs and competitive conditions, while permitting carriers to introduce differential pricing where dissimilarities in those key variables exist.").
[**127]

127. We do not intend to limit the LECs' ability to use financial arrangements other than purchasing equipment outright from third parties. For instance, in their current virtual collocation tariffs, some LECs allow the interconnector to purchase equipment and lease it to the LEC. LECs may, if they wish, offer to purchase virtual collocation equipment from interconnectors for a nominal amount (e.g., $ 1) and make it available for resale to the interconnectors for the same amount. We decline, however, to adopt the CAPs' recommendation that we require the LECs to offer such an arrangement. Under our definition of virtual collocation, the LECs own and control the central office equipment. A $ 1 sale and repurchase right would effectively make the interconnector the owner of the equipment in all but formal title, and would perhaps run afoul of the D.C. Circuit's analysis in Bell Atlantic v. FCC. n218

n218 See Bell Atlantic v. FCC, slip op. at 9.

128. Overhead Costs. LECs incur overhead costs in providing expanded interconnection services, and should be allowed to charge reasonable amounts to recover these costs in their rates for these services. We are concerned, however, [**128] that the LECs could attempt to load excessive overhead costs on their connection charges. On the current record, we reaffirm our

decision in the earlier orders in this proceeding that the LECs may include no more than uniform overhead loadings in their rates for expanded interconnection services, or must justify any deviations from uniform loadings. n219 In other words, LECs may not recover a greater share of overheads in rates for expanded interconnection services than they recover in rates for comparable services, absent justification. The LECs have the burden of demonstrating that their connection charges meet this overhead loading standard, and are otherwise just, reasonable, and not unreasonably discriminatory. The price cap LECs may be required to submit additional information to enable us to verify that the overhead loadings on the expanded interconnection connection charges do not unreasonably differ from the overhead loadings on other services, for which price cap LECs generally do not provide cost justification. We will carefully scrutinize the overhead costs that the LECs propose to recover through connection charges to ensure that they are reasonable.

n219 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7429, P 128 & n.291; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7419, P 79. [**129]

129. Other Pricing Issues. We decline to require the LECs to set connection charges to ensure that interconnectors using virtual and physical collocation arrangements pay the same total prices, or to require that virtual collocation be priced using physical collocation rates as a starting point and deducting the cost savings from using a virtual arrangement, as requested by WilTel. Virtual collocation and physical collocation are different services, and each should be priced based on the cost of providing it. We reaffirm our decision to require the LECs to provide cost justification for any connection charges that would vary on a per circuit basis because of the number or type of interconnected circuits ordered. n220 We also reaffirm our conclusion that the LECs may not charge different rates for special access and switched interconnection rate elements, or for interconnection rate elements in different types of central offices (i.e., end offices, serving wire centers, tandem offices, etc.), unless costs differ. n221 Interconnectors' wage rates are irrelevant to a determination of the cost of the service provided by the LECs.

n220 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7425, P 121 n.269; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7419-20, P 80.

n221 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7419-20, P 80. [**130]

[*5190] C. Contribution Charge

130. Orders/Background. A "contribution charge" is a rate element that recovers subsidies or support flows embedded in LEC rates for services comparable to those provided by interconnectors. Certain states permit a contribution charge in connection with expanded interconnection, and we concluded in the Special Access Expanded Interconnection Order that in theory a contribution charge would be reasonable if targeted to recover specifically identified regulatory support mechanisms or non-cost-based allocations embedded in LEC rates subject to competition. n222 We did not, however, permit the LECs to assess an interstate special access contribution charge in the Special Access Expanded Interconnection Order. Instead, we took steps to eliminate the only

support flow that appeared on the existing record to warrant a contribution charge. We did, however, adopt a rule (47 C.F.R. @ 69.122) permitting the LECs to seek the Commission's approval for a contribution charge applicable to special access expanded interconnection, as well as to their own special access services, if they could demonstrate the existence of any such support flows. n223 In the Switched Transport [**131] Expanded Interconnection Order, we concluded that the transport interconnection charge recovers revenues not recovered through other transport rate elements, and therefore that there is no need for a separate switched transport contribution charge. n224

n222 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7437, P 146.

n223 Id., 7 FCC Rcd at 7436-39, PP 143-49.

n224 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7421, P 84.

131. Positions of the Parties on Reconsideration. MFS argues that individual LECs should not be allowed to seek permission to impose a contribution charge. Rather, it contends that contribution charges should be allowed only following a rulemaking proceeding, because any non-cost-based support flows that exist must exist for all LECs under the uniform access rate structure. MFS asserts that any changes in the cost allocation and pricing rules should be consistent across the LEC industry. n225 USTA responds that a LEC's own costs, not an industrywide proceeding, should define a cost-based contribution element. n226

n225 MFS Special Petition at 22.

n226 USTA Special Opposition at 5.

132. Discussion. We reaffirm the principle, [**132] adopted in the Special Access Expanded Interconnection Order, that interconnectors, as well as LECs, should provide contributions to support any specifically identified regulatory subsidy mechanisms that are embedded in LEC rates for services subject to competition. n227 This policy principle advances our universal service goals in a manner that is consistent with the development of access competition, by ensuring the continued recovery of any regulatory subsidies or support flows that clearly advance universal network access on an equitable basis.

n227 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7436-39, PP 143-49.

133. Our rule on contribution charges for special access and expanded interconnection, 47 C.F.R. @ 69.122, will advance this policy principle, under the new expanded interconnection regime adopted in this order. No contribution charge was permitted in the Special Access Expanded Interconnection Order because we proposed to eliminate the only regulatory support flow identified in the record affecting the LECs' interstate special access rates -- the over-allocation of General Support Facility costs. We eliminated that over-allocation shortly thereafter. [**133] n228 Without evidence of other regulatory support flows within interstate special access rates, we decline to modify for our new regulatory regime the policy principle, the rule, or our procedures regarding contribution charges. We believe that MFS's challenge is

premature. If any LEC proposes a contribution charge, we will consider such a proposal on its merits. As to switched transport, we find no reason to alter our conclusion that the transport interconnection charge obviates the need for any separate contribution charge.

n228 Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order, CC Docket No. *92-222, 8 FCC Rcd 3697 (1993), pets. for recon.* pending.

D. Separations

134. Orders/Background. In earlier stages of this proceeding, some parties *argued that expanded interconnection should be accompanied by separations* changes because interstate competition [*5191] could lead to revenue shifts to the intrastate jurisdiction. n229 We adopted no separations changes in the Special Access Expanded Interconnection Order and the Switched Transport Expanded Interconnection Order, because we found that any indirect cost reallocation that might result from [**134] the implementation of expanded *interconnection would not be of sufficient* magnitude to undermine universal service or threaten state regulatory programs. n230 Both orders were, however, accompanied by notices of proposed rulemaking that referred to the Federal-State Joint Board in CC Docket No. 80-286 the limited issue of whether separations changes are needed to allocate properly the costs of, and revenues from, expanded interconnection between the state and federal jurisdictions. n231

n229 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7483-85, PP 242-46 and comments cited therein.

n230 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7485-86, P 247; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7446-48, PP 147-51

n231 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7485-86, PP 247-48; Second Notice, 7 FCC Rcd at 7749, PP 54-55; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7446-48, PP 147-51.

135. Positions of the Parties on Reconsideration. NARUC submits that, pending Joint Board action, the LECs should be required to exclude from the separations process an amount of expense equivalent to the [**135] amount of revenues received for interstate expanded interconnection, to avoid cost-revenue mismatches. n232 The D.C. PSC argues that the Commission should have directed the Joint Board to consider the full impact of expanded interconnection on separations, such as the reassignment of formerly interstate special access facilities to the state jurisdiction caused by diversion of LEC interstate traffic to competitors. According to the D.C. PSC, this trend could accelerate the reduction in telephone subscribership in the District of Columbia by increasing the costs that must be recovered from intrastate services. n233 GTE responds that existing separations procedures should continue to be used, rather than the interim procedures proposed by the states, but argues that a comprehensive separations review is necessary. n234

n232 NARUC Special Petition at 22-23.

n233 D.C. PSC Special Petition at 1-5 (arguing that as competition develops and the LECs lose market share more rapidly with respect to interstate than intrastate services, a greater proportion of the LECs' facilities will be used for intrastate purposes, causing a greater proportion of costs to be allocated to the state jurisdiction).

n234 GTE Special Opposition at 22-23. [**136]

136. Discussion. We reaffirm our earlier conclusions concerning the possible need for separations changes in response to the adoption of expanded interconnection requirements for special access and switched transport. n235 The policies we adopt here create no reason to alter those conclusions. Thus, while we find no reason to delay implementation of the requirements set forth in this order, we leave in place our current referrals to the Joint Board concerning whether separations changes are needed to ensure a reasonable jurisdictional allocation of expanded interconnection costs and revenues.

n235 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7485-86, PP 247-49; Second Notice, 7 FCC Rcd at 7749, PP 54-55 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7447-48, PP 150-51.

137. Having reviewed the record on reconsideration, we decline to broaden the scope of our referral to the Joint Board. A comprehensive review of separations and cost recovery is not necessary to resolve the limited issue of the jurisdictional allocation of the costs of and revenues from expanded interconnection. We also decline to modify our separations procedures, as proposed [**137] by NARUC. Because the initial magnitude of expanded interconnection costs and revenues is likely to be very small relative to LEC's total regulated costs and revenues, we conclude that any effect of the existing rules on the overall separations allocations should be minimal and should permit ample time for the Joint Board to make a recommendation to the Commission.

[*5192] VII. LEC PRICING FLEXIBILITY

A. In General

138. Background/Orders. Before we adopted the expanded interconnection orders, the LECs were permitted to offer special access -- but not switched transport -- with term and volume discounts, and were required to offer all special and switched access services at geographically averaged rates in each study area. In the Special Access Expanded Interconnection Order, we permitted LECs with operational special access expanded interconnection arrangements in a study area to introduce density zone pricing for special access in that study area. We defined special access expanded interconnection as "operational" after at least one interconnector has taken a special access cross-connect element. n236 Density zone pricing is a system that permits the LECs gradually to deaverage [**138] their special access rates by zones in a study area. In the Switched Transport Expanded Interconnection Order, we permitted LECs with operational switched transport expanded interconnection arrangements in a study area to implement density zone pricing for switched transport in that study area. We also allowed the LECs to offer volume and term discounts on switched transport services after interconnectors have subscribed to a certain number of switched expanded interconnection cross-connects. n237

n236 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7454, P 179 n.411.

n237 See generally Special Access Expanded Interconnection Order, 7 FCC Rcd at 7451-58, PP 172-86; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7422-36, PP 87-120. We describe how the density zone pricing system works, and the rules on volume and term discounts for switched transport, in more detail below.

139. The Teleport Petition. After the court issued its ruling in Bell Atlantic v. FCC, Teleport filed a petition for declaratory ruling requesting that the Commission eliminate the additional pricing flexibility granted to the LECs in the Special Access Expanded Interconnection [**139] Order unless those LECs voluntarily provide physical collocation for special and switched access expanded interconnection. n238 Teleport argues that the Commission determined that physical collocation is the best way to ensure that the LECs provide interconnection on the same terms as the interconnection they provide to themselves. Teleport further contends that the additional pricing flexibility granted to the LECs was premised on the mandate of physical collocation, and that without physical collocation, "the rationale behind the FCC's pricing flexibility standard falls away." n239 According to Teleport, limiting the availability of pricing flexibility will present a strong incentive for LECs to provide physical collocation, and an "appropriate reward" to those who do. n240 Finally, Teleport claims that if LECs continue to benefit from pricing flexibility without any incentive to provide physical collocation, the pace of developing competition will be slowed.

n238 Teleport Petition for Declaratory Ruling (filed June 10, 1994).

n239 Id. at 4.

n240 Id.

140. ALTS supports the Teleport petition, arguing that the policy and legal underpinnings of increased pricing flexibility [**140] were eliminated by the Court's decision in Bell Atlantic v. FCC. ALTS argues that the "significantly increased potential for competition made possible by expanded interconnection" will not be achieved without physical collocation. n241 Whereas Teleport's petition directly addresses only density zone pricing for special access, ALTS urges that Teleport's request is equally applicable to the pricing flexibility that the Commission has granted for switched transport. ALTS notes, however, that it is not arguing that there are no circumstances under which virtual collocation could create a level playing field. Rather, ALTS argues that a level playing field is more difficult to achieve where the only interconnection available is virtual collocation, and where the Commission's rules have not been modified to adequately ensure that virtual collocation is comparable in all relevant respects to physical. n242 Electric Lightwave, Inc. (ELI) also filed comments in support of the Teleport petition. ELI argues that virtual collocation is inferior to physical collocation, reduces the effectiveness of the Commission's expanded interconnection policies, and justifies a retraction of the previously [**141] granted pricing flexibility. n243

n241 ALTS Comments on Teleport Petition at 3-4.

n242 Id. at 5.

n243 ELI Comments on Teleport Petition at 1-2.

[*5193] 141. Bell Atlantic, GTE, Pacific, SW Bell, and Ameritech oppose the Teleport petition. Some of these LECs argue that Teleport's request is premature and procedurally improper because the mandate in Bell Atlantic v. FCC has not yet issued. n244 The LECs assert that under the Commission's rules, density zone pricing is linked to any form of operational expanded interconnection cross-connect, not necessarily a physical collocation cross-connect. n245 They contend that Teleport's request would circumvent the effect of the Court's order by withholding the pricing flexibility that they assert they need to compete unless they allow third parties to occupy their property. n246 Some LECs submit that more pricing flexibility is needed, not less, given the growth of competition and the rigid limits on LEC pricing under the existing density zone pricing and switched transport discount rules. n247 Ameritech notes that CAPs' representatives have stated publicly that their ability to compete is not affected by the Bell Atlantic v. FCC decision. [**142] n248 Finally, SW Bell asserts that at least some LECs will likely choose to offer some form of expanded interconnection that is satisfactory to the Commission even after the Court's mandate issues, and that the Commission should look to what the LECs are actually offering, as opposed to what they are legally required to offer, in making decisions concerning pricing flexibility. n249 Sprint/United also opposes the petition. It renews its argument on reconsideration that density zone pricing should be permitted even if expanded interconnection is not operational, because it enables LECs to tailor prices more closely to costs, and thus creates correct economic signals that facilitate sound entry decisions by CAPs. n250

n244 Pacific Opposition to Teleport Petition at 2-3; SW Bell Opposition to Teleport Petition at 1-2.

n245 GTE Opposition to Teleport Petition at 2-3; Pacific Opposition to Teleport Petition at 4; SW Bell Opposition to Teleport Petition at 2-3; Ameritech Reply in Support of Oppositions to Teleport Petition at 2. See also Sprint/United Opposition to Teleport Petition at 2 n.4.

n246 GTE Opposition to Teleport Petition at 1-2; Pacific Opposition to Teleport Petition at 3-4.

n247 Bell Atlantic Opposition to Teleport Petition at 1-5; Pacific Opposition to Teleport Petition at 4-7; Ameritech Reply in Support of Oppositions to Teleport Petition at 1-2.

n248 Ameritech Reply in Support of Oppositions to Teleport Petition at 2-3.

n249 SW Bell Opposition to Teleport Petition at 3-4.

n250 Sprint/United Opposition to Teleport Petition at 2-3. This filing represents the company's position both as LEC and as IXC. [**143]

142. Positions of the Parties on Reconsideration. Even under a general mandate of physical collocation, the CAPs have generally advocated reversal of the grant of additional pricing flexibility to the LECs. Teleport argues that

special access expanded interconnection increased competition for only a limited market segment (for connections to IXC POPs, not for low density connections to end user premises), and that special access volume and term discounts already give the LECs the practical benefits of deaveraged rates. n251 MFS and ALTS maintain that the LECs have sufficient pricing flexibility for switched transport under the price cap rules, continue to control bottleneck facilities and dominate markets, and do not need additional flexibility (density zone pricing or volume and term discounts) to respond to competition before a more substantial amount of competitive entry has occurred. n252 They assert that no additional flexibility should be allowed until the Bureau completes its inquiry into special access volume and term discounts. n253 ALTS and Hyperion argue that the Commission should remove restrictions on the LECs in the same manner as it did for AT&T in the interexchange [**144] market -- gradually, and not until after competing providers had made substantial inroads in the market. n254

n251 Teleport Special Petition at 15-17; Teleport Special Reply at 5-6.

n252 MFS Switched Petition at 4-10; MFS Switched Reply at 1-3; ALTS Switched Petition at 5-13; ALTS Switched Reply at 1-3.

n253 ALTS Special Petition at 22-23; MFS Switched Petition at 13-14.

n254 ALTS Switched Petition at 9-11; ALTS Switched Reply at 7-8; Hyperion Switched Petition at 8.

143. The LECs contend that, in light of the competitive inroads of CAPs and others, and the likelihood of rapid competitive advances in the highly [*5194] concentrated access market, additional pricing flexibility is needed to prevent price umbrellas or market share allocation that could deprive customers of the benefits of more rigorous competition. n255 Several LECs note that ALTs' and Hyperion's arguments that restrictions on LECs be maintained until they have lost a certain share of the market ignore the realities of the access market: a few large customers, high elasticity of supply and demand, and less potential overall market growth than the interexchange market. n256

n255 USTA Special Opposition at 2-4; Bell Atlantic Special Opposition at 2-3 (submitting independent market analysis purporting to show that CAPs have already obtained 20-30% of market share in targeted areas); Rochester Special Opposition at 6-8; United Special Reply at 1-7 (stating that delaying LEC pricing flexibility will force AT&T, customer of 60% of access, to shift traffic from LECs to CAPs); USTA Special Reply at 1-2; Ameritech Switched Opposition at 3-4; BellSouth Switched Opposition at 2-6; NYNEX Switched Opposition at 4-6, 11-12 (noting that a large market share does not necessarily indicate market power, particularly in undesirable, regulated markets); United Switched Opposition at 2-3; USTA Second Special Reply at 1-3; GTE Switched Reply at 1-4; Rochester Switched Reply at 1-2. See also API Special Opposition at 9-10.

n256 See, e.g., Pacific Switched Opposition at 12-16, citing Special Access Expanded Interconnection Order, 7 FCC Rcd at 7422 n.253 (distinguishing the development of competition in the access and interexchange markets); USTA Switched Reply at 2. [**145]

144. Discussion. We deny the Teleport petition and reject the claims for wholesale reversal of our density zone pricing policy, except that we slightly

modify the threshold standard by changing the definition of when expanded interconnection is "operational," as set forth in PP 154-56 below.

145. We deny Teleport's request because the need for additional LEC pricing flexibility does not hinge upon the choice between virtual collocation and physical collocation. Access competition should accelerate with the implementation of expanded interconnection, whether in the form of virtual collocation or physical collocation. In adopting a mandatory virtual collocation policy, we intend to ensure the availability of a reasonable expanded interconnection offering that gives interconnectors a realistic opportunity to provide special access and switched transport services in competition with the LECs. Thus, making additional pricing flexibility available only to LECs that opt to provide physical collocation appears unwarranted.

146. As we stated in our earlier orders in this proceeding, n257 excessive constraints on LEC pricing and rate structure flexibility during a time of increasing [**146] competition will deprive customers of the benefits of competition and give the new entrants false economic signals. At the same time, we recognize that inadequate restrictions on LEC pricing and rate structure could permit competitive abuses that would stifle economic competitive entry and place excessive cost burdens on customers of less competitive services. We conclude that density zone pricing for special access and switched transport, as well as our switched transport discount rules, strike a reasonable balance between these competing concerns under our mandatory virtual collocation regime.

n257 See generally Special Access Expanded Interconnection Order, 7 FCC Rcd at 7421-22, 7451-55, PP 110-15, 172-79; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7426-27, 7433-34, PP 98-100, 115-17.

147. We reaffirm under the new regime our conclusion that retention of study-area-wide rate averaging or a flat restriction on discounted offerings could maintain LECs' prices at artificially high levels in low-cost areas and thus create a pricing umbrella for the CAPs, depriving customers of the benefits of more vigorous competition. n258 Restraining full competition [**147] by the LECs even when they are the low cost service providers could further deny consumers the benefits of reduced prices from competition, increase the LECs' competitive losses under expanded interconnection, and might cause LEC rates for less competitive services to rise. In addition, some parties might enter the market who would not do so if LEC service rates were permitted to reflect more economic pricing. Similarly, requiring the LECs to maintain below-cost prices for potentially competitive services in high-cost areas could depress LECs' incentives to invest in modernizing their networks, and could deter competitive entry. We will not, therefore, limit pricing flexibility in the manner that Teleport requests.

n258 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7454, P 178.

148. With regard to the issues raised on reconsideration, and the question of whether any [*5195] modifications to our previously adopted pricing flexibility rules is warranted under our new regime, we generally reaffirm our decisions in the expanded interconnection orders regarding LEC pricing flexibility. We address the specific issues relating to density zone pricing, volume and term discounts, [**148] and related issues raised in petitions

for reconsideration at greater length below.

B. Density Zone Pricing

1. Threshold Required for Implementation

149. Orders/Background. In the Special Access Expanded Interconnection Order, we permitted LECs to introduce density zone pricing of interstate high-capacity special access in a study area after their expanded interconnection offerings are operational in that study area -- that is, once at least one interconnector has taken a special access cross-connect element. n259 In the Switched Transport Expanded Interconnection Order, we permitted LECs to implement density zone pricing of interstate switched transport in a study area once their expanded interconnection offerings are operational in that study area -- that is, after at least one interconnector has taken a switched cross-connect element. n260

n259 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7454, P 179 & n.411.

n260 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7426-27, P 99 & n.230.

150. Positions of the Parties on Reconsideration. Several LECs argue that zone pricing should be available after expanded interconnection tariffs are [**149] effective, rather than after an interconnector takes the service, in order to enable LECs to set rates more in line with costs, and to avoid giving uneconomic incentives for entry. n261 Sprint and other IXCs maintain that zone pricing should be available regardless of whether expanded interconnection is operational, because zone pricing enables LECs to set rates closer to cost, facilitates sound network planning and decisionmaking by IXCs, and eliminates any justification for maintaining artificial DS3/DS1 rate ratios or uneconomic volume discounts. n262

n261 USTA Special Petition at 20-21; GTE Special Petition at 22-23; Rochester Special Petition at 15-17 (noting that two CAPs are providing service in competition with Rochester, but that neither has used Rochester's intrastate collocation offering); United Special Petition at 9-12; Ameritech Special Opposition at 17; GTE Special Opposition at 6; USTA Switched Petition at 4-5.

n262 Sprint Special Petition at 2-3; Sprint Special Opposition at 3-4; CompTel Special Opposition at 10-11; WilTel Special Opposition at 11; Sprint Switched Opposition at 1-3.

151. MFS and ALTS argue that instead of obtaining statewide pricing flexibility [**150] in response to a collocation arrangement, LECs should obtain pricing flexibility only in the specific metropolitan area where a CAP is providing competitive service using a collocation arrangement. n263 MFS proposes that density zone tariffs not be permitted to become effective until the earlier of: (1) 12 months after a party other than AT&T has an operational interconnection arrangement, or (2) when interconnection arrangements are operational in central offices that serve at least 25% of the total interstate special access circuits, weighted by capacity, in a geographic area. n264 MFS argues that since both density zone pricing and volume and term discounts give

the LECs substantial pricing flexibility, LEC density zone pricing should not be permitted unless LEC volume discounts, including implicit volume discounts contained in DS3/DS1/voice grade relationships, are justified separately by cost conditions in specific zones. n265 The CAPs, MCI, and Ad Hoc oppose the LECs request to engage in density zone pricing before an interconnector takes service, arguing that the existing requirement gives LECs an incentive to cooperate in implementing interconnection, that no CAP would commit [**151] "market suicide" by avoiding interconnection to prevent deaveraging, and that averaged prices do not give CAPs incorrect pricing signals because the CAPs take into account the [*5196] likelihood of later deaveraging. n266

n263 ALTS Special Petition at 23; ALTS Switched Reply at 3-4 (terming geographic deaveraging a form of discrimination against customers in less dense service areas); MFS Special Petition at 23; MFS Switched Petition at 12-13.

n264 MFS Special Petition at 23-24.

n265 MFS Special Petition at 6; MFS Switched Petition at 11-12.

n266 ALTS Special Opposition at 9-10; MFS Special Opposition at 18-20; MCI Special Opposition at 5-6; Ad Hoc Special Opposition at 19-21.

152. The LECs and Sprint oppose the delays in density zone pricing proposed by the CAPs, contending that density zone pricing merely allow rates to reflect cost differences, and that competition will begin even before, and certainly after, the first cross-connect is operational. n267 United asserts that the proposals of MFS and ALTS to allow LECs to lower rates in dense areas but not to bring prices in other zones closer to cost is unfair and essentially would force LECs to lose revenue. n268 United contends [**152] that MFS's solution to the perceived problem of AT&T's "headstart" -- restraining LEC flexibility when AT&T uses expanded interconnection, and permitting flexibility only when a party other than AT&T interconnects -- only exacerbates the problem and penalizes the LECs without restraining AT&T, because AT&T can and does compete with LECs in providing local transmission. n269

n267 Ameritech Special Opposition at 17; GTE Special Opposition at 5-6; GTE Switched Reply at 4-5; United Special Opposition at 2-4, 6 (noting that it does not offer volume or term discounts on special access); Ameritech Switched Opposition at 3-4; Bell Atlantic Switched Opposition at 5; NYNEX Switched Opposition at 5; Pacific Switched Opposition at 16-18; United Switched Opposition at 2-3; Sprint Switched Opposition at 1-3.

n268 United Special Opposition at 2.

n269 United Special Opposition at 4-5.

153. Discussion. We reaffirm for our new regime the conclusion that LECs with "operational" expanded interconnection offerings for special access in a study area should be allowed to implement density zone pricing of special access in that study area, and similarly, that "operational" switched expanded interconnection [**153] should enable LECs to implement density zone pricing of switched transport. n270 Substantial changes in the LECs' expanded interconnection offerings are likely, however, in light of the Bell Atlantic v. LEC decision and the mandatory virtual collocation policy we adopt in this

order. We believe it is important to reflect these changes. Accordingly, we modify our definition of when expanded interconnection offerings are "operational."

n270 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7454, P 179; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7426-27, P 99.

154. For the purpose of our mandatory virtual collocation regime, we define expanded interconnection offerings as "operational" when and if an interconnector has taken a cross-connect element in connection with a tariffed expanded interconnection offering after our new mandatory virtual collocation policy becomes effective. We believe that this change will give the LECs an incentive to cooperate in providing expanded interconnection pursuant to our new policy, and will ensure that expanded interconnection provided under the new rules gives interconnectors a realistic opportunity to compete [**154] with the LECs before we permit LECs to engage in density zone pricing. The fact that an interconnector took a cross-connect prior to implementation of the new rules will not qualify a LEC for density zone pricing if previous interconnectors cease taking expanded interconnection, and no new interconnector takes service after the mandatory virtual collocation rules are implemented.

155. Thus, an offering will be considered "operational" under our new regime in the following circumstances: (1) an interconnector has taken a cross-connect pursuant to a generally tariffed virtual collocation offering pursuant to our new rules; or (2) an interconnector has taken a cross-connect pursuant to a physical collocation offering subject to the terms of this order. In this second case, the interconnector need not have started taking the cross-connect after our new regime becomes effective, so long as it continues to take the cross-connect under the new rules. In study areas where a LEC has implemented density zone pricing, we will require the LEC to file, sixty days after the effective date of the LEC's new expanded interconnection offering, tariff revisions effective on 15 days notice that [**155] reestablish averaged rates throughout the study area pursuant to @ 69.3(e)(7) of our rules if no interconnector has taken a cross-connect under our new regime. n271

n271 47 C.F.R. @ 69.3(e)(7).

156. We reject proposals to delay any competitive rate changes by the LECs for an arbitrary time period (such as the 12 months proposed by MFS) or until after they have lost a specified [*5197] proportion of market share. A threshold based on a simple percentage share of market penetration by LEC competitors comes too close to allocating market shares among competitors. We do not intend to try to determine competitive outcomes. Rather, we intend to expand opportunities for new entrants as well as incumbent providers to compete. As stated above, we will consider empirical evidence on the development of access competition in evaluating whether to grant the LECs additional pricing flexibility in the future. n272 We also reject the CAPs' suggestion that LECs be permitted to reduce rates in high-density areas but not to increase rates in low-density areas, where they may be below cost due to past geographic rate averaging. Finally, making density zone pricing for price cap LECs conditional on [**156] cost-justification of special access volume discounts would be inconsistent with price cap regulation. Under price cap regulation, the threshold justification for subsequent rate changes is tested primarily by reference to the indexes and bands of price cap regulation, not cost studies.

n272 See supra P 79.

2. Price Cap Structure

157. Orders/Background. In earlier orders, the Commission created new price cap service subcategories for LEC offerings in different zones, within the existing service categories and subcategories. The zone subcategories have upper pricing bands of 5% and lower bands of 10%. In the year during which a LEC introduces density zone pricing, the LEC must apply the same upper and lower bands to all of the zone subcategories for a given service, but the rate levels may diverge to the extent permitted by the upper and lower bands without the justifications that the price cap rules require for above- or below-band rates. n273

n273 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7456, PP 181-83; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7430-32, PP 109-112.

158. Positions of the Parties on Reconsideration. USTA [**157] submits that LECs will be unable to use the + 5% / -10% pricing bands for the zones because of the interplay with the overall DS1 and DS3 subindexes. USTA also asserts that separate and overlapping DS1 and DS3 subindexes with duplicative zone subindexes are redundant and reduce price competition, and asks that the zone subindexes be widened and that other subindexes be eliminated. n274 USTA contends that the upper bands in the high-cost zone remove incentives to deliver service improvements because rates will be substantially below cost. n275 USTA asserts that the 90 day filing period and tariff support requirements for above band filings will deter and delay the implementation of compensatory rates in high cost areas. It argues for reducing the filing period and streamlining the cost support. n276 Specifically, USTA recommends modifying the tariff standard for above-band rate zone filings to include a showing that the proposed zone revenues, when aggregated, are no greater than the study area revenues before zone pricing was implemented. n277 Several other LECs also argue that the zone subindexes do not provide adequate pricing flexibility and are inconsistent with full competition [**158] and with the rationale behind the price cap system. n278

n274 USTA Special Petition at 18-20; USTA Special Reply at 3.

n275 USTA Switched Petition at 5.

n276 USTA Special Petition at 20.

n277 USTA Switched Petition at 5.

n278 GTE Special Petition at 20-21; Rochester Special Petition at 17-22; United Special Opposition at 7-8.

159. United argues that broader annual pricing bands are needed, such as +20% / -20%, to enable LECs to move prices rapidly toward costs. n279 United also seeks clarification that the LECs may continue to average multiple study areas and to use a single tariff for multiple operating companies. n280 Sprint, CompTel, and WilTel argue that broader differences should be permitted for initial rates in different zones (i.e., set initial zone rates based on the

costs of service in each zone), or broader bands such as -20% and + 10% or +20% for subsequent rate changes, to enable LECs to set prices based on cost and to give proper access planning incentives to IXCs. n281 WilTel also [*5198] agrees with some LECs' arguments that the zone-specific pricing subindexes eliminate the need for overall floors for DS3 and DS1 rates, and argues that the double layer of indexes [**159] could require a LEC to increase rates in low-density zones to offset a decrease in the high-density zone. n282

n279 United Special Petition at 12-13.

n280 Id. at 13-15.

n281 Sprint Special Petition at 3-6; Sprint Special Opposition at 4; Sprint Switched Petition at 3-5; Sprint Switched Opposition at 3-4; CompTel Special Opposition at 12; WilTel Special Opposition at 11-12.

n282 WilTel Special Opposition at 12-13.

160. The CAPs, MCI, WilTel, and Ad Hoc oppose LEC proposals to eliminate pricing bands or otherwise substantially broaden LEC pricing flexibility, contending that the price cap bands are necessary to protect against cross-subsidization of the LECs' competitive services by captive rural customers and to prevent abuse of the LECs' market power. n283 Ad Hoc does not oppose a reasonable increase in the LECs' downward pricing flexibility in contested markets, short of predation, but states that this right should not justify predation in monopoly markets. n284 MFS argues that if density zone pricing is allowed, LECs should have to demonstrate that the ratio of revenues to average variable cost in the highest-density zone is no less than that ratio in the lowest-density [**160] zone. n285

n283 ALTS Special Opposition at 10-11; MFS Special Opposition at 17-18; MCI Special Opposition at 7; Ad Hoc Special Opposition at 19-21; MFS Special Petition at 10-13; WilTel Switched Opposition at 5-6. But see United Special Reply at 4-5 (contending that density zone ends an urban-to-rural cross-subsidy, rather than creating one).

n284 Ad Hoc Special Opposition at 21.

n285 MFS Switched Petition at 12; MFS Switched Opposition at 3-4.

161. The LECs respond that MFS's proposed rigid ratio requirement would restrict the LECs' ability to compete using cost-based prices, and would result in economic inefficiencies and umbrella pricing. They also argue that MFS's proposal could unfairly require LECs to lower prices throughout a study area, including in low-density areas where prices are already below cost, to compete with CAPs, and would essentially constitute a return to regulation based on fully distributed costs. n286 NYNEX contends that price cap regulation was developed to enable LECs to price services efficiently (i.e., services with elastic demand relatively close to marginal cost and services with inelastic demand relatively high above marginal cost), and to [**161] avoid the inefficient incentives created by cost-of-service regulation. n287 Rochester submits that subsidization only occurs when a company prices a service below incremental cost, for which average variable cost is a surrogate. Thus, Rochester asserts that MFS's concern would have merit only if the ratio of

revenues to average variable cost were less than one in any particular zone, regardless of the relative ratios among zones. Rochester also argues that in a competitive market, profit margins can be expected to vary in different geographic areas. n288

n286 USTA Switched Opposition at 5; GTE Switched Opposition at 11-12; NYNEX Switched Opposition at 7-11.

n287 NYNEX Switched Opposition at 3-7, citing National Rural Telecom Ass'n v. LEC, 988 F.2d 174, 182 (D.C. Cir. 1993) (upholding price cap regulation of LECs, and pointing out that it facilitates Ramsey pricing); see also infra P 128 (LEC responses to similar arguments in context of volume and term discounts).

n288 Rochester Switched Opposition at 3, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986) (subsidization occurs only in case of predatory pricing); Jay Foods, Inc. v. Frito-Lay, Inc., 614 F. Supp. 1073 (N.D. Ill. 1985) (rejecting geographic cross-subsidization argument and concluding that in a competitive market, profit margins can be expected to vary in different geographic areas); Rochester Switched Reply at 3. [**162]

162. Discussion. We find no need to amend the price cap rules for density zone pricing under our mandatory virtual collocation regime. Moreover, we reaffirm our decisions regarding the price cap structure for density zone pricing under the pre-existing rules, including the +5% / -10% pricing bands that apply to the zone subindexes, the retention of the overall DS1 and DS3 pricing bands, and the existing tariff procedures for above-band rate changes. We continue to believe that we granted the LECs a reasonable degree of pricing flexibility with the density zone pricing system, and nothing in the record convinces us to the contrary. As we stated in the Special Access Expanded Interconnection Order, we intend to monitor the density zone pricing system carefully and to review it in 1995. n289 Measures to increase the LECs' pricing [*5199] flexibility may be appropriate in the future, however, as the access market grows more competitive.

n289 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7457, P 184.

163. We also decline to adopt MFS's reconsideration proposal to require the LECs to demonstrate that the ratio of revenues to average variable cost in the highest-density [**163] zone is no less than that ratio in the lowest-density zone. First, we believe that the problem about which MFS is concerned -- rates that are well in excess of costs in low-density zones -- is unlikely to occur in the near future. Evidence in the record indicates that the differences between the costs of serving different geographic areas are substantial, although the rates were averaged before the implementation of density zone pricing. n290 Thus, at present and for the next few years, we believe that with the limited pricing flexibility permitted the LECs, rates in low-density zones are unlikely to be substantially above cost. Second, we conclude that the rate-to-cost ratios may reasonably differ for similar services in different zones, within the limits of our price cap rules. When we adopted price cap regulation for the LECs, we explicitly recognized that deviations from fully distributed cost (embedded costs plus a proportional share of joint costs) may be desirable and in some cases can maximize the consumer welfare created by regulated carriers. n291 To protect against the LECs' ability to disadvantage one class of

customers to the benefit of another, the Commission used [**164] the baskets and bands mechanisms of price cap regulation.

n290 See Special Access Expanded Interconnection Order, 7 FCC Rcd at 7452, P 175 & n.405 and evidence cited therein.

n291 See National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 182-83 (D.C. Cir. 1993) (affirming LEC price cap rules), citing Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195, 3257-58 (1988); Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6810-11 & n.299 (1990), aff'd, National Rural Telecom Ass'n v. FCC, supra. See also Transport Rate Structure and Pricing, Second Report and Order, CC Docket No. 91-213, 9 FCC Rcd 615, 623, P 15 (1994).

3. Definition of Zones

164. Orders/Background. In the Special Access Expanded Interconnection Order, the Commission directed LECs to assign central offices to zones based on cost based factors such as the density of total interstate special and switched traffic. Channel terminations or entrance facilities from a given central office are classified in the zone to which the office is assigned. Interoffice facilities [**165] between central offices in different zones are classified in the higher-priced, less dense of the zones, because the Commission concluded that "this classification will be consistent with traffic density patterns and underlying costs." n292 In the Switched Transport Expanded Interconnection Order, the Commission directed the LECs to use the same zone definitions for switched transport and special access. n293

n292 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7455, P 179 n.414.

n293 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7428-29, P 104.

165. Positions of the Parties on Reconsideration. Several IXCs argue that the LECs should not use the same density pricing zones for special access and switched transport, or for entrance facilities and interoffice facilities. CompTel asserts that the zones created for channel terminations are unsuited for interoffice transport. CompTel argues that the zones developed for channel terminations, based on collection and dispersion of traffic at wire centers, lead to little or no Zone 1 interoffice transport in many states, while the costs of interoffice transport relate to the technologies of interoffice [**166] networks and should be grouped in zones with relatively large geographic areas. n294 WilTel submits that zones for interoffice special access and switched transport should be broad in geographic scope and should reflect prevailing network characteristics. n295 Sprint contends that the requirement that traffic between offices in different zones must be charged the higher-rated zone rates would result in virtually no interoffice switched transport carried at high-density rates. Accordingly, Sprint argues that density zone pricing of switched transport would be ineffective unless LECs are allowed to establish density zones for switched transport different from those for special access and are required [*5200] to rate interoffice traffic at the lower-priced zone, rather than the higher-priced zone. n296 ALTS asserts that in order to

establish more than three zones, LECs should be required to satisfy the same standard that applies to above-band filings under price caps: a compelling showing of substantial cause, with a high likelihood of suspension. n297

n294 CompTel Switched Petition at 7-9; CompTel Switched Reply at 7-8.

n295 WilTel Switched Petition at 7-8; WilTel Switched Reply at 5-7.

n296 Sprint Switched Petition at 5-8; Sprint Switched Reply at 2-4. Accord, WilTel Switched Opposition at 5-6.

n297 ALTS Special Petition at 23. [**167]

166. The LECs oppose establishing separate zone plans for switched and special access or for interoffice facilities and entrance facilities, and argue that their density zone pricing plans defined their zones based on a calculation that included special and switched volumes and interoffice and entrance facility volumes, that interoffice channels have cost characteristics similar to those of entrance facilities, and that separate plans would be illogical in view of the integrated services the LECs provide. n298

n298 Bell Atlantic Switched Opposition at 4-6; BellSouth Switched Opposition at 7; GTE Switched Opposition at 10-11 (stating that the Commission should permit, but not require, individual LECs to establish separate zones).

167. Discussion. We reaffirm our decision to assign interoffice facilities between different zones to the higher-price, lower-density zone, and find no reason to apply a different rule under our mandatory virtual collocation policy. In the Special Access Expanded Interconnection Order, we reached our decision based on a conclusion that interoffice traffic between different zones has cost characteristics more similar to the traffic in the less dense [**168] zone. There is no basis in our policy on remand, and no new evidence in the reconsideration record, that would justify reversing this decision. We also decline to create separate zone systems for special access and switched transport services. This would be contrary to our conclusion in the Transport proceeding that special access and switched transport have similar cost characteristics. n299 Moreover, we directed the LECs to consider both special and switched access traffic in defining density zones. n300 Finally, we decline to create separate zone systems for interoffice facilities and entrance facilities, or to impose substantially higher burdens of proof than those we already imposed if LECs propose zone plans with more than three zones. These alternatives would be administratively burdensome and complex for the LECs, and do not appear to provide benefits that would justify the costs.

n299 Transport Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7028, 7034, PP 42, 53 (1992); Transport Rate Structure and Pricing, CC Docket No. 91-213, Second Report and Order, 9 FCC Rcd 615, 622, P 12 (1994).

n300 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7455, P 179 n.415. [**169]

B. Volume and Term Discounts

1. Special Access

168. Order. In the Special Access Expanded Interconnection Order, we concluded that hubbing and ratcheting arrangements are reasonable means to give customers and LECs flexibility in structuring and engineering their special access arrangements. We also found that volume and term discounts are generally legitimate means of pricing special access services to recognize the efficiencies associated with larger traffic volumes and the certainty of longer-term arrangements. We stated, however, that some of the largest of the LECs' volume and term discounts raised concerns of anti-competitiveness, and we directed the Common Carrier Bureau to conduct an inquiry to help determine whether any additional guidelines might be appropriate. n301

n301 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7463, PP 199-200.

169. Positions of the Parties on Reconsideration. MFS asserts that the LECs should be required to cost-justify all volume and term discounts that exceed reasonable threshold levels, such as the 20% maximum volume discount and 10% maximum term discount that MFS had proposed. n302 MFS alleges that LEC volume and [**170] term discount practices will become even more pernicious if coupled with density zone pricing, and argues that LEC density zone pricing should not be permitted unless LECs justify their volume discounts, including implicit volume discounts contained in DS3/DS1/voice grade relationships, [*5201] separately by cost conditions in specific zones. n303 MFS contends that it is unreasonable for LECs to charge less for unbundled, hubbed service offerings than they charge for bundled point-to-point circuits that in most cases use similar facilities, and asks that such hubbing discounts be addressed. n304 ALTS argues that the Commission should broaden the scope of the Bureau's inquiry to address all Tier 1 LEC volume discounts in excess of 20%, term discounts in excess of 10%, and hubbing arrangements. n305

n302 MFS Special Petition at 4-6; MFS Special Reply at 2-4.

n303 MFS Special Petition at 6.

n304 MFS Special Petition at 10-12; MFS Special Reply at 4-6.

n305 ALTS Special Petition at 15-17; ALTS Special Reply at 10.

170. The LECs respond that the CAPs' arguments were considered previously and rejected by the Commission, suggest that the Commission obtain information about CAP volume and [**171] term discount practices, and assert that the volume and term discounts and hubbing arrangements are reasonable and have been cost-justified. n306 Sprint supports requiring the LECs to cost-justify volume discounts, and contends that there would be no justification for volume discounts in interoffice channel mileage rate elements. n307 Sprint contends that intermediate hubbing is reasonable, and serves as a critical tool for medium and small IXCs to mitigate in part the price advantages the current rate structure gives AT&T. n308

n306 USTA Special Opposition at 7-8; Bell Atlantic Special Opposition at 3-4; GTE Special Opposition at 7-12; Rochester Special Opposition at 8-10; United Special Opposition at 14-15; USTA Special Reply at 4.

n307 Sprint Special Opposition at 4-5.

n308 Sprint Special Opposition at 6.

171. Discussion. Pursuant to the Commission's direction, the Common Carrier Bureau conducted an inquiry into LEC special access volume and term arrangements. The Bureau required the four LECs that had been identified by MFS as offering the steepest discounts to submit cost data to demonstrate whether the rates for one of their most discounted offerings covered average [**172] variable cost and were otherwise just and reasonable. Certain CAPs and LECs submitted comments on these data. n309 At this time, we are not persuaded that LEC offerings are priced below their average variable cost. Nevertheless, we will continue to examine LEC pricing behavior in the future, and will be vigilant in examining any evidence of unreasonable pricing practices on the part of the LECs.

n309 See ALTS Ex Parte (Oct. 29, 1993); MFS Ex Parte (Dec. 31, 1992); MFS Ex Parte (Mar. 3, 1993); MFS Ex Parte (Mar. 30, 1993); MFS Ex Parte (July 19, 1993); MFS Ex Parte (Aug. 31, 1993); Teleport Ex Parte (Dec. 8, 1993); NYNEX Ex Parte (June 14, 1993); SW Bell Ex Parte (Apr. 30, 1993); SW Bell Ex Parte (May 11, 1993); SW Bell Ex Parte (Aug. 11, 1993); U S West Ex Parte (Aug. 12, 1993); U S West Ex Parte (Aug. 25, 1993).

2. Switched Transport

a. In General

172. Positions of the Parties on Reconsideration. The IXCs other than AT&T generally seek reconsideration of the decision to permit volume discounts, arguing that such discounts will benefit AT&T, harm other IXCs, and interfere with the Commission's policies on the transport restructure and interexchange competition. CompTel, [**173] MCI, and WilTel contend that volume discounts on interoffice transport cannot be justified by underlying costs, because the cost of providing interoffice transport depends on the total traffic carried over the interoffice network, and all users should share the scale economies. n310 Sprint does not object to term discounts that are uniform regardless of the amount or type of capacity ordered, and concedes that cost-based volume discounts on entrance facilities should be permitted, but contends that volume discounts should not be permitted on interoffice facilities because the cost of such facilities is based on the total shared interoffice [*5202] network. n311

n310 CompTel Switched Petition at 3-4; CompTel Switched Reply at 3-7; MCI Switched Petition at 1-2; MCI Switched Reply at 3-4; WilTel Switched Petition at 3-4 (citing Ameritech's Bulk Capacity Transport and Bell Atlantic's Facilities Management Service as LEC offerings that acknowledge interoffice network efficiencies), 5-6; WilTel Switched Opposition at 3-5; WilTel Switched Reply at 2-5.

n311 Sprint Switched Petition at 10-11; Sprint Switched Reply at 4-10.

173. The LECs and AT&T defend the Commission's decision to permit [**174] volume discounts, stating that the LECs' competitors and the small and medium IXCs offer volume discounts on interoffice facilities, and that

although both DS1 and DS3 services use the same transport facilities, higher-capacity services use less costly electronics and involve administrative cost savings from ordering, billing, and provisioning. n312 BellSouth asserts that the small and medium IXCs' complaints are premature, because LEC-proposed discounts can be implemented only through a tariff filing with full cost support. n313

n312 Bell Atlantic Switched Opposition at 1-4; BellSouth Switched Opposition at 8-9; GTE Switched Opposition at 13-15; GTE Switched Reply at 7-8; Rochester Switched Reply at 5-6; USTA Switched Reply at 2-3; AT&T Switched Opposition at 8-10.

n313 Bell South Switched Opposition at 8.

174. Discussion. We reaffirm our decision to permit LECs to offer volume and term discounts on switched transport services after the specified threshold has been reached, and find no reason for a different rule under our mandatory virtual collocation policy. (We address below the specific threshold to be applied.) First, we are not persuaded that cost differences do not [**175] justify volume and term discounts on both interoffice facilities and entrance facilities. The cost of providing interoffice direct-trunked transport depends, at least in part, on the specific facilities used by the customer. n314 Transmission facilities carrying higher volumes of traffic tend to be characterized by lower per-circuit costs than lower-capacity facilities. In addition, term discounts recognize cost savings due to the certainty of longer-term commitments. When LECs first introduce such discounts on switched transport offerings, they will be required to provide cost justification because such discounts are new services under the price cap rules.

n314 See Transport Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7030-32, PP 47-49 (1992).

175. Second, the record reflects that volume and term discounts are an established and accepted feature of the communications marketplace. The LECs' competitors, as well as some of the IXCs that have argued against such discounts, offer these kinds of discounts themselves. If the LECs are not permitted to offer discounts on their services, large customers [**176] can simply obtain the services from other providers at such discounts, or provide such services for themselves.

176. Finally, we believe that permitting the LECs to offer volume and term discounts, subject to the safeguards we have adopted, will stimulate economic growth and enhance access to communications markets. Lower LEC prices for high-volume and long-term services, if cost-justified, should reduce access costs for IXCs, stimulate cost-based competition in the interexchange market, and ultimately make possible lower long-distance prices. Lower long-distance prices, in turn, should stimulate greater use of communications services, as well as free resources for consumers to spend and businesses to invest elsewhere in the economy, creating opportunities for new jobs and economic expansion. Lower long-distance prices should also give more Americans access to a variety of services that are available over interstate telecommunications facilities.

b. Threshold Required for Implementation

177. Order. In the Switched Transport Expanded Interconnection Order, we permitted the LECs to begin offering switched transport with volume and term discounts in any particular study area [**177] only after one of the following conditions is met: (1) 100 DS1-equivalent switched cross-connects are operational in the Zone 1 offices in the study area; or (2) an average of 25 DS1-equivalent switched cross-connects per Zone 1 office are operational. (Zone 1 refers to the LEC's density pricing zone with the greatest traffic density.) In study areas with no Zone 1 offices, the LECs may implement volume and term discounts discounts once five DS1-equivalent switched cross-connects have been taken in the study area. LECs that have not implemented density zone pricing may implement volume and term discounts in a study area after customers have subscribed to 100 DS1-equivalent switched cross-connects in the study area. n315

n315 Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7434-35, P 118 & nn.263-65.

178. Positions of the Parties on [*5203] Reconsideration. The CAPs and the IXCs other than AT&T argue that the threshold constraints for allowing term and volume discounts are not valid measures of viable competition because they bear no relationship to realities of competition in the marketplace, the numbers are too small and easy to satisfy for large LECs, and the LECs [**178] already have excessive pricing flexibility. The CAPs recommend more stringent threshold tests for switched transport volume and term discounts: ALTS and Hyperion argue for thresholds based on a certain percentage of market share for competitors, while MFS proposes to permit LEC transport discounts in a study area only after an interconnector is present at central offices serving 50% of a LEC's switched access traffic in the study area, and two or more interconnectors are present in central offices serving 25% of the switched traffic in the study area. n316 Sprint contends that there is no need to require a particular level of competition before allowing cost-based discounts for entrance facilities, and it makes no economic sense to allow interoffice volume discounts even if viable competition is present. n317 MCI asserts that the thresholds are meaningless if the density of interconnection criteria can be satisfied by AT&T alone. n318

n316 ALTS Switched Petition at 12 (suggesting an "effective competition" standard under which (1) a certain percentage of telephone subscribers have access to at least one competitor to the LEC, and (2) a certain percentage of subscribers are receiving service from one of the competitors); ALTS Switched Opposition at 3-7; ALTS Switched Reply at 3-7; Hyperion Switched Petition at 3-9 (recommending competitive penetration of 20% of market as threshold); MFS Switched Petition at 15-16; CompTel Switched Petition at 4-5; MCI Switched Petition at 2-3; Sprint Switched Petition at 11-12; Sprint Switched Opposition at 4; WilTel Switched Petition at 4-5.

n317 Sprint Switched Petition at 12-13.

n318 MCI Switched Petition at 2-3. [**179]

179. The LECs oppose delays in volume and term discounts. They argue that their competitors provide such discounts and that because such delays would create a pricing umbrella and protections for LEC competitors that prevent real competition from developing, they are not in the public interest. They also

assert that interconnection by AT&T is properly included in satisfying the threshold requirement, and argue that self-provisioning by AT&T represents a competitive challenge to LEC switched transport offerings as significant as the introduction of CAP networks. n319

n319 Ameritech Switched Opposition at 3-4; BellSouth Switched Opposition at 2-6; Bell Atlantic Switched Opposition at 1-4; Rochester Switched Petition at 4-6; USTA Switched Opposition at 2-4; NYNEX Switched Opposition at 5-6; Pacific Switched Opposition at 16-18; GTE Switched Opposition at 2-6, 8-9 (opposing MFS's proposed standard because competitive access markets are generally smaller than a study area, and opposing ALTS's proposed standard because numbers of subscribers is an inapposite measure in the access market, in which some subscribers have much higher levels of usage); GTE Switched Reply at 4-5.

180. [**180] USTA and GTE assert that the threshold required for volume and term discounts on transport is inconsistent with the Commission's policy of permitting the LECs to offer special access discounts, which the Commission reaffirmed in the Special Access Expanded Interconnection Order, and is unsupported by the Communications Act. They contend that the threshold will unfairly exacerbate LEC competitive losses and prevent genuine competition, and is an arbitrary and capricious exercise in regulatory handicapping. They argue that a more reasonable threshold for volume and term discounts would be when switched expanded interconnection is tariffed (or, in the alternative, when it is operational). n320 USTA and GTE propose that special access cross-connects be counted toward satisfaction of the threshold requirement, given that special and switched access services are substitutable and zone plans were constructed based on total traffic density. n321

n320 USTA Switched Petition at 6-9; GTE Switched Petition at 2-11.

n321 USTA Switched Petition at 9; GTE Switched Petition at 12; GTE Switched Opposition at 7-8; GTE Switched Reply at 6; accord, NYNEX Switched Opposition at 6 n.16.

181. [**181] GTE, Rochester, and USTA note that the threshold essentially requires substantial market share losses before LECs with smaller study areas may engage in volume and term discounts. n322 GTE asserts that in over half of its study areas, the 100 [*5204] DS1 equivalents threshold would require market share losses of 25% or more, and that in the five GTE study areas where the 25 DS1 equivalent per Zone 1 office threshold applies, that threshold amounts to a 43% to 60% loss of market share. n323 Rochester states that the 100 DS1 threshold, which applies to it, would require loss of nearly half of its switched transport minutes to competitors. n324 Sprint, MCI, MFS, and ALTS oppose the LECs' proposals, although these parties concede that the threshold may be unreasonably high in some smaller study areas. n325 As already noted, Sprint instead recommends permitting no volume discounts, MCI would permit only cost-based discounts that apply equally to all interoffice network users, while MFS recommends using a market penetration test as the threshold.

n322 GTE Switched Petition at 9-11; GTE Switched Opposition at 6-7; Rochester Switched Petition at 4-8; USTA Switched Petition at 7-8.

n323 GTE Switched Petition at 9-11; GTE Switched Opposition at 6-7; GTE Switched Reply at 5-6 (recommending amending the threshold to become the smaller of the existing threshold or 5% of the DS1 equivalents in the Zone 1 area).

n324 Rochester Switched Petition at 4-8; Rochester Switched Reply at 3-5.

n325 Sprint Switched Opposition at 4; MCI Switched Reply at 4-6; MFS Switched Opposition at 5; ALTS Switched Opposition at 3-7. [**182]

182. Discussion. For our new mandatory virtual collocation regime, we generally reaffirm the threshold that must be met before a LEC may introduce term and volume discounts on switched transport. The threshold chosen represents a considered policy decision balancing both the costs and benefits of higher and lower thresholds. The requirement that LECs not offer transport volume or term discounts until expanded interconnection is operational on a broader scale than a single operational cross-connect should provide an incentive for the LECs to offer expanded interconnection for switched transport on reasonable terms. In addition, a LEC's flexibility to engage in volume and term discounts for switched transport services should be linked to a demonstration that the LEC's switched expanded interconnection offering presents a viable competitive opportunity. For this reason, in light of our mandatory virtual collocation policy, we adopt the definition of "operational" cross-connects that we adopted in the context of density zone pricing. n326

n326 See supra PP 154-55.

183. The lower thresholds for density zone pricing (and special access volume and term discounts) coupled with [**183] the higher threshold for switched transport discounts should gradually introduce LEC pricing flexibility and facilitate the initial development of competitive entry. A different standard for special access and switched transport is also reasonable: interstate switched access services, unlike special access services, have always been subject to close rate structure regulation and, until December 1993, were priced at an equal charge per minute of use. Permitting volume and term discounts for switched transport is a substantial departure from our past practice, and must be done cautiously.

184. As with density zone pricing, n327 we decline to set a threshold based on the market penetration of LEC competitors, an action that may be perceived to endorse allocating market shares among competitors. We do not intend to try to determine competitive outcomes. Rather, we intend to expand new entrants', as well as incumbent providers', opportunities to compete. We are, however, concerned about GTE's and Rochester's assertions that in smaller study areas the 100 DS1-equivalent switched cross-connects threshold requirement may require LECs to lose 25% to 60% of their switched transport market [**184] share before they may implement volume and term discounts. Because this problem potentially may affect only a few Tier 1 carriers with small study areas, we delegate authority to the Chief, Common Carrier Bureau, to modify the threshold point for zone density pricing in unusual circumstances where a change in the strict requirements would advance the Commission's objectives.

n327 See supra P 156.

185. Finally, we do not adopt GTE's and USTA's proposal to count special access cross-connects toward any of the thresholds for switched transport

discounts. Although there is a degree of cross-elasticity demand between special access and switched transport, the gradual introduction of LEC pricing flexibility warrants looking only to switched access cross-connects in deciding when to allow more switched access flexibility.

[*5205] c. Application of New Service Test to Discounts

186. Order. When LECs subject to the price cap rules offer volume and term discounts on switched transport, the LECs must satisfy the cost showing requirements for new services under those rules. A special 120-day notice period, rather than the standard 45-day notice period, applies to these tariff filings. n328 [**185]

n328 Special Access Expanded Interconnection Order, 8 FCC Rcd at 7435, P 119.

187. Positions of the Parties on Reconsideration. CompTel, Sprint, WilTel, and MFS object to the price cap new service test that will be used to evaluate the level of discounted prices. CompTel asserts that LECs have excessive flexibility to define direct costs and to employ non-uniform overhead loadings, n329 while Sprint contends that the Commission should require justification for any rate differences between different levels of capacity. n330 Sprint also argues that LECs should be required to implement density pricing before offering volume discounts, to prevent LECs from charging medium and small IXCs high, averaged rates for transport in high-density areas while giving AT&T volume discounts. n331 WilTel submits that the new service test is inadequate to scrutinize discounts because it prevents over-pricing but not discriminatory under-pricing. n332 WilTel opposes using the volume discounts in existing LEC special access tariffs as the basis for switched transport rates, noting that the Commission is in the process of investigating current LEC special access volume discounts. n333 MFS contends [**186] that the new service test does not place any meaningful limits on the magnitude of the discounts, and instead proposes requiring the LECs to show that the ratio of revenues to average variable cost of discounted services is not less than the same ratio for less discounted services (except for term discounts less than 10% or volume discounts less than 20%). n334

n329 CompTel Switched Petition at 5.

n330 Sprint Switched Petition at 9-10; Sprint Switched Reply at 7.

n331 Sprint Switched Petition at 10.

n332 WilTel Switched Petition at 4.

n333 WilTel Switched Opposition at 4.

n334 MFS Switched Petition at 16-18.

188. NYNEX opposes proposals to compare the overhead loadings or revenue-to-cost ratios of different services. NYNEX argues that price cap regulation was developed to enable LECs to price services efficiently (i.e., services with elastic demand relatively close to marginal cost and services with inelastic demand relatively high above marginal cost), and to avoid the inefficient incentives created by cost-of-service regulation. n335 Rochester

submits that subsidization only occurs when a company prices a service below incremental cost, for which average variable cost [**187] is a surrogate. Thus, Rochester asserts that MFS's concern would have force only if the ratio of revenues to average variable cost were less than one for any particular offering, regardless of the relative ratios among services. n336

n335 NYNEX Switched Opposition at 3-7, citing National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 182-83 (D.C. Cir. 1993) (upholding price cap regulation of LECs, and pointing out that it facilitates Ramsey pricing); see also supra P 161 (LEC responses to similar arguments in context of density zone pricing).

n336 Rochester Switched Opposition at 3, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986) (subsidization occurs only in case of predatory pricing).

189. GTE argues that rates for discounted switched transport offerings should be presumed reasonable if based on existing special access rates, like rates for non-discounted, restructured transport, without additional cost support or lengthy review periods. GTE notes that its volume and term special access arrangements have been cost-justified either under rate-of-return regulation or under the price cap rules' below-band pricing test. GTE contends that discounted [**188] transport offerings are "new services" only as an artifact of the sequence in which the Commission permitted them to be introduced, and essentially are no more "new services" than were the non-discounted restructured transport rates. n337 GTE also argues that the 120-day tariff review period is unnecessarily long and [*5206] contrary to the public interest. n338 ALTS responds that improper pricing could be more disruptive for switched transport because of the size of the market, and that it is essential to retain the 120-day review period to give the Commission and interested parties additional time to assess whether the tariff rates are cost-justified. n339

n337 GTE Switched Petition at 13-16; GTE Switched Reply at 8-9. Accord, USTA Switched Reply at 3-4.

n338 GTE Switched Petition at 16-17.

n339 ALTS Switched Opposition at 8.

190. Discussion. We retain for our mandatory virtual collocation regime the rule regarding cost showings for discounted switched transport offerings, which qualify as new services under the price cap rules. New services are services that make additional options available to customers, which discounted transport offerings clearly do. Volume or term discounts [**189] for the transport component of interstate switched access have never been offered in the past. Contrary to the IXCs' assertions, the new service test protects against under-pricing as well as over-pricing. The cost justification that the LECs are required to submit enables us to ascertain that rates for new services are not less than direct costs.

191. We reject the proposals of MFS and Sprint to require LECs to demonstrate that discounted services recover the same proportion of overheads as non-discounted services, or to require that the ratio of revenues to average variable cost of discounted offerings be no less than that ratio for

non-discounted services. We conclude that the cost showing required by the existing new service test adequately protects against possible unreasonable discrimination with respect to newly introduced volume and term discounts for switched transport. n340

n340 Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4531 (1991), recon., 7 FCC Rcd 5235, 5236-37 (1992) (adopting the current version of the new service test).

192. We believe that the cost [**190] justification required pursuant to the new service standard is an essential safeguard against the LECs' offering of unreasonable volume and term discounts on switched transport. Accordingly, we will not permit the discounted switched transport rates to be set based on pre-existing discounted special access rates without such cost justification. In addition, we are not persuaded that any change is necessary to the 120-day notice period for these tariff filings, which we conclude is reasonable in light of the extensive cost showings that must accompany these tariffs.

D. Other Forms of Pricing Flexibility

193. Orders/Background. In the Special Access Expanded Interconnection Order and the Switched Transport Expanded Interconnection Order, we did not grant the LECs broader pricing flexibility, such as individual case basis pricing of special access or switched transport in response to competitors' offerings or differential pricing of loop-side and trunk-side special access services. n341

n341 Special Access Expanded Interconnection Order, 7 FCC Rcd at 7457-58, PP 185-86; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7424-25, P 94.

194. Positions of the [**191] Parties on Reconsideration. GTE and USTA argue that, in order to compete fully with CAPs, LECs should be able to engage in individual case basis contract pricing, competitive response pricing, or other alternatives. n342 USTA also argues for comprehensive reform of the restrictive Part 69 structure and tariffing rules applicable to the LECs in light of competition. n343 Ad Hoc supports non-predatory individual case basis pricing of DS1 and DS3 services in contested markets. n344 The CAPs and IXCs respond that such broad pricing flexibility could lead to widespread anti-competitive behavior by LECs, such as preferential arrangements benefiting AT&T, as demonstrated by the results of the Commission's investigation of individual case basis pricing of DS3 offerings and the pending inquiry on volume and term discounts, and is unnecessary given the flexibility already granted to the LECs. n345 Sprint contends that with a properly [*5207] implemented system of density zone pricing that enables LECs to respond to competitive pressures in dense areas, there is no justification for individual case basis or contract pricing. n346 In an ex parte filing, Pacific argues that LECs should be permitted to [**192] institute differential rates for loop-side and trunk-side special access rates, which Pacific contends would be cost-justified. n347

n342 GTE Special Petition at 23-24; USTA Special Petition at 21; USTA Special Reply at 3-4.

n343 USTA Special Petition at 21-23.

n344 Ad Hoc Special Opposition at 21.

n345 ALTS Special Opposition at 11-12; MFS Special Opposition at 20-21; CompTel Special Opposition at 11-12; MCI Special Opposition at 7; WilTel Special Opposition at 7-10 (contending that such individual case basis pricing would interfere with interexchange and access competition, and would violate the MFJ and @ 202(a) of the Communications Act).

n346 Sprint Special Opposition at 5-6.

n347 Pacific Ex Parte (April 7, 1994), Attachment at 2-4.

195. Discussion. We do not grant the LECs authority for broader pricing flexibility at present. We have taken a number of significant steps to increase the LECs' ability to compete with new entrants. We also recognize, however, that the LECs continue to possess substantial market power in the provision of special access and switched transport services. We believe that the ability to introduce density zone pricing and volume and term [**193] discounts under the criteria we have set is sufficient flexibility to facilitate the development of competition at this time.

196. As competition develops, we may consider eliminating more of the pricing restrictions imposed upon the LECs. As indicated in paragraph 79 above, however, we intend to carefully monitor the development of competition in the access marketplace, and have delegated to the Chief, Common Carrier Bureau, responsibility for instituting a monitoring program.

E. Fresh Look

197. Orders/Background. In general, "fresh look" means a policy that makes it easier for an incumbent provider's established customers to consider taking service from a new entrant. In the Second Reconsideration Order, we reconsidered de novo our "fresh look" policy for special access expanded interconnection. We concluded that certain long-term special access arrangements may prevent customers from obtaining the benefits of the new, more competitive access environment. For that reason, we adopted a "fresh look" policy, limiting the charges a LEC may impose on certain customers who want to terminate long-term LEC special access arrangements to an amount that would place both the LEC [**194] and the customer in the same position they would have been had the customer chosen a shorter term arrangement from the beginning of the term. We limited the fresh look opportunity to customers with LEC special access arrangements for terms of three years or longer, entered into on or before September 17, 1992, the date of adoption of the Special Access Expanded Interconnection Order. The right to limited termination charges for services in a particular central office exists for a period of 180 days from the date of filing of the LEC's tariff transmittal giving public notice of the start of the fresh look period. The LEC must file that tariff transmittal within five business days of the date that the first special access expanded interconnection arrangement is operational in that central office.

198. If a customer chooses to terminate a long-term arrangement pursuant to the fresh look policy, its termination liabilities will be limited to the

difference between the amount the customer has already paid and any additional charges that the customer would have paid for service under a shorter term offering corresponding to the term actually used, plus interest at the IRS rate for tax [**195] refunds, compounded daily from the date of each discounted payment that the customer made while taking the service. In addition, we created a second fresh look opportunity that occurs when switched transport expanded interconnection becomes operational, and applies only to LEC special access facilities used to transmit both special and switched access traffic. n348 Like the original fresh look, this second opportunity applies only to long term arrangements entered into on or before September 17, 1992.

n348 Second Reconsideration Order, 8 FCC Rcd at 7342-59, PP 3-41. See also Special Access Expanded Interconnection Order, 7 FCC Rcd at 7463-64, P 201; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7437-38, PP 124-25.

199. In Bell Atlantic v. FCC, the Court of Appeals did not directly address the LECs' challenges to our fresh look policy. The court held that "[a]lthough the temporary right to switch providers may have been intended as an independent regulatory remedy for the problems of rate structure and barriers to competition that the Commission identified, the remedy was tied to the details of co-location and would float unattached in their absence. We [**196] must therefore remand that portion as well." n349

n349 Bell Atlantic v. FCC, slip op. at 11.

[*5208] 200. Positions of the Parties on Reconsideration. MFS and Teleport argue that to facilitate greater access competition, the fresh look requirement should eliminate termination liabilities, rather than merely limiting them. n350 WilTel and MFS argue that AT&T's pre-existing collocation at many BOC central offices and its dominant market share enable it to benefit uniquely from expanded interconnection, assert that the benefits of fresh look will be lost if access customers do not have competitive alternatives to LEC services during the period in which they can terminate their access arrangements with LECs, and therefore ask that the fresh look period not be triggered by interconnection by a party that already had collocated facilities before September 1992 (i.e., AT&T) alone. n351

n350 MFS Second Special Petition at 3-6; Teleport Switched Petition at 5-6.

n351 WilTel Second Special Petition at 2-3; WilTel Second Special Reply at 1-3; MFS Second Special Petition at 6-8; MFS Second Special Opposition at 1-3; MFS Switched Reply at 2 n.2.

201. The LECs respond that the CAPs and WilTel [**197] raise no new arguments, that the Commission's fresh look rules properly permit the LECs to collect cost-based non-recurring charges and put both the LEC and the customer in the same position they would have been if the customer had originally chosen a shorter term arrangement, and that customers with term arrangements are large sophisticated businesses that do not need additional protection. n352 They contend that LECs face real competition from self-provisioning by AT&T, that the expanded interconnection proceeding is not intended to equalize the competitive positions of new entrants and established providers, and that the fresh look period should run from the same date that density zone pricing is implemented.

n353

n352 Ameritech Switched Opposition at 1-2; Bell Atlantic Second Special Opposition at 1-3; GTE Second Special Opposition at 2-5; United Switched Opposition at 4; Rochester Switched Opposition at 6; USTA Second Special Opposition at 2-3.

n353 GTE Second Special Opposition at 5-7; USTA Second Special Opposition at 3-5.

202. USTA suggests that, instead of requiring LECs to file tariff transmittals every time expanded interconnection becomes operational in a central [**198] office, the Commission should require LECs to file monthly transmittals to include all new collocations that become operational within that month. n354 MFS supports USTA's proposal, stating that it would reduce administrative burdens on LECs, interconnectors, and users by making the fresh look notice process simpler and more predictable. n355

n354 USTA Second Special Petition at 1-2; USTA Switched Petition at 9-10; USTA Second Special Reply at 3; USTA Switched Reply at 5.

n355 MFS Switched Opposition at 6.

203. GTE Petition. GTE filed a petition for waiver of the requirement that it file a tariff each time expanded interconnection first becomes operational in a central officer. n356 Instead, GTE proposes to reduce the termination charges in its tariff to enable all customers that may become eligible for the fresh look to exercise that option at any time during the term of their agreements. GTE also proposes not to charge customers any interest in computing the applicable termination charges. GTE contends that these measures would benefit its customers, and should relieve GTE of administrative burdens in calculating such charges. SW Bell does not oppose GTE's petition, but [**199] suggests that no waiver may be required, and contends that other LECs should not be subject to similar requirements. n357

n356 GTE Petition for Limited Waiver of the "Fresh Look" Policy (Nov. 16, 1993).

n357 SW Bell Comments on GTE Petition for Limited Waiver of the "Fresh Look" Policy (DATE) at 3.

204. Discussion. We conclude that fresh look continues to be necessary, in connection with our mandatory virtual collocation policy, to give customers with LEC term discounts entered into on or before September 17, 1992, a reasonable chance to take advantage of new competitive opportunities made possible by expanded interconnection. We reaffirm our conclusion that the limited termination liabilities enable customers to benefit sooner from the competition generated by our expanded interconnection policies. We also reaffirm our conclusion that fresh look does not place an unreasonable burden on the LECs, since the LECs will obtain the compensation appropriate for the term actually taken by the customer. In addition, we find that the parties have presented no evidence or [*5209] arguments in the reconsideration record that persuade us that our earlier conclusion regarding the maximum reasonable [**200] amount of termination liabilities was incorrect.

205. Some of the LECs challenged our fresh look policy in court on the grounds that we did not provide adequate notice of the policy to satisfy the requirements of Section 553 of the Administrative Procedure Act or Section 205 of the Communications Act. n358 We disagree with this contention. In the initial Notice of Proposed Rulemaking in this proceeding, we focused on the anticompetitive effect of the LECs' then-existing special access tariff structure. n359 Long-term contracts had the effect of locking in that tariff structure and sealing off portions of the market from competition, notwithstanding our expanded interconnection policy. Thus, in the absence of fresh look, implementation of expanded interconnection would lead to only limited special access competition because of the effects of long-term contracts. While we recognize that we did not ask for specific comment on the fresh look remedy, we continue to believe that it is a "logical outgrowth" of the competitive concerns identified in the Notice. n360 Finally, we reconsidered the fresh look issue de novo, and made substantial changes to the policy, in the Second Reconsideration [**201] Order, based on an extensive record submitted by a broad range of parties. Thus, even if inadequate notice was given before adopting fresh look in the Special Access Expanded Interconnection Order, any error was harmless because we have already reconsidered the decision de novo, with an open mind. n361

n358 5 U.S.C. @ 553; 47 U.S.C. @ 205.

n359 First Notice, 6 FCC Rcd at 3260, PP 6-9.

n360 See Action Alliance of Senior Citizens of Philadelphia v. Bowen, 846 F.2d 1449, 1455 (D.C. Cir. 1988); Small Lead Refiner Phase-Down Task Force v. EPA, 705 F.2d 506, 547 (D.C. Cir. 1983); Central Lincoln Peoples' Utility District v. Johnson, 735 F.2d 1101, 1118 (9th Cir. 1984); American Transfer & Storage co. v. ICC, 719 F.2d 1283, 1303 (5th Cir. 1984); Second Reconsideration Order, 8 FCC Rcd at 7343-44, PP 6-8. See also First Notice, 6 FCC Rcd at 3266, P 45 (requesting comment on "whether to establish new guidelines for review of rate structure responses to competition.").

n361 See Reeder v. FCC, 865 F.2d 1298, 1304 (D.C. Cir. 1989); McLouth Steel Prods. Corp. v. Thomas, 838 F.2d 1317, 1323 (D.C. Cir. 1988); Air Transport Ass'n v. DOT, 900 F.2d 369, 379 (D.C. Cir. 1990), vacated for consideration of mootness, 111 S.Ct. 944 (1991). [**202]

206. We also reaffirm that interconnection by any party, including AT&T, in a given central office triggers the beginning of the fresh look period for that office. If AT&T (or any other party) interconnects in a central office, it should be eligible for limited termination liabilities for long-term LEC special access arrangements purchased by it or by its customers to whom it sells access service. The fresh look period does not re-commence each time a new interconnector enters a given central office. Interconnectors subsequent to the first must take the access market as they find it. The LEC tariff filing giving customers public notice of the beginning of the fresh look period for each central office gives potential subsequent interconnectors notice of the activities of the earliest interconnector, and enables them to start providing service in the central office during the fresh look period if they can and choose to do so. We are not placing any special restrictions on the ability of AT&T or other parties to purchase and use expanded interconnection. n362

n362 See supra PP 109-110.

207. USTA's proposal to allow LECs to file monthly transmittals including all new collocations [**203] that become operational within that month appears to be reasonable. As noted by MFS in support, this should reduce the tariff filing burdens on LECs, as well as the information retrieval burdens on parties interested in these filings. Accordingly, we modify our fresh look policy, which currently requires LECs to file tariff transmittals giving public notice of the fresh look opportunity for each central office no later than five business days after the first special access expanded interconnection arrangement becomes operational in the central office. Instead, we will require the LECs to file tariff transmittals no later than five business days after the end of each calendar month giving public notice of the fresh look opportunity for each central office in which the first expanded interconnection arrangement became operational during that month. The fresh look period runs from the actual date that the first expanded interconnection arrangement becomes operational until 180 days following the filing date of the tariff providing [*5210] notice of the beginning of the fresh look period. n363 The same procedures will apply to fresh look periods triggered by switched transport expanded interconnection. [**204] In addition, we clarify that LECs need not file any tariff transmittals if their termination liabilities are less than or equal to the maximum liabilities specified by our fresh look policy. Accordingly, we dismiss GTE's petition for waiver as moot.

n363 See 47 C.F.R. @ 1.4 (computation of time).

208. Finally, we conclude that no additional fresh look periods are necessary under our mandatory virtual collocation rules. Once interconnectors entered a market by using physical collocation arrangements in a particular central office, LEC customers with term discounts had the opportunity to switch their service to the interconnectors with limited termination liabilities. Such interconnectors are likely to remain active in the same geographic areas even if the LEC substitutes a virtual collocation offering for its physical collocation offering. Thus, if the fresh look period has already run in a given central office, no new fresh look period will be triggered by operational expanded interconnection under our new policies.

F. Non-Recurring Reconfiguration Charges

209. Order. In our earlier orders, we decided that all non-recurring charges applicable to customers shifting [**205] to an interconnector's services are to be set no higher than cost-based levels, and exempted such charges from the application of the presumption of reasonableness in the price cap rules. In addition, we concluded that any difference between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be cost-based. n364

n364 Second Reconsideration Order, 8 FCC Rcd at 7361-63, PP 47-51; Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7439, P 130.

210. Positions of the Parties on Reconsideration. Ameritech asks the Commission to reconsider the decision to eliminate the price cap presumption of reasonableness for non-recurring reconfiguration charges, expressing concern about the erosion of pricing flexibility in the price cap system, and arguing

that the price cap constraints and the existence of access competition and interconnection adequately protect consumers. n365 MFS responds that it is necessary to abandon the presumption of lawfulness in order to review the reasonableness of the levels and differences in non-recurring charges, protect consumers and competitors, [**206] and enforce the Communications Act's prohibition of unreasonable discrimination in this context. n366

n365 Ameritech Second Special Petition at 1-3; Ameritech Second Special Reply at 1-2 (noting that it has modified its non-recurring charges to establish a single rate structure applicable to special access, switched transport, and interconnection).

n366 MFS Second Special Opposition at 3-4.

211. Teleport opposes the provision permitting "cost-based" differences between non-recurring charges applicable to customers shifting to use interconnector services and those applicable to customers reconfiguring LEC services. Teleport argues that this exception creates a huge loophole that enables LECs to discriminate against access competitors, and instead recommends a requirement that LECs waive all NRCs when customers shift traffic to competitors within 180 days of the establishment of a collocation arrangement in a given central office. n367 The LECs argue that termination liabilities are cost-based, are commonly used throughout commerce, including by the CAPs, and reflect the economics of protecting LECs and their ratepayers from premature customer departure from LEC facilities. [**207] They also argue that Teleport's proposal would constitute a rate prescription without the necessary procedures. n368

n367 Teleport Switched Petition at 4-6.

n368 USTA Switched Opposition at 6; Ameritech Switched Opposition at 1-2; GTE Switched Opposition at 17-19; GTE Second Special Opposition at 2-5; United Switched Opposition at 4.

212. Discussion. We reaffirm our policies on non-recurring reconfiguration charges. These charges raise special competitive concerns, and we conclude that elimination of the price cap presumption of reasonableness for these charges is necessary to enforce our requirement that the levels of and differences between these charges be cost-based, and to protect competitors and consumers. We also reaffirm that LECs may charge higher non-recurring charges to customers reconfigufing to use interconnectors' services than they charge for other [*5211] reconfigurations if such rate differences are cost-justified. The LECs incur legitimate costs in making service changes, and in general should be able to recover these costs from interconnectors and their customers. The only exception would be when the LEC does not recover non-recurring reconfiguration costs [**208] from its own special access or switched transport customers. In that case, the LEC must not charge customers who reconfigure in order to take service from an interconnector more than an amount reflecting the difference between the costs of the two different types of reconfigurations.

VIII. OTHER MATTERS

213. The CAPs have argued that the Commission should impose certain requirements to govern the transition from a mandatory physical to a mandatory

virtual collocation regime. Specifically, the CAPs argue that in the event LECs choose to terminate their existing physical collocation offerings, those LECs should bear the full cost of any LEC-required rearrangements to virtual collocation. n369 The CAPs also argue that the LECs should reimburse interconnectors for certain charges previously paid for physical collocation, such as the costs of cage construction, n370 and that LECs that "grandfather" existing physical collocation arrangements should be required to permit interconnectors reasonably to expand those facilities to meet demand. n371 We believe that the transition issues raised by the CAPs generally present questions that should be addressed on a case-by-case basis. We delegate [**209] authority to the Chief, Common Carrier Bureau, to address these matters.

n369 MFS Ex Parte (July 5, 1994) at 23-24; U S Signal Ex Parte (July 7, 1994) at 3.

n370 ALTS Ex Parte (July 6, 1994) at 5; MFS Ex Parte (July 5, 1994) at 24-26.

n371 MFS Ex Parte (July 5, 1994) at 26-27.

214. With respect to any other issues addressed in our previous expanded interconnection orders that are not specifically addressed in this order, we reaffirm our earlier conclusions for our new virtual collocation regime, based on the reasons stated in the earlier orders.

IX. CONCLUSION

215. Our expanded interconnection policy advances major Commission objectives of promoting economic growth and increasing access to communications networks. Accordingly, we modify that policy to be consistent with the recent court decision in the Bell Atlantic v. FCC case, and require the LECs to provide expanded interconnection through virtual collocation, unless they qualify for an exemption that would permit them to offer physical collocation instead. We have addressed in detail in this order the standards, terms, and conditions that will apply to virtual collocation under our new policy. Because we expect [**210] that some LECs will provide a Title II physical collocation offering under this new regime, we have also addressed the standards, terms, and conditions that will apply to physical collocation. In most respects, the rules governing the mandatory virtual collocation regime will be the same rules that applied under our original mandatory physical collocation policy.

X. ORDERING CLAUSES

216. Accordingly, IT IS ORDERED, pursuant to authority contained in Sections 1, 4, 201-205, 214, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. @@ 151, 154, 201-205, 214, and 218, that Part 64 of the Commission's Rules IS AMENDED as set forth in Appendix B of this Order.

217. IT IS FURTHER ORDERED that the policies, rules, and requirements adopted in this Order SHALL BE EFFECTIVE on December 15, 1994, except the requirements regarding the filing of tariffs and regarding notifications with respect to exempt physical collocation offerings, n372 which SHALL BE EFFECTIVE on September 1, 1994.

n372 See supra P 36.

218. IT IS FURTHER ORDERED that Teleport's Petition for Declaratory Ruling IS DENIED except to the extent specified in this order.

219. IT IS FURTHER ORDERED that [**211] GTE's Petition for Limited Waiver of the "Fresh Look" Policy IS DISMISSED as moot.

[*5212] 220. IT IS FURTHER ORDERED that authority is delegated to the Chief, Common Carrier Bureau, as set forth herein. n373

n373 See infra PP 61, 79, 81, 117, 184, & 213.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

Acting Secretary

CONCURBY: QUELLO; BARRETT; CHONG

CONCUR:
[*5217] Separate Statement of Commissioner James H. Quello

Re: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141

I support this Memorandum Opinion and Order because I have consistently supported this Commission's pro-competitive policy of expanded interconnection. The benefits of allowing competitive provision of communications access services are manifest in the record before this Commission and redound to the benefit of American consumers. It was not the policy per se that was vacated on appeal, but, instead, the procedure by which we chose to implement the broader policy objectives. Although the interstices may have been deemed impermissible, the corpus remains sound.

While it is true that I had some reservations about mandating physical collocation, I do not believe that virtual collocation suffers [**212] the same flaws. The businesses affected by this decision, LECs, IXCs, and CAPs alike, need a reasonable and predictable regulatory regime. Predictability engenders rational business planning and decision making, which is in the ultimate interest of the public. I believe that virtual collocation meets these criteria and is a sound regulatory mechanism.

Moreover, this Commission is acting expeditiously to preserve such predictability by seeking to avoid a gap in regulatory continuity that would result if the expanded interconnection policy were to lapse before the new virtual collocation tariffs were in place. This Memorandum Opinion and Order provides guidance to all parties during the transition from physical to virtual collocation.

I am convinced that this Commission has, and is properly exercising, the statutory authority to mandate virtual collocation but am also pleased that this Memorandum Opinion and Order allows for flexibility. The local telephone companies are permitted to retain physical collocation or suggest other means of providing expanded interconnection. In my view, the proper balance between regulatory oversight and business practice has been restored [**213] by returning this decision to the carriers.

[*5218] SEPARATE STATEMENT OF COMMISSIONER ANDREW C. BARRETT

RE: Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order (CC Docket No. 91-141)

In this Memorandum Opinion and Order, the Commission responds to a decision of U.S. Court of Appeals for the District of Columbia Circuit, which vacated and remanded the Commission's order on expanded interconnection on the grounds that the Commission does not have authority to require local exchange carriers (LECs) to provide expanded interconnection through physical collocation. n1 This Memorandum Opinion and Order mandates that LECs offer expanded interconnection in the form of virtual collocation. As of September 1, 1994, Tier I LECs (other than NECA pool members) must file generally available tariffs, offering expanded interconnection through virtual collocation. LECs will be exempted from this requirement in central offices where they agree to provide physical collocation subject to the Order's policies.

n1 Bell Atlantic Telephone Companies v. FCC, No. 92-1619 (D.C. Cir., June 10, 1994) (vacating in part and remanding certain orders in the Expanded Interconnection proceeding, CC Docket No. 91-141). [**214]

I have previously supported the Commission's policies on expanded interconnection as steps toward increased competition in local and interstate access services. n2 On remand, I support our efforts to implement expanded interconnection rules that will expand service choices for telecommunications users, and heighten the incentives for efficient and flexible pricing by existing carriers. Our expanded interconnection rules are necessary to the development of a competitive local exchange access structure, through competing access providers (CAPs) and other interconnectors. As a result, I support this action by the Commission to implement virtual collocation rules which will continue to promote competition through flexible interconnection arrangements, and provide a measure of certainty to interconnectors seeking to provide interstate access services.

n2 See Separate Statement of Commissioner C. Barrett, September 17, 1992, CC Docket No. 91-141.

I am also concerned that the Commission balance its interconnection policy by providing sufficient flexibility to the LECs in conjunction with virtual collocation interconnection requirements. In particular, I am concerned that the provisions [**215] regarding the designation of equipment by the CAPs properly balance the need to allow LEC's to manage and control their network operations, while satisfying interconnection requests under virtual collocation tariffs. In this regard, I believe that potential CAP demand for interconnection from the LECs is likely to involve a reasonable number of requests in the vast majority of situations. The provisions adopted for virtual collocation are likely to impose fewer burdens on the LECs in terms of central [*5219] office space in comparison to requirements for physical collocation. This Order creates a process for interconnectors to designate specific equipment for inclusion in the LECs initial tariff filings. This initial tariff requirement will provide LECs some measure of certainty in terms of the types of equipment that interconnectors are likely to use. Further, in the limited instances where the LECs receive interconnection requests that cannot be satisfied within the limitations of their technical network operations or central office configurations, they can seek a good cause waiver from virtual interconnection compliance in such cases. n3 Given our strong concerns for balancing competitive [**216] market arrangements with reasonable LEC interconnection requirements, this Order achieves such a result. The burden to prove that certain virtual collocation arrangements may not be feasible is properly placed upon the LEC -- the entity with the most knowledge of the technical configuration of its network and central offices.

n3 The Commission may consider alternative interconnection arrangements proposed by telephone companies in waiver petitions if those proposals satisfy the public interest objectives adopted in this Order.

Other options for virtual collocation that impose fewer conditions on the LECs might not offer the necessary certainty for interconnectors in order to avoid disruptions in competition. Thus, I support this decision as a means of promoting the public policy goals of competition through interconnection while avoiding the legal concerns associated with physical collocation.

[*5220] SEPARATE STATEMENT OF COMMISSIONER RACHELLE B. CHONG

Re: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141

Today we revise our expanded interconnection policy in response to a recent judicial decision reviewing the mandatory physical collocation [**217] requirement we adopted in previous orders in this docket. n1 Our modified expanded interconnection rules require local exchange carriers ("LECs") to offer virtual collocation to prospective interconnectors, with an exemption from this requirement for any LEC that opts to provide physical collocation on a common carrier basis in lieu of a virtual collocation offering.

n1 See Bell Atlantic Telephone Companies v. FCC, No. 92-1619 (D.C. Cir. June 10, 1994).

I support this revised approach because it advances three important objectives: (1) increased competition; (2) regulatory certainty; and (3) enhanced flexibility. First, by providing competitive access providers, interexchange carriers and users an opportunity to interconnect their transmission facilities to those of the LECs, we further the Commission's overarching goal to foster more competition in the interstate special access and switched transport markets. This increased competition should lead to lower prices for communications services and greater choices for consumers.

Second, by acting swiftly and decisively, we seek to bring certainty to a regulatory environment that was left somewhat uncertain in the wake of the [**218] court's decision. Our action today seeks to avoid any lapse in our expanded interconnection policy and should provide guidance to LECs and interconnectors with respect to their rights and obligations under our revised rules.

Third, I am pleased that our revised approach affords a measure of flexibility for both LECs and interconnectors. Most importantly, the fundamental decision whether to provide virtual collocation or to opt for physical collocation offered on a common carrier basis is within the discretion of the LECs. This is a choice that was not available to LECs under the mandatory physical collocation rule reviewed by the court. We also have provided for choices in the installation, maintenance and repair of equipment necessary to implement interconnection in order to address concerns expressed to us by the affected parties. Under our revised approach, a local exchange carrier may authorize the technical representatives of an interconnector to install, maintain and repair designated equipment in the LEC's central office. This procedure in some instances will obviate the need for a local exchange carrier to engage in costly training of its employees. Further, should [**219] the local exchange carrier [*5221] choose to utilize an interconnector's technicians to perform these service functions, the interconnector will be afforded a greater measure of security with respect to installation, maintenance and repair of critical equipment on a timely basis.

Finally, I encourage the LECs and interconnectors to work with each other and with the Commission to achieve a smooth transition to our revised expanded interconnection regime. Clearly, the potential exists for conflicts to arise between LECs and interconnectors as we move toward a more competitive interstate access environment. When disputes arise concerning particular interconnection arrangements, I urge the parties to consider employing consensual dispute resolution methods such as mediation to resolve their differences. In this regard, I support the delegation of authority to the Chief of the Common Carrier Bureau to develop alternative dispute resolution techniques to address conflicts that may arise in this context.

APPENDIX: APPENDIX A

PETITIONS FOR RECONSIDERATION, OPPOSITIONS AND REPLIES FILED

Petitions for Reconsideration of the Special Access Expanded Interconnection Order ("Special Petitions") December 18, [**220] 1992 n374

n374 GTE filed a document captioned "Second Petition for Reconsideration" on February 1, 1993. This filing does not challenge the First Reconsideration Order; in substance it merely records GTE's continued objections to the Special Access Expanded Interconnection Order discussed in its initial petition for reconsideration. We consider this "petition" as an ex parte filing.

American Telephone and Telegraph Co. (AT&T)

Association for Local Telecommunications Services (ALTS)

Central Telephone Co. (Centel)

GTE Service Corporation and its affiliated domestic telephone operating companies (GTE)

Independent Data Communications Manufacturers Association, Inc. (IDCMA)

MCI Telecommunications Corp. (MCI)

MFS Communications Co. (MFS)

National Association of Regulatory Utility Commissioners (NARUC)

New York Telephone Co. and New England Telephone and Telegraph Co. (NYNEX)

Penn Access Corporation (Penn Access)

Rochester Telephone Corp. (Rochester)

Sprint Communications Co. (Sprint)

Teleport Communications Group (Teleport)

Tennessee Public Service Commission (Tennessee)

United States Telephone Association (USTA)

United Telephone Companies [**221] (United)

WilTel, Inc. (WilTel)

Oppositions to Petitions for Reconsideration of the Special Access Expanded Interconnection Order ("Special Oppositions") February 3, 1993

Ad Hoc Telecommunications Users Committee (Ad Hoc)

Ameritech Operating Companies (Ameritech)

ALTS

American Petroleum Institute (API)

AT&T

Bell Atlantic Telephone Companies (Bell Atlantic)

Competitive Telecommunications Association (CompTel)

GTE

IDCMA

Information Industry Association (IIA)

Information Technology Association of America (ITAA)

International Communications Association (ICA)

MCI

MFS

NARUC

NYNEX

Prodigy Services Co. (Prodigy)

Rochester

Sprint

United

USTA

WilTel

Replies to Oppositions to Petitions for Reconsideration of the Special Access Expanded Interconnection Order ("Special Replies") February 18, 1993

ALTS

AT&T

GTE

MCI

MFS

IDCMA

NYNEX

Penn Access Corp. (Penn Access)

Sprint

Teleport

United

USTA

WilTel

Petitions for Reconsideration of the Second Reconsideration Order ("Second Special Petitions") October 18, 1993

Ameritech

MFS

USTA

WilTel

Oppositions to Petitions for Reconsideration [**222] of the Second Reconsideration Order ("Second Special Oppositions") November 23, 1993

Bell Atlantic

GTE

MFS

USTA

Replies to Oppositions to Petitions for Reconsideration of the Second Reconsideration Order ("Second Special Replies") December 9, 1993

Ameritech

MFS

USTA

WilTel

Petitions for Reconsideration of the Switched Transport Expanded Interconnection Order ("Switched Petitions") October 18, 1993

ALTS

CompTel

GTE

Hyperion Telecommunications, Inc. (Hyperion)

MCI

MFS

NARUC

Pennsylvania Public Utility Commission (Pennsylvania)

Sprint

WilTel

Teleport

USTA

WilTel

Replies to Oppositions to Petitions for Reconsideration of the Switched Transport Expanded Interconnection Order ("Switched Oppositions") November 23, 1993

Ameritech

AT&T

Bell Atlantic

BellSouth Telecommunications, Inc. (BellSouth)

GTE

MFS

NYNEX

Pacific Bell and Nevada Bell (Pacific)

Rochester

Sprint

United and Central Telephone Companies (United)

USTA

WilTel

Replies to Oppositions to Petitions for Reconsideration of the Switched Transport Expanded Interconnection Order ("Switched Replies") December 9, 1993

CompTel

[**223] GTE

MCI

MFS

Rochester

Sprint USTA

WilTel

APPENDIX B -- RULE CHANGES

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225, unless otherwise noted.

2. Section 64.1401 of Subpart N of Part 64 is amended by revising paragraph (c), removing paragraphs (d) and (e), redesignating paragraphs (f) through (h) as paragraphs (d) through (f), respectively, and revising redesignated paragraph (f)(2), to read as follows:

@ 64.1401 Expanded Interconnection

* * *

(c) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access and switched transport services through virtual collocation, except that they may offer physical collocation, instead of virtual collocation, in specific central offices, as a service subject to non-streamlined communications common carrier Title II regulation.

* * *

(f) * * *

(2) At least two such interconnection [**224] points at any local exchange carrier location at which there are at least two entry points for the local exchange carrier's cable facilities, and space is available for new facilities in at least two of those entry points.

39TH ITEM of Level 1 printed in FULL format.

17

In the Matter of Competition in the Interstate Interexchange Marketplace

CC Docket No. 90-132

FEDERAL COMMUNICATIONS COMMISSION

7 FCC Rcd 2677; 1992 FCC LEXIS 2061; 70 Rad. Reg. 2d (P & F) 968

RELEASE-NUMBER: FCC 92-181

April 17, 1992 Released; Adopted April 16, 1992

ACTION: [**1] MEMORANDUM OPINION AND ORDER ON RECONSIDERATION (38386)

JUDGES:
By the Commission: Commissioner Duggan concurring in part and dissenting in part and issuing a separate statement.

OPINION:
[*2677] I. Introduction

1. On August 1, 1991, we adopted a Report and Order concluding our examination of the state of competition in the interstate interexchange marketplace and adapting our regulatory policies to reflect this competition. n1 While the Report and Order took several steps to reduce the regulatory restrictions on AT&T's provision of business services, we declined to extend these reforms at that time to 800 and other inbound services. n2

n1 Competition in the Interstate Interexchange Marketplace, Report and Order, CC Docket No. 90-132, 6 FCC Rcd 5880 (1991).

n2 The term "800 services" refers to Price Cap Basket 2 offerings by AT&T which permit subscribers to agree in advance to pay for all calls made to them using a predesignated "800" number. The term "inbound service" refers to any other services or capabilities using an 800 number, including the inbound calling capabilities integrated in Tariff 12 packages.

2. Eleven parties filed petitions for reconsideration of the Report and Order. n3 While [**2] petitioners sought reconsideration of several of the conclusions adopted in the Report and Order, six petitions focused on our treatment of 800 and other inbound services. n4 Because of the special significance of these issues and the need to address them promptly, we reconsider our treatment of 800 and other inbound services separately from the other issues raised by petitioners.

n3 Petitions for reconsideration were filed by the Ad Hoc Telecommunications Users Committee (Ad Hoc); Aeronautical Radio, Inc. (ARINC); Alascom, Inc.; American Telephone and Telegraph Company (AT&T); Capital Cities/ABC, Inc, CBS Inc., and National Broadcasting Company, Inc. (the Broadcast Coalition); Citicorp; The Competitive Telecommunications Association (CompTel); the Independent Data Communications Manufacturers Association, Inc. (IDCMA); MCI Telecommunications Corporation (MCI); US Sprint Communications Company Limited

EXHIBIT
"B"

Partnership (Sprint); and Williams Telecommunications Group, Inc. (WilTel). Oppositions were filed by Ad Hoc, the American Petroleum Institute (API), AT&T, the California Bankers Clearing House Association and the New York Clearing House Association (Banking Coalition), CompTel, MCI, and Sprint.

n4 Petitions raising issues relating to the bundling of 800 and inbound services were filed by Ad Hoc, AT&T, CompTel, MCI, Sprint, and WilTel. WilTel asks us to reconsider the Report and Order for the reasons set forth in CompTel's petition. Thus, when we discuss CompTel's arguments, we are also discussing WilTel's arguments. [**3]

3. Based on a review of the record now before us, we conclude that we should grant in part and deny in part the petitions of Ad Hoc, AT&T, CompTel, MCI, Sprint, and WilTel, insofar as these petitions seek reconsideration of our rules adopted in the Report and Order governing the bundling of 800 and other inbound services with other services. n5 As discussed below, the 800 bundling rules adopted in the Report and Order appear to be overly narrow in some respects and overly broad in others. The modifications we now adopt better tailor those rules to meet our twin goals of promoting fair competition in the long-distance marketplace and providing customers with the flexibility to pursue the broadest range of service options.

n5 We make no decision with respect to the other issues raised by these or other petitioners at this time. Those issues will be considered in a future order.

4. We conclude, first, that until 800 number portability is available, n6 future bundling by AT&T of any service with 800 or inbound service using "old" 800 numbers (800 numbers that were in use by the customer on the day prior to the release of this order) is an unlawful practice under section 201(b) [**4] of the Communications Act. n7 Second, we conclude that the bundling of 800 or inbound service that uses "new" 800 numbers, with proper safeguards, will not create a significant risk of anticompetitive effects and therefore is permissible. Third, we conclude that the public interest will be served by modifying the grandfathering provision adopted in the Report and Order to apply to customers, rather than options. Thus, we allow the customers of Tariff 12s, Tariff 16s, or other tariffed offerings with bundled 800 or inbound service, to take service under their current arrangements, provided that the customer has signed a final contract for service or begun taking service on the day prior to the release of this order. In light of this change in the grandfathering provision, otherwise lawful modifications to service arrangements of grandfathered customers will be permitted. n8 Fourth, we reaffirm our decision in the Report and Order to allow grandfathered customers to terminate service within ninety days of the time 800 numbers become portable without incurring any early termination liability.

n6 In an order adopted on August 1, 1991, we required local telephone companies to take steps that would permit 800 number portability by March 1993. See Provision of Access for 800 Service, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 5421, 5425 (1991).

n7 We are not applying this prohibition to Tariff 15 services at this time. We defer such a determination pending completion of the remand proceeding. See note 42, infra.

n8 See para. 31, infra. [**5]

[*2678] II. Background

5. In this proceeding, we undertook an examination of the state of competition in the interstate interexchange marketplace. Finding that there was substantial competition in the provision of most business services, we adopted a series of reforms designed to reduce regulatory restrictions on AT&T's provision of business services, including the elimination of existing price cap constraints and the allowance of "contract-based" tariffs. n9

n9 See 6 FCC Rcd at 5880-5881.

6. We excepted from these regulatory reforms AT&T's provision of 800 services. Although such services are important components of the business services market, we concluded that 800 services were not yet fully competitive. n10 We based this conclusion on the fact that 800 numbers are not portable under existing local exchange network technology, i.e., a customer may not switch from one 800 service provider to another without also changing its 800 number. Although we found that the lack of number portability substantially affects only a minority of 800 customers, we concluded that it could, nevertheless, have an overall adverse effect on competition in 800 services. n11

n10 6 FCC Rcd at 5904.

n11 See 6 FCC Rcd at 5905. [**6]

7. In order to protect AT&T's 800 service customers from the possibility of unlawfully high rates, we retained price cap regulation of AT&T's 800 services. n12 In addition, because of concerns that bundling of 800 services by AT&T could lead to anticompetitive leveraging, thereby harming competition for other services, we prohibited AT&T from including 800 or inbound services in contract-based tariffs or Tariff 12 integrated services packages until 800 numbers become portable. n13 Also, in a companion order, we required local telephone companies to take steps that would permit 800 number portability by March 1993. n14

n12 6 FCC Rcd at 5905.

n13 6 FCC Rcd at 5905-5906. The application of the bundling prohibition to Tariff 16 and other offerings bundling 800 or inbound services with other services is discussed in paragraph 20, infra.

n14 See Provision of Access for 800 Service, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 5421, 5425 (1991).

8. At the same time, we recognized that a number of existing Tariff 12 options included inbound service as a package component. In order to protect the expectancy interests of the customers of such options and to avoid [**7] causing these customers undue disruption during the relatively limited transition period to full number portability, we allowed Tariff 12 options on file as of August 1, 1991 to remain in effect, even if they included inbound service. n15 Finally, we provided that AT&T must permit customers with Tariff 12 packages that include inbound service to terminate these packages within

ninety days of the time 800 numbers become portable without the imposition of any termination liabilities. n16

n15 6 FCC Rcd at 5906.We later revised the grandfathering date to include all Tariff 12 options on file as of September 1, 1991. Competition in the Interstate Interexchange Marketplace, Memorandum Opinion and Order, CC Docket No. 90-132, FCC No. 91-390 (Nov. 25, 1991).

n16 6 FCC Rcd at 5906.

9. After adoption of the Report and Order, AT&T filed a number of revisions to its grandfathered Tariff 12 options. To prevent the modification of generally available grandfathered options from undermining our bundling prohibition, the Common Carrier Bureau has accepted ministerial modifications n17 while rejecting other modifications. n18

n17 See, e.g., AT&T Transmittal No. 3364, DA 91-1542 (Com.Car.Bur. December 11, 1991); AT&T Transmittal No. 3387, DA 91-1575 (Com.Car.Bur. December 19, 1991).

n18 See, e.g., AT&T Transmittal No. 3375, DA 91-1577 (Com.Car.Bur. December 19, 1991); AT&T Transmittal No. 3405, DA 91-1622 (Com.Car.Bur. December 24, 1991); AT&T Transmittal No. 3706, DA 92-5 (Com.Car.Bur. January 3, 1992). [**8]

III. Petitions for Reconsideration

10. Several parties have filed petitions for reconsideration of the Report and Order. Many of these petitions raise issues regarding the lawfulness of the 800/inbound service bundling prohibition and our related grandfathering criteria.

11. Ad Hoc and AT&T challenge our decision to prohibit all bundling of 800 service, stating that the bundling prohibition lacks record support and is based entirely on unsubstantiated economic theory. n19 They argue that there is a wide gap between the problem that we actually found to exist and the remedy we imposed to correct it. They state that we found that the risk of leveraging applied at most to a relatively small minority of current AT&T 800 customers, but that we prohibited all future bundling of 800 service by AT&T until 800 numbers become portable. n20 They claim that the bundling restriction is so broad that it prevents customers from taking advantage of bundled offerings, even if the customers can establish they are not "captive" to AT&T and are not subject to leveraging. n21

n19 Ad Hoc Petition at 7-10; AT&T Petition at 2-3.

n20 Ad Hoc Petition at 5-7, 10-11; AT&T Petition at 3-6, citing Report and Order, 6 FCC Rcd at 5905-5906.

n21 Ad Hoc Petition at 6-7; AT&T Petition at 5-6. [**9]

12. Although Ad Hoc and AT&T argue that no 800 bundling restriction is necessary, they suggest that, at the very least, we should: allow AT&T to bundle 800 or inbound service when the customer is using 800 numbers that came into

use after January 1, 1987; allow AT&T to show, in other cases, that a particular customer is not "captive," and thus not subject to leveraging; and, prohibit the bundling of 800 or inbound service only in any options or contracts in which the proportion of 800 service to other services is greater than some threshold level, and only if the customer elects to retain its old 800 number. n22

n22 See Ad Hoc Petition at 10-11; AT&T Petition at 5-6.

13. AT&T also challenges our decision to permit grandfathered Tariff 12 customers to terminate service, without termination liability, within 90 days of the time when 800 numbers become portable -- the "fresh look" requirement. AT&T states that because some options have large upfront costs that are recovered from customers only over the life of the contract, the "fresh look" provision may unreasonably deny AT&T the ability to recover its [*2679] costs. n23 AT&T also claims that we failed to give proper notice of the [**10] potential changes in Tariff 12 and we have thereby violated the Administrative Procedure Act (APA). n24 AT&T further asserts that the "fresh look" requirement is an unlawful prescription under section 205 of the Communications Act. It argues that "fresh look" may only be imposed if we first find that the existing service terms are unlawful and that the results of "fresh look" are just and reasonable. n25

n23 AT&T Petition at 19. AT&T filed an emergency application, pursuant to section 214 of the Communications Act, 47 U.S.C. @ 214, to discontinue one Tariff 12 option (Option 58) for precisely this reason. The Common Carrier Bureau dismissed that application as not establishing an emergency. See Letter from James R. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau, to Steven Haas, Division Manager, AT&T, January 31, 1991.

n24 AT&T Petition at 10-13. Although Ad Hoc supports "fresh look", Ad Hoc Opposition at 11-15, it expressed similar APA concerns with respect to the application of the bundling prohibition to Tariff 12 options. Ad Hoc Petition at 3-4, 10.

n25 AT&T Petition at 13-18, citing, AT&T v. FCC, 449 F.2d 439, 450, 452 (2d Cir. 1971); AT&T v. FCC, 487 F.2d 865, 872 n.13 (2d Cir. 1973). [**11]

14. While Ad Hoc and AT&T claim that the 800 bundling rules are too strict, CompTel, MCI, and Sprint argue that they are not strict enough. CompTel and MCI claim that our decision to prohibit bundling of 800 service with contracts and Tariff 12 options necessarily means that we found bundling to be unlawful. n26 They also argue that under existing case law, we cannot permit an unlawful rate or practice, except under the narrowest of circumstances. n27 CompTel, MCI, and Sprint argue that since our rationale for grandfathering was to protect the reliance interest of existing customers, the decision to grandfather Tariff 12 options is too broad and goes beyond the limited power we have to permit unlawful practices to continue in effect. n28 They urge us to grandfather customers, rather than options, arguing that would be more consistent with our stated rationale.

n26 See CompTel Petition at 20, MCI Petition at 6-7.

n27 MCI Petition at 7-9, citing, MCI Telecommunications Corp. v. FCC, 712 F.2d 517, 535 (D.C. Cir. 1983). See also, CompTel Petition at 20-21.

n28 See CompTel Petition at 21-22; MCI Petition at 9-11. See also Sprint Petition at 5-9.

IV. Oppositions

15. CompTel, [**12] MCI, and Sprint oppose the petitions of Ad Hoc and AT&T. They claim that our decision to prohibit the bundling of 800 and inbound service in all future Tariff 12 options and contracts is fully justified. They argue that our findings with respect to the competitiveness of 800 services and AT&T's ability to exploit the unwillingness of its 800 customers to switch carriers is supported by solid record evidence. n29 They also argue, along with Ad Hoc, API, and the Banking Coalition, that "fresh look" should be retained. They claim generally that we gave parties sufficient notice of "fresh look," n30 that no section 205 problem is created by our adoption of "fresh look," n31 and that, as a policy matter, we must allow "captive" customers to terminate their bundled service arrangements as soon as 800 numbers become portable. n32

n29 CompTel Opposition at 6-8; MCI Opposition at 17; Sprint Opposition at 2-4.

n30 See API Response at 5-10; Banking Coalition Opposition at 5-8; CompTel Opposition at 10-12; MCI Opposition at 17-24; Sprint Opposition at 12-17.

n31 See API Response at 10-15; Banking Coalition Opposition at 8-9; CompTel Opposition at 12-15; Sprint Opposition at 17-18.

n32 See Ad Hoc Opposition at 11-15; API Response at 4; Banking Coalition Opposition at 9-12; CompTel Opposition at 9; MCI Opposition at 14-16; Sprint Opposition at 12-17. [**13]

16. Ad Hoc, API, AT&T, and the Banking Coalition oppose modifying the Report and Order to grandfather customers rather than existing Tariff 12 options. They argue that since we have not found the bundling of 800 and inbound service to be an unlawful practice, existing Tariff 12 options may remain generally available. n33 They deny that the grandfathering of Tariff 12 options will permit AT&T to circumvent the bundling prohibition. n34

n33 Ad Hoc Opposition at 6; AT&T Opposition at 11-13.

n34 API Opposition at 15-17; Banking Coalition Opposition at 13.

V. Discussion

17. We now modify the Report and Order in the following manner. We conclude, first, that until 800 number portability is available, future bundling by AT&T of any service with 800 or inbound service using "old" 800 numbers is an unlawful practice under section 201(b) of the Communications Act. Second, we conclude that the bundling of 800 or inbound service that uses "new" 800 numbers, with proper safeguards, n35 will not create a significant risk of anticompetitive effects and is therefore permissible in AT&T's contract-based tariffs, Tariff 12s, Tariff 16s, and other bundled offerings. Third, we conclude [**14] that the public interest will be served by modifying the grandfathering provision adopted in the Report and Order. Most significantly, we apply the grandfathering provision to customers, rather than options. We

allow the customers of Tariff 12s, Tariff 16s, or other tariffed offerings with bundled 800 or inbound service to take service under their current arrangements, provided that the customer has signed a final contract for service or begun taking service on the day prior to the release of this order. n36 In light of this change in the grandfathering provision, otherwise lawful modifications to service arrangements of grandfathered customers will be permitted. n37 Fourth, we reaffirm our decision in the Report and Order to allow grandfathered [*2680] customers to terminate service within ninety days of the time 800 numbers become portable without incurring any early termination liability.

n35 See para. 22, infra.

n36 We note that several resellers have alleged that AT&T unreasonably delayed filling their orders for existing Tariff 12 options. We made it clear in our decision in the Tariff 12 proceeding that AT&T could not lawfully restrict the resale of Tariff 12 packages. *AT&T Communications, Revisions to* Tariff F.C.C. No. 12, Memorandum Opinion and Order on Remand, CC Docket No. 87-568, 6 FCC Rcd 7039, 7053-7055 (1991). If we conclude that AT&T has unreasonably delayed providing these generally available options to any entity, we will extend the grandfathering provision to include such entities.

n37 Of course, proposed modification must not violate other Commission requirements, such as establishing geographic limitations on availability of a Tariff 12 option. See, e.g., AT&T Communications Revisions to Tariff F.C.C. No. 12, Memorandum Opinion and Order, CC Docket No. 87-568, 4 FCC Rcd 4932, 4938, rev'd on other grounds, MCI Telecommunications Corp. v. FCC, 917 F.2d 30 (D.C. Cir. 1990). [**15]

18. Ad Hoc and AT&T argue that our decision to prohibit the bundling of 800 services is not supported in the record and is based on unsubstantiated economic theory. We disagree. Our findings with respect to the competitiveness of 800 services were made in response to substantial record evidence. n38 While we found that some of AT&T's competitors had overstated the risk and impact of leveraging, we nevertheless found that some, so-called "captive," customers are unable to change their 800 number without incurring substantial costs, and that AT&T retains the ability to leverage market power in 800 and inbound services with respect to these customers through the inclusion of 800 or inbound services in contracts and Tariff 12s. We stated that:

leveraging could occur, for example, if AT&T offered a "captive" 800 service subscriber discounts on 800 service conditioned upon the customer's purchase of another service from AT&T -- for example, if AT&T offered a customer a bundled contract of 800 service and WATS service, with ten percent discounts on each. In this example, assuming equal usage of 800 and >WATS, and AT&T competitor would have to offer a twenty percent discount on WATS [**16] in order to win the customer's WATS business. In other words, because the customer is committed to AT&T's 800 service, AT&T's competitors would have to include, in their WATS discount, compensation to the customer for foregoing the 800 service discount available in AT&T's package. n39

n38 See 6 FCC Rcd at 5903-5906.

n39 6 FCC Rcd at 5906, n.234.

In light of the above, we reject Ad Hoc and AT&T's arguments and conclude that future bundling of any service with 800 or inbound service using "old" 800 numbers will be an unlawful practice under Section 201(b) of the Communications Act until 800 number portability is available. n40 We define "old" 800 numbers as numbers in use by the customer on the day prior to release of this order.

n40 Once 800 number portability is generally available, see Report and Order, 6 FCC Rcd at 5905, n.233, the bundling restriction will expire.

19. We agree with Ad Hoc and AT&T, however, that the prohibition fashioned in the Report and Order could be more narrowly tailored to remedy the problem posed by leveraging. We have found that leveraging is a significant risk with respect to "captive" 800 service customers -- customers that are unable [**17] to change their 800 number without incurring substantial costs. Customers obtaining a new 800 number would rarely fall into this category. n41 Therefore, these customers are not generally subject to leveraging and AT&T should not be precluded from offering them service arrangements that include bundled 800 or inbound service.

n41 A customer using a new 800 number could be "captive" to a specific carrier only if the customer was committed to obtaining a specific number, despite never having used it before. In that case, in order to receive the desired number, the customer would have to take its 800 service from the IXC to which the first three digits (the NXX code) for that number was assigned. A customer in this situation is far less likely to be captive to a particular carrier than a customer with an existing 800 number because it would not have invested resources in advertising the number, it would not have acquired a public association with that number, and it would not incur the expenses associated with an 800 number change, including the expenses of changing such materials as manuals, brochures, warranties, and catalogs.

20. We also find that the bundling prohibition [**18] adopted in the Report and Order, and modified here, should apply not only to contracts and Tariff 12s, but also to Tariff 16s and other bundled service offerings. n42 To hold otherwise could negate our anti-bundling policy by allowing AT&T to funnel 800 and inbound service customers away from one offering and into other bundled arrangements. n43 Moreover, the rationale used to support our prohibition of 800 and inbound bundling in the Report and Order n44 is equally applicable to 800 and inbound bundling in Tariff 16s and other service offerings.

n42 We are not applying the bundling prohibition to Tariff 15 services at this time. In January of this year, we were granted a voluntary remand of our decision that AT&T's Tariff 15 offering to Resort Condominiums International was unlawfully discriminatory. AT&T Communications Tariff F.C.C. No. 15, Competitive Pricing Plan No. 2, Resort Condominiums International, Memorandum Opinion and Order, CC Docket No. 90-11, 6 FCC Rcd 5648 (1991), remanded, AT&T v. FCC, Order, D.C. Circuit No. 91-1504 (filed January 21, 1992). While it appears that the bundling prohibition, as modified in this order, should reasonably apply to the bundling of 800 service in Tariff 15s, in the interest of receiving the benefit of a full record on the relationship of the bundling issue with other issues raised by Tariff 15, we will address the lawfulness of bundling in Tariff 15 in that remand proceeding. See AT&T Communications, Tariff F.C.C. No. 15, Competitive Pricing Plan No. 2, Resort Condominiums International, Supplemental Designation Order, CC Docket 90-11, FCC No. 92-180, (released

April 16, 1992).

n43 While the Report and Order did not specifically address bundling outside the context of Tariff 12 and contract-based tariffs, our Notice of Proposed Rulemaking sought comment on the impact of 800 services on competition for other services offered by AT&T. We therefore provided adequate and proper notice that we might adopt rules regulating all 800 and inbound service bundling. Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2641 (1990) (hereinafter "NPRM"). Accordingly, our decision here to extend the bundling prohibition is fully consistent with the scope of the NPRM.

n44 See para. 18, supra. [**19]

21. In light of these conclusions, we modify the prohibition adopted in the Report and Order as follows: (1) we conclude that future bundling of "old" 800 numbers with other services will be an unlawful practice under section 201(b) of the Communications Act until 800 number portability is available; and (2) we will allow AT&T to bundle 800 or inbound service in its contracts, Tariff 12s, Tariff 16s, and other offerings, so long as the 800 numbers were not in use by the customer taking such service, or any of its corporate affiliates, on the day prior to the release of this order. n45 By excepting customers willing to take new 800 numbers from the ban adopted in the Report and [*2681] Order, we tailor the bundling prohibition more narrowly to solve the problem of possible anticompetitive leveraging. In particular, we exclude from the bundling prohibition: (1) "new" AT&T 800 service customers -- that is, customers not taking 800 service from AT&T on the day prior to release of this order; and (2) existing AT&T 800 customers insofar as they take new 800 numbers, or switch some or all of their old 800 numbers to new 800 numbers, in order to obtain a discount for bundled service with new 800 [**20] numbers. n46 In short, our modified rules more narrowly tailor the bundling prohibition to preclude bundling only in situations that pose a risk of leveraging. n47

n45 In adopting the prospective policy on 800 bundling, we conclude that "old" 800 numbers are those used by a customer as of the day before the release of this order. Based on the record submitted on reconsideration, we determine that, on a going-forward basis, customers using "new" 800 numbers bundled with other services will be able to deal with all interexchange carriers on a comparable basis. See AT&T Petition at 5-6. We reject Ad Hoc's argument that, because competition in 800 services began in January of 1987, bundling of 800 and inbound service should be allowed if the 800 numbers provided under the package were not in use by the customer prior to January 1, 1987. While competition in 800 services was introduced on January 1, 1987, AT&T had significant competitive advantages at that time. For example, during the early days of NXX access AT&T had a far greater number of NXX codes than did any of its competitors.

n46 In June of 1990, the Common Carrier Bureau found that an AT&T tariff bundling SDN service and 800 services violated section 201(b) of the Communications Act. See AT&T Communications, Revisions to Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 2071, 2212, Memorandum Opinion and Order, DA 90-824 (Com.Car.Bur. June 8, 1990), Application for Review pending (filed June 25, 1990). This bundled offering may now be provided by AT&T subject to the terms of this order.

n47 Ad Hoc and AT&T suggest that the prohibition could be even further narrowed by allowing some customers with old 800 numbers to receive bundled service if 800 or inbound service is less than some threshold percentage of the total package, or if the customer can otherwise show it would not incur substantial costs in changing 800 numbers. We do not believe it is appropriate to adopt this suggestion. The ban, as we have restructured it, would allow customers with old 800 numbers to show they are not "captive" by giving up their old numbers. [**21]

22. In order to ensure that AT&T does not include traffic from any old 800 numbers retained by a customer in the bundled discounts it provides for traffic using the customer's new 800 numbers, we here require AT&T to file with us a compliance affidavit as well as reports identifying the customers taking bundled 800 service and their old and new 800 numbers. Specifically, AT&T must provide to us, with any new contract-based tariff, Tariff 12, Tariff 16, or other bundled offering that combines 800 or inbound service with other services, an affidavit signed by a corporate officer of AT&T indicating that AT&T will not: (1) extend to old 800 numbers the rates applicable to lawfully bundled new 800 numbers; or (2) include, directly or indirectly, traffic from any old 800 numbers retained by the customer in the calculation of the rates applicable to a customer's new 800 number service associated with its bundled offering. n48 In addition, before any customer begins taking service under any contract-based tariff, Tariff 12, or Tariff 16, AT&T must file with the Common Carrier Bureau, a list of any old 800 numbers used by that customer and its affiliates, and the new 800 numbers for that [**22] customer. For each time a new customer takes any other tariffed service bundling 800 or inbound service, AT&T must within thirty days of the effective date of this order, and every thirty days thereafter until the bundling restriction is lifted, provide us any old 800 numbers used by each such customer and its affiliates, and the new 800 numbers used by each customer. n49 AT&T may request confidential treatment of this information. We find that these measures will enable us to administer and enforce our bundling prohibition. n50

n48 One way in which AT&T could impermissibly include traffic from old 800 numbers indirectly in the calculation of the rates applicable to new 800 numbers is through the use of software programming capable of diverting traffic placed to old 800 numbers to the new 800 numbers.

n49 We also require AT&T to retain sufficient billing information to enable the Bureau to audit AT&T's compliance with the requirements of this order.

n50 We also note that violations by AT&T could subject the company to fine and forfeiture liability. See, e.g., 47 U.S.C. @@ 502, 503.

23. AT&T also challenges our decision to allow grandfathered customers to terminate service, [**23] without termination liability, within ninety days of the time 800 numbers become portable -- the "fresh look" requirement. AT&T claims that, in adopting "fresh look," we violated the Administrative Procedure Act (APA) by failing to provide AT&T and other parties with adequate notice of and opportunity to comment on the "fresh look" requirement. We disagree. The APA requires only that the agency include in its Notice of Proposed Rulemaking ("NPRM") "either the terms or substance of the proposed rule or a description of the subjects and issues involved." n51 As held by the courts, evidence in the record may warrant a final rule different from that proposed by the agency.

n52 According to the United States Court of Appeals for the District of Columbia Circuit, "the exact result reached after a notice and comment rulemaking need not be set out in the initial notice for the notice to be sufficient. Rather, the final rule must be 'a logical outgrowth' of the proposed rule." n53 We believe that, in seeking comment on the status of competition in the interexchange marketplace, in asking "for comment on whether the current level of competition in 800 services warrants an interim regulatory [**24] approach to services in the 800 Services Basket," and in asking for comment on the impact of 800 services on competition for other services, we gave notice that interim regulatory changes might be adopted for 800 and inbound services. n54 The "fresh look" requirement is a logical outgrowth of the proposed action. Also, as MCI notes, AT&T had actual notice of the possibility of regulatory changes involving 800 bundling and Tariff 12, as evidenced by several ex parte presentations made by AT&T addressing 800 bundling in the context of Tariff 12. n55 In light of the above, we find that our decision to adopt the "fresh look" requirement satisfied the APA notice requirements.

n51 5 U.S.C. sec. 553(b)(3).

n52 See MCI opposition at 19, citing Edison Electric Institute v. OSHA, 849 F.2d 611, 621 (D.C. Cir. 1988). See also International Harvester Co. v. Ruckelhaus, 478 F.2d 615, 632 (D.C. Cir. 1973).

n53 Public Service Commission of the District of Columbia v. FCC, 906 F.2d 713, 717 (D.C. Cir. 1990), citing AFL-CIO v. Donovan, 757 F.2d 330, 338 (D.C. Cir. 1985); United Steelworkers v. Marshall, 647 F.2d 1189 (D.C. Cir. 1980), cert. denied sub nom. Lead Industries Association v. Donovan, 453 U.S. 913 (1981).

n54 NPRM, supra, 5 FCC Rcd 2627, 2641 (1990). See Id. at 2628, 2635-2636 (1990). See also Banking Coalition Opposition at 5-8; API Response at 5-10; MCI Opposition at 18-24; CompTel Opposition at 9-12; Sprint Opposition at 11-14.

n55 MCI Opposition at 23. See, e.g., ex parte letter from Joel E. Lubin, Regulatory Vice President, Government Affairs, AT&T, to Donna Searcy, Secretary, FCC, November 30, 1990; ex parte letter from Joel E. Lubin, Regulatory Vice President, Government Affairs, AT&T, to Donna Searcy, Secretary, FCC, July 18, 1991. [**25]

[*2682] 24. AT&T also argues that the "fresh look" requirement constitutes an unlawful prescription under section 205 of the Communications Act. It claims that a "fresh look" may only be imposed if we first find that the existing service terms are unlawful and that the remedy "fresh look" imposes is just and reasonable. API, the Banking Coalition, and CompTel disagree with AT&T's reading of the applicable law. They contend that policies adopted in rulemaking proceedings that affect, but do not set, rates do not constitute unlawful prescriptions within the meaning of section 205. n56 They argue further, that even if section 205 requires us to provide AT&T the opportunity for a hearing, that requirement was met by the notice and comment cycle. n57

n56 See, for example, Banking Coalition Opposition at 8-9, citing, Western Union Telegraph Co. v. FCC, 665 F.2d 1126, 1151 (D.C. Cir. 1981) (citing, AT&T v. FCC, 572 F.2d 17, 21-23 (2d Cir. 1978), cert. denied, 439 U.S. 875 (1978)); CompTel Opposition at 13-14.

n57 API Response at 11-12, citing AT&T v. FCC, 572 F.2d at 22-23; Banking Coalition Opposition at 8-9; CompTel Opposition at 14.

25. We agree that "fresh look" does not violate [**26] section 205 of the Communications Act. The "fresh look" requirement was adopted in a rulemaking proceeding and is well within our rulemaking authority under the Communications Act. n58 In any event, AT&T and all other parties were notified in the NPRM that we intended to consider rule changes in the 800 services marketplace in the context of section 205 of the Act. n59 The "fresh look" requirement was adopted in the Report and Order under the authority, inter alia, of section 205. n60 Implicit in our decision to adopt "fresh look" is a finding that AT&T's termination liability clauses will be unreasonable in light of the risk of leveraging in 800 services. Through the original notice and comment proceeding, and the reconsideration process, AT&T and other parties have been given ample opportunity to have their arguments heard. We now affirm that AT&T's termination liability clauses are unreasonable, and reject AT&T's argument that the "fresh look" requirement violates section 205 of the Act. n61

n58 See Report and Order, 6 FCC Rcd at 5912.

n59 See Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2628, 2635-36, 2641, 2659, n.234 (1990).

n60 See 6 FCC Rcd at 5906, 5912.

n61 See AT&T v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978). [**27]

26. Finally, AT&T challenges the "fresh look" requirement on policy grounds, stating that because some options have large upfront costs which are recovered from customers only over the life of the contract, the "fresh look" requirement may unreasonably deny AT&T the ability to recover its costs. AT&T fears that customers will flock to these options and then opt to terminate service prior to the end of the contract. We believe that by grandfathering customers instead of options, we can address AT&T's concerns while preserving the benefits of the "fresh look" requirement. By applying the grandfathering provision to customers, n62 we eliminate the possibility that customers will "flock" to options with large upfront costs and qualify for "fresh look." Thus, we find that the policy concerns AT&T expressed with respect to "fresh look" have been largely mitigated. To the extent that AT&T can demonstrate in specific instances that application of the "fresh look" requirement will cause substantial losses that are not sufficiently offset by other valid public policy concerns, we will entertain requests for waiver of that requirement. n63

n62 See para. 27, infra.

n63 One example of a Tariff 12 option that AT&T asserts has large upfront costs is option 58. [**28]

27. CompTel, MCI, and Sprint argue that the grandfathering provision in the Report and Order should apply to customers of Tariff 12 options rather than to Tariff 12 options. They state that, having found that bundling of 800 or inbound service with other services is an unlawful practice, our authority to allow that practice to continue is very limited and does not extend to new

customers. n64 We believe that it would be in the public interest to institute a more narrowly tailored grandfathering requirement. We therefore modify the Report and Order to grandfather customers rather than options. We find that grandfathering options results in the proliferation of an unlawful practice to additional customers, and undercuts our bundling prohibition. Grandfathering customers prevents this proliferation, while ensuring that grandfathered options will remain available to any customer willing to take a "new" 800 number.

n64 See MCI Petition at 6-11. AT&T challenges the premise for this argument, contending that we never expressly found the bundling of 800 and inbound services by AT&T to be an unlawful practice. Opposition at 11. However, in light of our conclusion that future bundling of "old" 800 numbers with other services is an unlawful practice under section 201(b) of the Communications Act until 800 number portability is available, we reject AT&T's contention. See paras. 18, 21, supra. [**29]

28. We also find that the grandfathering provision adopted in the order, and modified here, should apply not only to Tariff 12s, but also to Tariff 16s and other bundled service offerings. n65 In extending our bundling prohibition to Tariff 16s and other bundled tariffed offerings, we conclude that the equitable considerations we relied on to justify grandfathering of Tariff 12s are similarly applicable to Tariff 16s and other existing tariffed offerings that include bundled 800 or inbound service. We believe that we should protect the expectancy interests of customers with bundled Tariff 12s, Tariff 16s, and other tariffed offerings to avoid causing these customers undue disruption during the relatively limited transition period to full number portability. n66 Accordingly, we now conclude that the public interest is served by extending our grandfathering rules to customers of Tariff 16s and other tariffed offerings with bundled 800 or inbound service.

n65 We are not applying the grandfathering provision to Tariff 15 services at this time. See note 42, supra.

n66 See Report and Order, 6 FCC Rcd at 5906.

29. Upon reconsideration, we will allow the customers of Tariff 12s, [**30] Tariff 16s, or other tariffed offerings with bundled 800 or inbound service that have signed contracts for service or begun taking service on the day prior to the release of this order to continue to take service under their current arrangements. Indeed, the equitable considerations [*2683] on which the grandfathering provision was based apply only to existing customers, and not to other customers who may wish to take service under grandfathered deals. n67

n67 We have grandfathered customers for equitable reasons before. For example, in finding that local exchange carrier individual case basis (ICB) rates for DS-3 service were unlawful, we allowed ICB rates to remain in effect for a limited period of time for customers already receiving service under ICB rates in order to facilitate a smooth transition to general tariffed rates and to avoid disruption of service to customers. Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, Memorandum Opinion and Order, 4 FCC Rcd 8634, 8642-8644 (1989). See also MCI Telecommunications Corporation v. FCC, 627 F.2d 322, 338 (D.C. Cir. 1980).

30. In order to enforce the grandfathering provision as modified, we direct AT&T to provide [**31] us, within 90 days of the release of this order, a list of customers of existing Tariff 12s, Tariff 16s, and other tariffed offerings with bundled 800 or inbound service, and the 800 numbers associated with each. AT&T may request confidential treatment of this information.

31. In order to ensure that the 800 and inbound services bundling prohibition we adopted in the Report and Order was not undermined by our grandfathering of options rather than customers, the Common Carrier Bureau rejected all non-ministerial modifications of grandfathered package deals. n68 Several customers of these deals, however, citing the need to modify their service arrangement to keep up with changes in their business, request that we permit substantive modifications. n69 In light of our decision to modify the Report and Order to grandfather only existing customers of Tariff 12s, Tariff 16s, or other tariffed offerings bundling 800 or inbound service with other services, we here permit otherwise lawful modifications of Tariff 12s, Tariff 16s, or other tariffed offerings that fall within the grandfathering provision. n70

n68 The Common Carrier Bureau rejected non-ministerial modifications because modifying existing options could be a vehicle for avoiding the bundling prohibition. For example, AT&T could modify an existing Tariff 12 option to make it fit the needs of several non-Tariff 12 customers.

n69 See, for example, CompuServe Reply at 5-9; Letter from Leo J. Heile, Vice President and Chief Information Systems Officer, ITT Corporation, to Richard M. Firestone, Chief, Common Carrier Bureau, January 16, 1992.

n70 Customers wanting to modify a grandfathered service package may file those tariff modifications with the Commission on fourteen days notice. Pending modifications will be reviewed consistent with the rules adopted herein. [**32]

VI. Conclusion

32. In light of the findings above, we modify our treatment of the bundling of 800 and inbound services in the Report and Order. We conclude, first, that until 800 number portability is available, future bundling by AT&T of any service with 800 or inbound service using "old" 800 numbers (800 numbers that were in use by the customer on the day prior to the release of this order) is an unlawful practice under section 201(b) of the Communications Act. Second, we conclude that the bundling of 800 or inbound service that uses "new" 800 numbers (800 numbers not in use by the customer on the day prior to the release of this order), with proper safeguards, will not create a significant risk of anticompetitive effects. Third, we conclude that the public interest will be served by modifying the grandfathering provision adopted in the Report and Order to grandfather customers, rather than options. Accordingly, we allow the customers of Tariff 12s, Tariff 16s, or other tariffed offerings with bundled 800 or inbound service to take service under their current arrangements, provided that the customer has signed a final contract for service or begun taking service on the day [**33] prior to the release of this order. In light of this change in the grandfathering provision, otherwise lawful modifications to service arrangements of grandfathered customers will be permitted. Fourth, we reaffirm our decision in the Report and Order to allow

grandfathered customers to terminate service within ninety days of the time 800 numbers become portable without incurring any early termination liability.

VII. Ordering Clauses

33. Accordingly, pursuant to authority contained in sections 1, 4 and 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. @@ 151, 154, 201-205, IT IS ORDERED that the policies, rules and requirements set forth herein ARE ADOPTED.

34. IT IS FURTHER ORDERED that the petitions for reconsideration of Ad Hoc, AT&T, CompTel, MCI, Sprint, and WilTel are GRANTED IN PART AND DENIED IN PART, insofar as the petitions seek reconsideration of our treatment of 800 and inbound services in the Report and Order.

35. IT IS FURTHER ORDERED that MCI Telecommunications Corporation's request that we accept its late filed opposition under this docket is GRANTED.

36. IT IS FURTHER ORDERED that the provisions in this Report and Order will be effective [**34] immediately upon its release. n71

n71 The publication of a rule may be made less than 30 days from publication in the Federal Register where good cause exists. See 5 U.S.C. @ 553 (d)(3). In order to avoid unduly delaying the benefits customers will receive from service options that are consistent with our decision in this order, we find good cause to make this order effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Secretary

CONCURBY: DUGGAN (In Part)

CONCUR:

[*2684] In re: Competition in the Interstate Interexchange Marketplace (CC Docket No. 90-132)

Separate Statement of Commissioner Ervin S. Duggan

Concurring in Part and Dissenting in Part

I join with my fellow Commissioners in voting to amend the "grandfathering" rules we adopted last August. On reconsideration, we have revised the grandfathering provision to accommodate more closely the competing considerations we identified in the Report and Order. n1 By grandfathering existing customers and allowing them to revise their Tariff 12 options, we recognize that existing customers would suffer serious hardship if they were prohibited from revising their options as their business needs change. On the other hand, by allowing [**35] AT&T to add additional customers to those options only if the customer changes its 800 number, we have limited AT&T's

ability to leverage its control in the 800 market into other, more competitive, interexchange services.

n1 Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, 6 FCC Rcd 5880 (1991).

In two respects, however, I believe the remedy as crafted by the majority does not closely enough fit the problem in the 800 market, at least as I see it. First, I would have defined "new" number as "brand new." Second, I would not have allowed 800 [*2685] bundling in contract-based tariffs, at least not without obtaining further comment. I find it necessary, therefore, to dissent on these two grounds.

My difference of opinion may be based in part on a difference in the way I perceive the nature of the 800 market. In my view, until we reach number portability, there will be some danger of such leveraging with respect to all existing 800 customers of AT&T.

For any 800 customer there are costs associated with changing an 800 number. For some customers the cost of changing an 800 number may be low; for others, it will be substantially higher. For others, the [**36] cost -- both financial and intangible -- is so great that they would simply be unwilling to change 800 carriers under any circumstances. But lack of number portability is a competitive issue whether or not a customer is a complete "captive" of a particular carrier. If AT&T's competitors, in order to challenge AT&T for the business of its 800 customers, must compensate those customers for the cost of changing their 800 numbers, are the competitors not at a competitive disadvantage in competing for 800 customers and for bundled packages that include 800 service? n2

n2 Competition in the 800 market began in 1987, when AT&T started out with 100 percent of the market. While its market share has declined since then, AT&T still has the dominant share of the 800 business.

[*2686] I nevertheless support the "old number/new number" distinction we adopt on reconsideration because it addresses this competitive advantage. If AT&T's customers are routinely required to change their 800 numbers as a condition of taking a bundled offering from AT&T, then AT&T and its competitors will be equally able to bid for that customer's bundled business.

I would, however, define "new" number as "brand new," [**37] not merely new as of some date a year before the arrival of number portability. The majority's definition of "new" number as new on the date of reconsideration appears to me to have no basis in logic. This definition, moreover, may complicate enforcement, and could allow the dominant interexchange carrier to continue to leverage customers that begin taking 800 service after the date of reconsideration. In my view, the competitive problems associated with lack of 800 number portability will not evaporate until we finally do have number portability.

I would also have preferred not to decide now whether bundled 800 services should be included in contracts. In the Report and Order, we concluded that until we reach 800 number portability, 800 services should remain under price cap regulation and should not be subject to streamlined tariff review procedures or be included in contract-based tariffs. I see no reason to change this approach now, particularly without further comment to guide the Commission.

Citation	Rank(R)	Database	Mode
6 F.C.C.R. 4582	R 1 OF 1	FCOM-FCC	Page

6 FCC Rcd. 4582, 1991 WL 642868 (F.C.C.)

Federal Communications Commission

Memorandum Opinion and Order

IN THE MATTER OF AMENDMENT OF THE COMMISSION'S RULES RELATIVE TO ALLOCATION OF THE 849-851/894-896 MHZ BANDS

FCC 91-194

GEN Docket No. 88-96

Adopted: June 25, 1991
Released: July 11, 1991

By the Commission: Commissioner Barrett issuing a separate statement.

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INTRODUCTION

1. By this action, the Commission grants in part petitions for reconsideration of the Report and Order in this proceeding. [FN1] The petitions were filed by McCaw Cellular Communications, Inc. (McCaw) [FN2] and GTE Airfone Incorporated (GTE). [FN3] This action should ensure greater opportunity for competition in the 800 MHz air-ground radiotelephone market. Additionally, we are adding and amending certain technical rules to enable new air-ground licensees to commence service while GTE replaces its experimental system with a system that conforms with the rules adopted in the Report and Order.

EXHIBIT

"C"

BACKGROUND

2. On April 12, 1990, the Commission adopted a Report and Order in this proceeding establishing an air-ground radiotelephone service that is to operate on the 849-851/894-896 MHz frequency bands. To promote competition, the Commission adopted an open entry licensing policy that facilitated the entry of new air-ground service providers. [FN4] The Commission also adopted channel and ground station plans. The channel plan adopted contains ten channel blocks, each with 31 communications channels and four control channels. The Commission provided for sharing of the air-ground frequencies by specifying that all air-ground licensees would be allowed equal access to the communications channels. Under the plan adopted, each licensee would be assigned an exclusive control channel. Additional control channels, if more than four licenses were granted, would be created from the communications channel(s) adjacent to the control channels in each channel block. The Commission also established a 12 month transition period for GTE to modify its experimental system equipment by reducing the control channel bandwidths from 14 kHz to 3.2 kHz, as specified in the rules. Further, the Commission pre-empted state regulation of technical and operational standards on all 800 MHz air-ground radiotelephone service communications, and of rates and conditions of entry and exit in that service with respect to intrastate communications on interstate airline routes. The Commission did not preempt state regulation of rates and conditions of entry and exit with respect to intrastate air-ground communications on intrastate airline routes. [FN5]

3. McCaw and GTE filed petitions for reconsideration of certain aspects of the Report and Order. McCaw requests that the Commission invalidate GTE's airline contracts entered into prior to the release of the Report and Order and grant other licensees interim access to GTE's system to allow them to engage in the resale of air-ground services. GTE requests an extension of the transition period for GTE to change its system from experimental to regular service, additional federal preemption of state regulation of air-ground communications, and a number of changes in the technical rules. Further, both McCaw and GTE request direct FCC involvement in the resolution of technical problems that may arise during the implementation of the next generation of air-ground technology.

DISCUSSION

GTE's Preexisting Airline Contracts

4. In its petition, McCaw states that the pool of airlines free to negotiate contracts with other applicants for air-ground service is severely depleted as a result of contracts made with GTE during the term of GTE's experimental license. Additionally, McCaw states that these contracts are anticompetitive and impede other applicants from entering the air-ground market because they contain restrictive provisions that obligate the airlines to use GTE exclusively for air-ground service. Therefore, it requests that the Commission declare any restrictive provisions in these contracts void. In-Flight, in support of McCaw, maintains that GTE has contracts with 12 of the 13 largest airlines, effectively controlling 85 percent of the air-ground market. Both

McCaw and In-Flight argue that with the pool of available airlines depleted, new service providers will find it extremely difficult, if not impossible, to compete with GTE. Skycell generally concurs with McCaw and In-Flight.

5. GTE replies that its contracts do not impede entry by new competitors. It states that most of its contracts restrict only the installation of cordless/bulkhead telephones, not the more desirable seatback telephones. [FN6] Specifically, GTE states that as of August 29, 1990, the date of its Reply, only 118 out of 4,500 domestic aircraft are covered by contracts that do not allow other air-ground licensees to install seatback telephones. [FN7] GTE also argues that within the next few years, 10 percent of the existing aircraft will be retired and new aircraft totaling 20 percent of the domestic fleet will be delivered. GTE claims that these new aircraft represent a significant marketing opportunity for the new air-ground licensees.

6. Subsequently, in an ex parte presentation, GTE expressed interest in resolving the concern raised over its contracts. Specifically, GTE stated that it has notified, in writing, all airlines with which it entered into contract prior to June 15, 1990, that GTE will not obligate them to purchase or use additional equipment or services from GTE for any aircraft not already equipped with cordless/bulkhead or seatback telephones, but that GTE will continue to fulfill its remaining contractual obligations. Previously, GTE had informed airlines with GTE installed equipment that they could purchase the equipment at book or market value in order to release the airline from any obligation to use the GTE air-ground service. [FN8]

7. Upon review of the pleadings and ex parte communications, we find a basis for concern that prior contracts may inhibit the development of a competitive air-ground service. GTE entered into contracts with the airlines pursuant to its experimental license when it had a de facto monopoly on airground service. Many of these contracts terminate after December 24, 1990, when specific competing 800 MHz air-ground carriers were first licensed. Certain contracts GTE has entered into with the airlines contain clauses that can be interpreted to restrict that airline's entire fleet of aircraft to GTE equipment, or to restrict that airline to connection with only the GTE ground network. Such contracts appear to bind airlines to GTE not only for all previously equipped aircraft, but also for all non-equipped aircraft. Furthermore, while the number of aircraft bound to GTE by contract may be less than stated by In-Flight, it is still substantial. We agree that the important public interest concerns of promoting competition and customer choice in airground service would be impeded by the long-term contracts negotiated by GTE pursuant to its experimental license. At the same time, we are cognizant that disruption of existing air-ground service might occur were we to void GTE's contracts in their entirety. Accordingly, we will not take such action but we do recognize the significant competitive advantage that was created by GTE by its negotiating long term, exclusive contracts while operating under its experimental authority and conclude that some regulatory action is necessary to mitigate that advantage.

8. While the letters sent by GTE may permit an airline choose an alternative licensee for any of its fleet not yet installed with air-ground equipment, they do not provide the airline freedom to have the GTE equipment removed that was installed under GTE's experimental license in order to have another licensee equip that aircraft. When the Commission allowed GTE to enter into service contracts under its experimental license, it did not envision GTE's entering

into contracts that would bind airlines exclusively to GTE for periods exceeding the term of the experimental license. [FN9] We find it contrary to the public interest for GTE to restrict competition by binding airlines to exclusive contracts with termination dates exceeding the term of GTE's experimental license or to require airlines to pay premature contract-termination penalties. [FN10] Further, we believe the quantity of aircraft equipped by GTE since the release of our Report and Order on June 15, 1990, is substantial. [FN11] To allow competition to develop fully in the air-ground market, airlines need to be able to terminate, at their option and without penalty, contracts entered into with GTE prior to December 24, 1990, [FN12] for equipment installed prior to release of this Memorandum Opinion and Order, regardless of the contract termination provisions. The airline or the new service provider selected by the airline will be responsible for the costs of removing the GTE equipment and will be required to return the removed equipment to GTE. In order to effect this freedom and to ensure that GTE refrains from enforcement of the restrictive provisions, appropriate conditions are being imposed on the air-ground license that will be granted to GTE. [FN13] Such conditions will include a requirement that GTE notify, within 30 days, all affected parties that the relevant contractual provisions will no longer be enforced. [FN14]

Interim Access and Resale

9. McCaw also contends that by adopting a technical framework that allows the GTE experimental system to continue without interruption, the Commission has provided GTE with a substantial head start over the other licensees. It argues that in order to reduce this advantage, other licensees should be allowed interim access to GTE's system for the purpose of reselling air-ground service to the airlines. In reply, GTE states that it is willing to make its service available for resale. However, GTE cautions that it plans to begin a transition to a second generation air-ground system, and resellers will be required to duplicate this technological evolution.

10. We believe that the situation with regard to the implementation of air-ground service is similar to that which existed during the early development of cellular radio. There the Commission found it necessary to require the resale of cellular radio service in order to develop a competitive market. [FN15] We believe that GTE's headstart and competitive advantage is such that it is necessary to require the resale of GTE's air-ground service to facilitate the entry of other air-ground providers. Accordingly, we are requiring GTE to make its service available to the other air-ground licensees for resale at non-discriminatory rates based upon our current resale policies. [FN16] We believe this plan will assist the new licensees in initiating service and thereby promote the development of a competitive air-ground market.

Channel Plan

11. GTE observes that the channels listed in the Report and Order correspond to the carrier frequencies of its experimental system, which utilizes asymmetrical modulation of -1.5 kHz, +4.5 kHz, and not to the center frequencies of its system's channel plan. GTE also notes that there is an

overlap of 200 Hertz between communications channel C-1 and control channe P-4. It states that new systems based on the channel plan in the rules would overlap with its experimental system and result in mutual interference. Therefore, GTE requests that the center frequencies listed in the Report and Order be increased by 1.5 kHz to be consistent with the channels of its experimental system.

12. Subsequent to its petition, GTE submitted a new channel plan that would permit its transition and also accommodate the immediate entry of new air-ground licensees. [FN17] This channel plan would keep the communications channel center frequencies consistent with its experimental system but would move the control channels from the lower end to the upper end of each of the ten channel blocks. Thus, it would make control channels immediately available for all six licensees. This would allow new licensees to initiate service without waiting for GTE to complete its control channel bandwidth conversion. During the transition period, however, GTE would continue to operate its experimental system on the wideband (14 kHz) control channel at the lower end of each channel block while it concurrently brings its new narrowband control channel equipment into service. GTE's new equipment would use one of the new control channels at the upper end of each channel block. This plan would provide 29 communications channels per block.

13. GTE's plan would require recovery of two control channels, e.g., two license cancellations, to obtain one additional communications channel. In-Flight, in an ex parte presentation, requests minor modifications to GTE's proposed channel plan that would allow the creation of an additional communications channel if only one provider cancels its license. [FN18] In-Flight's proposal would alter the guardband scheme in GTE's plan.

14. Clairtel, also in an ex parte presentation, proposed an alternative channel plan to those of GTE and In-Flight. [FN19] It proposes moving the center frequencies of the communications channels and using 3 kHz bandwidth control channels. It states this will provide one more communications channel in each channel block, for a total of 30 communications channels per channel block. Clairtel argues that an additional advantage of its plan is that all the center frequencies fall on a multiple of 1 kHz, thus making equipment design simpler. However, GTE notes that this channel plan is incompatible with its experimental system. To avoid interference during GTE's transition, Clairtel proposes that the communications channels be divided between GTE's existing experimental operations and those of the new licensees. GTE opposes this option, stating that even with a 50 percent spectrum split, 44 percent of its stations would experience blockages during peak hours.

15. The channel plan adopted in the Report and Order was intended to be consistent with GTE's experimental system. The 1.5 kHz difference between the center frequencies of the channel plan adopted in the Report and Order and GTE's experimental system and the 200 Hertz overlap resulted from misinterpretations of GTE's experimental system channel plan. We continue to believe that it is in the public interest to accommodate GTE's experimental system in the new channel plan to allow for a smooth transition. Therefore, we will increase the center frequency of each communications channel by 1.5 kHz to ensure that all systems will be frequency compatible. We find that modifying the channel plan as suggested by GTE and In-Flight will better accommodate the needs of both GTE and the new licensees. These changes will accommodate GTE's

transition from its experimental system to its regular system and will allow the new licensees to initiate service as soon as they are ready. Further, it has the potential to provide an additional communications channel in each channel block if one licensee returns its license to the Commission or if only five licensees construct their systems. We are not adopting Clairtel's proposed plan, because it is inconsistent with the communications channels used in GTE's experimental system.

16. To implement the new channel plan, we will shift the current location of the control channels to the upper end of each channel block. To accomplish this, we are reassigning communications channels C-28 through C-31 from each block for control channels. This will supply spectrum for six control channels and guardbands to compensate for oscillator instability and intercell Doppler shift. This plan will limit the number of communications channels to 26 (new C-4 through C-29) during the GTE transition. After this transition, three more communications channels (new C-1, C-2 and C-3) will be created from the 20kHz now used by GTE for the control channel and guardbands in its experimental system. The new channel plan is set forth in revised Section 22.1107 of the Rules.

Transition Provisions

17. In its petition, GTE states that the 12 months granted for its transition period is unrealistically short. It argues that redesigning, procuring, testing, and refitting all of its ground stations and approximately 1,400 aircraft with new air-ground equipment capable of utilizing a narrower control channel involves nearly 6.000 transceivers and will take considerably longer than 12 months. Further, in an ex parte presentation, GTE states that it plans to replace its experimental system with a second generation digital system and that this will require five to six years to implement. [FN20] It claims the time for this transition is driven by two factors: 1) the development and manufacturing lead time for new digital equipment, which will be approximately two years; and 2) the scheduling of aircraft for retrofitting, which will require considerable coordination with the airlines. [FN21]

18. GTE proposes two alternative plans for the transition from its experimental system to a regular system that conforms with the rules. GTE's preferred approach is a single step transition in which it would replace its existing equipment with new digital equipment. This new equipment would use 3.2 kHz bandwidth control channels located at the top of each channel block. GTE states that this option would allow it to continue operating its current system without further modifications during the transition. However, recognizing that until the entire transition is complete this plan would occupy the lower 20 kHz of each channel block to accommodate the control channel of its experimental system, GTE also proposed an alternative plan that would provide for a dual-track transition. Under this option, GTE would reduce the experimental system's control channel bandwidth to 3.2 kHz at the current control channel location at the lower end of each channel block. Concurrently, GTE would begin replacing its experimental equipment with new equipment that would use one of the new control channels located in the upper portion of each channel block. GTE states that in approximately 22 months all experimental equipment would be modified for 3.2 kHz bandwidth operation in the lower portion of each channel block.

This would free two communications channels from the existing control channel. GTE would continue to use one of the new communications channels to accommodate its experimental control channel at the lower part of each channel block until all of its equipment was replaced by new equipment. GTE notes this alternate plan involves two aircraft retrofits, is more complicated and costly, and still requires the same time for transition, but will make available two additional communications channels after 22 months. These two communications channels would not be available for five to six years under the first alternative. At a joint technical meeting, the other licensees expressed concern regarding the GTE request that it be allowed five to six years for its transition, noting that they are required to build at least 25 ground stations within three years. [FN22]

19. GTE's transition from its experimental system to a system that conforms with the rules is a considerable undertaking. We recognize that in order to maintain service to existing customers, GTE will be required to operate two systems simultaneously: its experimental system using two control channels in the lower portion of each channel block, and its new system using a control channel in the upper portion of each channel block. We are persuaded that the large quantity of equipment requiring modification and/or retrofit, coupled with GTE's implementation of new equipment, will require a longer transition period than the 12 months granted in the Report and Order. Further, we are concerned that if GTE is required to cease operation because the transition period is too short, the public, including customers of providers using resale of GTE's service, would temporarily lose air-ground radiotelephone service. However, we are also concerned about the effect of the reduction in available communications channels while GTE is making its transition. In this regard, we note that In-Flight stated in its license application that it will be ready to begin testing by March 31, 1991, and that it will have an operating system by June, 1991. [FN23] On this basis, we will adopt GTE's alternative plan and grant it 22 months, from the effective date of this Memorandum Opinion and Order, to modify its current equipment for narrow control channel operation (3.2 kHz bandwidth) in the lower portion of each channel block and 60 months, from the effective date of this Memorandum Opinion and Order, to bring its operations into full compliance with the rules. While this approach will be somewhat more costly to GTE, we believe that these costs are outweighed by the need to make communications channels available as quickly as possible. Accordingly, we are adding a new Section 22.1121 to the rules to specify the transition provisions for the GTE system.

20. GTE also questions whether or not it is permitted to continue using the Part 15 cordless telephones of the experimental system during the transition period. These cordless telephones operate on frequencies of 1.59/1.80 MHz and 49.22/49.56 MHz. In its recent rewrite, the Commission allowed operation of Part 15 devices at these frequencies. [FN24] Therefore, cordless telephones that comply with the appropriate Part 15 standards and are approved under the Commission's equipment authorization requirements may be used. [FN25]

Additional Federal Preemption

21. GTE requests that the Commission extend its preemption of state regulation of air-ground communications to include all aircraft that fly

interstate routes. The effect of this request would be to extend the preemption of state regulation to intrastate calls on intrastate airline routes if the aircraft involved is also used on interstate airline routes. For those aircraft, GTE states that there is no practical way to determine whether a call is interstate or intrastate. GTE contends that call classification by flight number would not be reliable because flight route information constantly changes. It submits that to keep track of these changes would require the creation and maintenance of a large and unwieldy computer data base. GTE acknowledges that calls on the experimental system are classified by the unique aircraft registration number. However, it states that aircraft identification alone does not always indicate whether a call is interstate or intrastate because aircraft get reassigned from their normal routes. Consequently, GTE recommends that the Commission preempt state regulation of air-ground communications from all aircraft except: those owned by a carrier that flies only within a state, or those aircraft, as identified by the airline(s), that always travel routes within a single state.

22. We understand the difficulties involved in determining whether the air-ground communications are intrastate or interstate. However, the states have not expressed any inclination to regulate air-ground communications, and therefore we do not believe it necessary to extend our preemption policy at this time. We will not act with regard to additional preemption of state regulation unless and until a specific situation arises that requires our consideration.

Control Channel Bandwidth

23. GTE argues that the 3.2 kHz bandwidth provided for control channels is insufficient for anticipated future signaling needs. According to GTE, future signaling needs will require a control channel bandwidth of 6 kHz to include aircraft identification, network control, handoff, maintenance, and billing information. GTE submits that these signaling messages will occupy 50 bytes per packet and that the data rate necessary to transmit this packet will be 3.5 kilobits per second. GTE states this data rate would nominally require a bandwidth of 4.7 kHz; however, with additional compensation for Doppler shift and oscillator instability, the total bandwidth necessary for signaling will be 6 kHz.

24. Both McCaw and In-Flight oppose GTE's request to increase the control channel bandwidth. In-Flight argues that signaling messages related to individual call set-up and tear-down should be transmitted on the particular communications channel involved, and that the control channels should be used only for system signaling messages. It states that doing so reduces the required bandwidth for the control channels. McCaw maintains that GTE's request to reserve more spectrum for possible future signaling needs is premature, and may be unnecessary because much less continuous data transfer is currently required and the demands of future signaling operations are uncertain.

25. We continue to believe that the 3.2 kHz control channel bandwidth adopted in the Report and Order is sufficient for the signaling needs of the air-ground service. As indicated by the commenting parties, additional signal messages and information necessary for call set up, billing information, etc., can also be sent over communications channels. Further, we are concerned that expanding the

control channels to 6 kHz would mean the loss of 3 communications channels, which would reduce overall capacity for service to the general public. We also agree with McCaw that it would be premature to provide spectrum now for as yet undetermined future increases in control channel data transmission rates. As pointed out by McCaw, the need for this capacity might never develop. We believe the appropriate time to consider expanding the control channel bandwidth is if and when there is the need for such capacity. Accordingly, we are denying GTE's request to expand the control channel bandwidth to 6 kHz.

Ground Station Locations

26. GTE states that the Commission's listing of GTE's ground stations in Section 22.1109 of the Rules is incomplete and contains incorrect coordinates for a number of ground station locations. It also asserts that several existing ground station locations are missing from the Commission's list. McCaw asks that GTE not be allowed to add new stations without going through the coordination process adopted in the Report and Order.

27. The listing of GTE's ground stations in the Report and Order was based upon the information available to the Commission at the time that decision was adopted. Since then, we have verified that 16 locations authorized prior to June 15, 1990, were omitted. Therefore, we are modifying the rules to include these missing locations. We also have corrected coordinates.

Coordination of Available Channels

28. The rules adopted in the Report and Order to govern the procedures for selection and use of the communications channels are intended to allow competing air-ground systems employing entirely different technologies to coexist in the same band. Section 22.1115 of the Rules requires radio frequency (rf) signal monitoring to ensure that ground stations will not transmit on a communications channel that is already in use. [FN26] GTE requests that the Commission amend this rule to require that all air-ground licensees establish land-links among the ground stations in each location for the purpose of coordinating available channel information. According to GTE, independent rf signal monitoring, as required in the Report and Order, would be an unreliable method of determining which channels are available at a given location. It states, for example, that aircraft ground transmissions could be blocked by buildings in the vicinity of airport terminals. Further, GTE is concerned that the received signal level standard in Section 22.1115(a) for determining channel availability through monitoring could preclude use of future equipment that could detect a lower signal level. GTE also requests clarification as to whether the rules require continuous monitoring or if they permit scanning in regard to the detection of hang-up signals. Further, GTE is concerned that the use of a 15 second delay interval to determine channel availability as an alternative to hang-up signal detection would result in a loss of capacity. [FN27]

29. Neither Clairtel nor In-Flight believes that it is necessary for the licensees to share available channel information in order to determine when channels are available. According to these two parties, the requirement that new air-ground providers' ground stations be located within one mile of GTE's

existing ground stations and the fact that structures in the vicinity of airports are relatively low in height render it unlikely that 895 MHz air-ground signals will degrade to the levels envisioned by GTE. A better solution, according to In-Flight, is for the air-ground licensees to monitor the transmissions from each other's base stations to determine whether a channel is in use.

30. Monitoring the rf signals, particularly of ground stations, is a reliable means for determining channel availability. Structures around airport terminals will not attenuate a 100 watt effective radiated power signal so severely that the signal cannot be detected by a receiver or scanner specifically designed to monitor it that is located within two miles. Further, a Commission requirement for land-link coordination would be excessively burdensome and expensive for all of the licensees. Accordingly, we reject GTE's request for a land-link requirement.

31. We recognize GTE's concerns with regard to the potential for the signal threshold standard to affect the introduction of more sensitive equipment in the air-ground service. Nonetheless, we believe a threshold standard is necessary to assist the licensees in determining whether a channel is occupied. We continue to believe that the -115 dBm signal threshold is appropriate for determining the presence of a signal. This signal level is near the threshold of sensitivity (the weakest signal that can be detected) in typical receivers currently available for operation in the 850-900 MHz range. If and when the state of the art in air-ground receiver technology advances to the point where the consensus of the air-ground licensees is that this level is too high, we would entertain a proposal, supported by technical justification, that the -115 dBm guideline be reduced or modified as appropriate.

32. In response to GTE's concern with the requirements for detection of a hang-up signal, we note that the rule does not require a specific monitoring procedure for detecting the hang-up signal. The hang-up signal or the 15 second delay merely establishes the conditions that define when a ground station terminates a call and relinquishes the channel. [FN28] The licensees have the flexibility to design their systems as they wish to determine if either of these conditions have occurred. This could include continuous monitoring or scanning, in accordance with the operating designs of individual systems. Further, the Commission anticipated that licensees might wish to employ an alternative common hang-up signal that can be recognized by all licensees. The existing rule permits the use of such a signal. Another alternative approach would be for a system to be designed to recognize the hang-up signals of all the other systems operating. Thus, the rules permit use of a variety of approaches to avoid the need to wait 15 seconds to determine if a channel is available.

Communication with Aircraft on the Ground

33. Section 22.1109(a) of the Rules permits any of the ten channel blocks to be used for low power communication with aircraft on the ground, provided that the ground station meets certain technical requirements designed to limit skyward radiation. [FN29] GTE argues that these technical requirements might not be effective in preventing interference to airborne mobile stations due to reflections from nearby structures and the ground. Further, GTE states that

the "dramatic" attenuation pattern specified in Section 22.1109(a) would be difficult to design. [FN30] GTE argues that radiotelephone service to aircraft on the ground should be provided only in accordance with a specific allotment plan that is coordinated with the initial channel block layout. GTE states that it plans to develop a second generation ground station plan with a different reuse pattern, and states that this plan will specifically provide for communication with aircraft on the ground. Therefore, GTE asks that Section 22.1109(a) and the last sentence of Section 22.1117 of the Rules, which limits to 5 watts the ERP of ground transmitters in communication with mobile stations on the ground, be deleted from the rules and reuse of channel blocks for ground communication not be authorized until its second generation ground plan is implemented.

34. In-Flight opposes GTE's request. It proposes an alternative plan that would protect airborne mobile stations by a worst case desired-to-undesired signal ratio of at least 30 dB at the receiver of an airborne mobile station. Additionally, ground stations providing service to aircraft on the ground would be required to be at least 150 miles from other ground stations using the same channel blocks to communicate with airborne mobile stations.

35. We continue to believe it important to allow air-ground licensees to have immediate access to channel blocks not allotted in the same geographic area to provide additional radiotelephone service to aircraft on the ground. At airports there usually are numerous aircraft on the ground waiting for clearance to take off. Persons aboard these aircraft can receive additional service from a low power ground station on channels otherwise unused. [FN31] However, considering GTE's argument on the difficulty of realizing the technical radiation requirements, we are concerned that the antenna pattern specified in the Report and Order might not be sufficient for channel reuse due to signal reflections from buildings and the ground. Further, we find In-Flight's proposal infeasible because it is based on a received signal level at the airborne mobile station. The locations of aircraft are highly variable and therefore it is not practicable to design a system that could control the level of signal received at an aircraft in flight. Nevertheless, we do believe that through a combination of techniques, including geographical separation, low power operation, and the use of directional antennas, ground to ground systems can be designed to re-use the non-allotted channel blocks in such a way that they will not interfere with airborne stations. Therefore, we are modifying Section 22.1109(a) by removing the existing antenna pattern requirement and replacing it with an alternative plan based on separation distances from the ground plan allotments. Under the new rules, ground stations providing service to aircraft on the ground must be located at least 300 miles from other ground stations using the same channel blocks to communicate with airborne mobile stations. Additionally, such ground stations must limit the transmitter output power to 1 watt ERP. If, nevertheless, the ground stations interfere with airborne mobile stations, the ground station licensee(s) will be required to take appropriate action to resolve that interference. These requirements are sufficient to insure that interference is not caused to airborne mobile stations. Further, allowing for immediate service to aircraft on the ground will in no way prevent licensees from jointly developing a new ground plan.

Equipment Specifications and Design Requirements

36. GTE believes that some of the current technical standards are inadequate and could result in interference among air-ground licensees. To improve these standards, GTE requests that the Commission: 1) specify the adjacent channel emission mask in terms of mean power instead of peak envelope power (PEP), modify the rules to increase adjacent channel by emission suppression [FN32] by an additional 5 dB, and require automatic power control [FN33] 2) specify power limits in terms of equivalent isotropically radiated power (EIRP) instead of effective radiated power (ERP); 3) adopt amobile carrier-off standard, similar to that applicable to cellular mobile telephones under OET Bulletin 53 [FN34]; and 4) require that transmitting systems be designed to contain internal safeguards against accidental interference (e.g., automatic shut-down circuits).

37. First, with respect to using mean power versus PEP, the purpose of this requirement is to establish limits on the adjacent channel emissions. We originally specified PEP because it is convenient for measurement of reduced or suppressed carrier amplitude modulated emissions, for which the envelope varies with the modulating signal, as well as for measurement of those with a constant envelope. [FN35] Mean power, while equally suited to measurement of emissions with a constant envelope, is less suitable for measuring signals with varying envelopes. Thus there are advantages and disadvantages to both types of power measurements, depending on the modulation used. However, we will continue to use an emission mask specified in PEP because we do not want to disadvantage licensees who wish to use suppressed carrier emissions and, indeed, some licensees proposed in their applications to use such emissions.

38. With respect to the emission mask, Section 22.1111 of the Rules limits adjacent channel emissions to levels relative to the peak envelope power. GTE requests that an additional 5 dB of adjacent channel suppression be required to reduce the potential for interference. However, at the meeting on March 25, 1991, Clairtel suggested that the Commission adopt a different type of emission limitation on adjacent channels. Instead of an emission mask, which limits adjacent channel power relative to the peak emission power, it proposed that the Commission set maximum power limits [FN36] on adjacent channel emissions as received at the ground stations. Clairtel argued that this type of specification will allow air-ground system designers more flexibility in establishing different nominal power levels for occupied channels while still preventing interference from adjacent channel emissions. Although there was substantial concurrence with Clairtel's proposal at the meeting, no agreement was reached on the specific power levels.

39. In subsequent ex parte presentations, both Clairtel and In-Flight suggested that for the air-ground link the maximum power level should be -130 dBm on the first adjacent channel and -148 dBm on all other channels. They also suggested that for the ground-air link, the transmitter output power should be +2 dBm on the first adjacent channel and -16 dBm on all other channels. [FN37] GTE argues that the Clairtel and In-Flight proposals are unnecessarily restrictive, citing In-Flight's own estimate that only a 20 dB signal to interference ratio is required for adjacent channel suppression. Additionally, GTE claims that their proposed standard would unnecessarily constrain the amplifier and antenna choices available to air-ground providers and suggests the use of different maximum power levels into a distant receiver to promote design flexibility. [FN38] GTE recommends the following standards: for the air-

ground links greater than or equal to 0.5 mile, the maximum permissible power level on the first adjacent channel should be -130 dBm, for the second adjacent channel this level should be -145 dBm, and for the third and higher adjacent channels, -150 dBm. For the ground-air links, maximum permissible transmitter output power levels on the first adjacent channel should be + 10 dBm, and -5dBm for all other channels.

40. The proposals suggested by the commenting parties have merit. Therefore we will adopt a standard based on maximum power limits. We are adopting In-Flight's proposal as we believe it is simpler and provides adequate protection. However, measuring adjacent channel emissions at the -148 dBm level makes equipment authorization and testing extremely difficult. Therefore, in addition to adopting maximum power limits on adjacent channels as proposed by In-Flight, we are also retaining and amending the emission mask for the purpose of equipment authorization. There is no need to increase the first adjacent channel suppression level in the mask, as was proposed by GTE, because it is consistent with the maximum power limits we are adopting. However, to better match the maximum adjacent channel power level for the other adjacent channels we are modifying the emission mask from -60dB to -50dB. Further, for the ground-air link, we will adopt GTE's proposal of + 10 dBm on the first adjacent channel and -5 dBm on all other channels. Also, to protect services in the adjacent frequency bands, we are requiring that the ground-air signal levels outside the air-ground frequency bands not exceed -10 dBm.

41. GTE also believes that the Commission should require the use of automatic power control to further reduce adjacent channel interference. It proposes that aircraft be required to reduce output power level amaximum of 30 dB as they approach a ground station. In-Flight, however, argues that 30 dB is inadequate and states that 50 dB of control range is necessary for "robust" operation. [FN39] At the meeting, the other licensees generally supported the use of automatic power control, but failed to reach consensus on the optimum range of power control necessary. We do not believe it necessary to adopt specific automatic power control rules because to comply with the adjacent channel absolute power levels addressed in paragraph 40, supra, licensees will be required to employ automatic power control in their systems. We believe such an approach will allow licensees greater design flexibility.

42. Second, with regard to GTE's request that the Commission specify power limits in EIRP instead of ERP, we note that in Part 22 of the Rules gain is usually specified in reference to a half-wave dipole antenna rather than an isotropic radiator. Consequently, effective power limits are customarily expressed in terms of ERP rather than EIRP. [FN40] To maintain consistency in Part 22, we will deny GTE's request and leave the power specifications in terms of ERP.

43. Third, GTE is concerned that high levels of residual power may be mistaken for active channels, and therefore requests that the Commission adopt a carrier-off specification that would limit carrier residual power. It suggests that the carrier-off definition reflect the air-ground channel bandwidth and be modified to read as follows: "carrier power output at the transmitting antenna connector not exceeding -60 dBm measured in the 6 kHz channel bandwidth." [FN41] We do not believe that such a specification is necessary for the air-ground radiotelephone service because the adjacent channel suppression as discussed in paragraph 40, supra, willmake it

unnecessary.

44. Finally, with regard to GTE's recommendation that the Commission require that transmitters contain automatic shut-down circuits, we do not see a potential for extensive interference due to transmitter failure and, therefore, the need to adopt such rules. Further, we are concerned that any technical requirement we impose on the air-ground licensees may impede innovation and system design. Nevertheless, we encourage licensees to employ any technique that they view as necessary for the efficient operation of air-ground radiotelephone service. Accordingly, we will not adopt rules requiring that transmitters contain automatic shut-down circuits.

Establishment of Technical Advisory Committee

45. McCaw and GTE submit that there is need for an expedited process to implement technical upgrades and to resolve disputes in a timely manner. GTE proposes the formation of a technical advisory committee chaired by the Commission and composed of all the air-ground licensees. GTE argues that this would allow issues to be resolved in an informal atmosphere and that the committee could submit its recommendations for rule changes to the Commission. It states that if this committee were unable to reach a consensus on some particular issue, then a more formal approach could be used. McCaw suggests that the Commission adopt rules that would shorten the normal two-step-notice-decision rule making procedure to a one-step procedure for changes to the air-ground rules. It suggests that prior coordinated change requests be automatically put on public notice as proposed changes. Further, it suggests that waivers of the air-ground rules be granted upon an appropriate showing that would include any necessary coordination among air-ground providers.

46. We do not believe that it is necessary to institute an informal FCC technical advisory committee for the air-ground service. We believe the rules adopted in this proceeding provide an adequate framework and level of government intervention for the growth and development of the air-ground service. However, we do encourage the licensees to discuss technical improvements before bringing such proposals to the Commission.

47. With regard to McCaw's request to modify our rule making procedures, we note that the Commission's rule making process already allows for both proposals issued on the Commission's own motion and the granting of waivers to our rules. Therefore, no action is necessary in this regard. However, to ensure that all interested parties are provided adequate opportunity to participate in our rule making proceedings, we will continue to consider each proposed rule change on its own merits. Therefore, we will decide only after receiving a proposed rule change request whether to issue a Notice of Proposed Rule Making on our own motion or to release the request for public comment first. Further, licensees and other parties are advised that we will consider waivers of the air-ground service rules on a case by case basis.

48. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by McCaw Cellular Communications, Inc. and GTE Airfone Incorporated ARE GRANTED to the extent indicated herein. IT IS FURTHER ORDERED that under the authority contained in 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), and 303(r), Part 22 of the Commission's Rules ARE AMENDED as specified in the Appendix below, effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna Searcy
Secretary

FN1 Report and Order in GEN Docket No. 88-96, 5 FCCRcd 3861 (1990).

FN2 Subsequent to filing its petition, McCaw formed a limited partnership with Hughes Network Systems, Inc. to form a new company, Clairtel Communications Group, L.P. (Clairtel) to provide air-ground service.

FN3 See Petitions for Reconsideration, GEN Docket No. 88-96, filed by McCaw and GTE on July 26, 1990.

FN4 In the Report and Order, the Commission established a deadline of October 15, 1990, for the filing of applications for a nationwide license in the 800 MHz Air-Ground Radiotelephone Service. The Commission subsequently extended the deadline to October 22, 1990. Six applications were timely filed. Licenses were granted to American Skycell Corporation (Skycell), Clairtel, In-Flight Phone Corporation (In-Flight), JET-TEL Group, L.P., and Mobile Telecommunications Technologies Corporation. A license that is subject to the conditions specified in paragraph 8, infra, will be granted to GTE subsequent to this Memorandum Opinion and Order.

FN5 See Report and Order, supra, at paragraph 36.

FN6 GTE's cordless/bulkhead telephones require passengers to leave their seats to initiate telephone calls. According to GTE, the demand for that service is reduced when seatback telephones are available.

FN7 In August 1990, only 118 aircraft had seatback telephones installed. However, by February 1991, ex parte communications with GTE indicated that the figure had jumped to 316 aircraft with seatback telephones.

FN8 In a recent ex parte presentation, Clairtel proposed an "open season" that would permit air carriers to unilaterally terminate contracts with all airground service providers until June 30, 1992. See Clairtel ex parte presentation, May 29, 1991. GTE responded that for a six month "open season" it would voluntarily permit air carriers to amend contracts signed before the Commission's June 15, 1990, Report and Order on an aircraft-by-aircraft basis to provide for a change in service provider. See GTE ex parte presentation, June 7, 1991.

FN9 Part 5 of the Commission's rules does not confer any right to conduct an activity of a continuing nature. To the extent that GTE bound itself to provide service beyond the term of the experimental license it did so at its own peril. Furthermore, a Part 5 experimental license may be cancelled at any time without hearing if, in the judgment of the Commission, such action should be necessary. See Airfone, Inc., 60 RR2d 1489 (1986).

FN10 GTE's offer to sell to an airline installed equipment in exchange for an early termination of a contract is insufficient to rectify competitive problems caused by these service contracts. There is no reason to believe that the airlines or competing air-ground service providers would be willing to purchase this equipment that even GTE admits is obsolete and not state of the art. Nevertheless, we do not consider it overly burdensome for the airline or the new service providers to bear the cost of removing the GTE equipment. See discussion, this paragraph, supra.

FN11 GTE states that it has installed equipment on 650 aircraft since June 15, 1990. See GTE ex parte presentation, June 7, 1991, at page 2.

FN12 The Commission granted the first air-ground licenses to four new service providers on December 24, 1990. Accordingly, this is the first date that the airlines were able to identify the specific service providers that would compete with GTE.

FN13 On December 5, 1990, in response to an application filed by GTE for a regular license, Skycell filed a Petition for Conditional Grant requesting relief with respect to the contracts GTE secured under its experimental license. Section 303(r) of the Communications Act of 1934 authorizes the Commission to apply such conditions to the grant of a license as may be necessary to further the public interest, convenience, or necessity, 47 U.S.C., Section 303(r).

FN14 We recognize that additional cost to GTE may result from this decision because a carrier may elect to remove equipment from its aircraft before the equipment has been fully depreciated by GTE. Nevertheless, the importance of ensuring a competitive air-ground market is paramount and outweighs these additional costs. The potential financial burden on GTE is, however, somewhat eased by our requirement that the airline or any new service provider(s) selected by an airline absorb the costs of removing and returning to GTE equipment from affected aircraft.

FN15 See Report and Order in CC Docket No. 79-318, 86 FCC2d 469 (1981), modified, 89 FCC2d 58 (1982), further modified, 90 FCC2d 571 (1982), appeal dismissed sub nom. U.S. v. FCC, No. 82-1526 (D.C.Cir.1983). See also Notice of Proposed Rule Making and Order in CC Docket No. 91-33, 6 FCCRcd 1719 (1991).

FN16 Report and Order, 86 FCC2d 469 at 511; see also 6 FCCRcd 1719, 1724 at para. 44.

FN17 See GTE ex parte presentation made November 9, 1990. The transition process set forth in the Report and Order requires GTE to complete a conversion to 3.2 kHz bandwidth control channels. The new providers cannot initiate service on their systems until this conversion is completed.

FN18 See In-Flight ex parte presentation, December 18, 1990.

FN19 See Clairtel ex parte presentation, March 8, 1991.

FN20 See GTE ex parte presentation, February 6, 1991.

FN21 GTE indicates that additional delays may occur if FAA recertification is required.

FN22 At the request of the Commission's staff, a meeting was held on March 25, 1991, to address several technical issues. This meeting was attended by representatives from all six air-ground licensees.

FN23 Clairtel and Skycell indicated that they will be ready within one and two years, respectively.

FN24 See, First Report and Order in GEN Docket No. 87-389, 4 FCCRcd 3493 (1989) and 47 CFR 15.209.

FN25 We will permit GTE six months from the effective date of this decision to obtain the necessary approval of this equipment or to replace the equipment with that which has been approved.

FN26 A communications channel is not available for use by a ground station if the received signal power on that channel at the ground station exceeds -115 dBm, assuming a 0 dB gain 895 MHz receive antenna. Ground stations other than the one from which service has been requested must consider the communications channel to be unavailable until either a hang-up signal is transmitted by the airborne mobile station, or the received signal power on that channel drops below -115 dBm for a period of at least 15 seconds. See Sections 22.1115(a) and 22.1115(d) of the Rules.

FN27 See GTE Reply Comments at Appendix B, page 15.

FN28 The licensee providing service will continuously monitor the airborne mobile station to detect the hang-up signal. It will terminate the call if either: 1) the hang-up signal is received, or 2) the radio signal from the airborne mobile station is lost for more than 15 continuous seconds.

FN29 Section 22.1109(a) of the Rules requires that the vertical antenna pattern show the following attenuation in all azimuths: 47 decibels above the 1 degree elevation and 67 decibels above 2 degrees elevation.

FN30 See GTE ex parte presentation, October 9, 1990.

FN31 Upon take off, any calls in progress could be handed off to channels allotted for airborne communications.

FN32 Section 22.1111 of the Rules specifies that the power of any emission on any frequency removed from the center of the authorized bandwidth by more than 3 kHz must be at least 30 dB below the PEP of the main emission and that emissions on any frequency removed from the center of the authorized bandwidth by more than 9 kHz must be at least 60 dB below the PEP of the main emission.

FN33 Automatic power control causes the airborne mobile station transmitting power to vary as needed to compensate for the distance between the aircraft and the ground station, and for other factors.

FN34 OET Bulletin 53 defines cellular mobile telephone carrier-off status as "a power output at the transmitting antenna connector not exceeding -60 dBm."

FN35 GTE's experimental system uses a reduced carrier amplitude modulated emission. Several of the licensees indicate that their systems will employ a multilevel phase shift keying (digital) type of emission.

FN36 For calculation purposes, a 0 dBi reference antenna is used.

FN37 See ex parte presentations, both filed on April 15, 1991, by Clairtel and In-Flight.

FN38 See GTE exparte presentation, April 22, 1991.

FN39 See In-Flight Comments, page 7.

FN40 There is a direct conversion between ERP and EIRP and, therefore, one may be easily converted to the other.

FN41 See Comments of GTE at Appendix B, p. 16.

SEPARATE STATEMENT OF COMMISSIONER ANDREW C. BARRETT

Re: Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands.

I supported the prior Report and Order that established the air-ground radiotelephone service in the 800 MHz band. [FN42] I believe our open entry licensing policy will promote competition and facilitate the development of new air-ground service providers. In the long run, I believe the public will benefit from competition among various providers of air-ground communications services. [FN43]

I also have decided to support this Memorandum Opinion and Order. This Order corrects certain technical specifications, revises the channelization plan to promote competitive entry, provides a reasonable transition period for GTE, and addresses matters that impact upon a licensee's initial ability to compete in this new service. I write separately to highlight my concern about the technical issues involved with the air-ground service. The Commission should continue to be sensitive to the need for further technical adjustments in the air-ground service where our licensees experience interference problems. While I agree with the decision not to form a technical advisory committee for air-ground service at this time, I am concerned that the Commission's formal rulemaking processes could unnecessarily delay further technical adjustments;

particularly where technical interference problems are caused by competing air-ground licensees. Our framework for communications channel sharing and ground station frequency reuse requires a significant degree of mutual cooperation among licensees. Resolving any technical problems, particularly those which cause interference, will be more time-consuming if licensees approach such issues in a contentious manner. Our Order encourages licensees to discuss technical improvements with each other before bringing such proposals to the Commission; and I am hopeful that this occurs. However, if this does not occur, I remain open to considering the formation of an FCC technical advisory committee that could spur cooperation among licensees to resolve technical matters in the air-ground service.

FN42 Report and Order, GEN Docket No. 88-96, released June 15, 1990, 5 FCCRcd 3861 (1990).

FN43 I note that the Commission has granted licenses to 5 air-ground service applicants. A license will be granted to GTE subsequent to this Memorandum Opinion and Order. I am encouraged by the prospects for competitive air-ground services among these licensees.

APPENDIX

Part 22 of Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 22--PUBLIC MOBILE SERVICE:

1. The authority citation in Part 22 continues to read as follows: AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. Section 22.1107 is amended by revising the headnote, the text of paragraphs (a)(1), (a)(2), (a)(2)(ii), and (b), and by removing paragraph (a)(iii), to read as follows:

Section 22.1107 Channel plan.

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(a) ***

(1) Each channel block is subdivided into 6 control channels labeled P-1 through P-6, and 29 communications channels labeled C-1 through C-29.

(2) The authorized channel bandwidths are as follows:

(i) Each control channel has a bandwidth of 3.2 kHz.

(ii) Each communications channel has a bandwidth of 6 kHz.

(b) The center frequencies of the communications and control channels are listed in the following table. Guardbands are labeled "GB".

GROUND TO AIR CHANNELS
(Center frequency in MHz)
CHANNEL BLOCK

CHANNEL NUMBER	10	9	8	7	6	5	4	3	2	1

C-1	849.0055	849-.-2-0-55	849.-40-55	849.-60-55	849.-80-55	850.-00-55	850-.2-055	850.-40-55	850.-60-55	850-.-8-0-55
C-2	849.0115	849-.-2-1-15	849.-41-15	849.-61-15	849.-81-15	850.-01-15	850.-21-15	850.-41-15	850.-61-15	850-.-8-1-15
C-3	849.0175	849-.-2-1-75	849.-41-75	849.-61-75	849.-81-75	850.-01-75	850.-21-75	850.-41-75	850.-61-75	850-.-8-1-75
C-4	849.0235	849-.-2-2-35	849.-42-35	849.-62-35	849.-82-35	850.-02-35	850.-22-35	850.-42-35	850.-62-35	850-.-8-2-35
C-5	849.0295	849-.-2-2-95	849.-42-95	849.-62-95	849.-82-95	850.-02-95	850.-22-95	850.-42-95	850.-62-95	850-.-8-2-95
C-6	849.0355	849-.-2-3-55	849.-43-55	849.-63-55	849.-83-55	850.-03-55	850.-23-55	850.-43-55	850.-63-55	850-.-8-3-55
C-7	849.0415	849-.-2-4-15	849.-44-15	849.-64-15	849.-84-15	850.-04-15	850.-24-15	850.-44-15	850.-64-15	850-.-8-4-15
C-8	849.0475	849-.-2-4-75	849.-44-75	849.-64-75	849.-84-75	850.-04-75	850.-24-75	850.-44-75	850.-64-75	850-.-8-4-75
C-9	849.0535	849-.-2-5-35	849.-45-35	849.-65-35	849.-85-35	850.-05-35	850.-25-35	850.-45-35	850.-65-35	850-.-8-5-35
C-10	849.0595	849-.-2-5-95	849.-45-95	849.-65-95	849.-85-95	850.-05-95	850.-25-95	850.-45-95	850.-65-95	850-.-8-5-95

C-11	849.0655	849-.-2-6-55	849.-46-55	849.-66-55	849.-86-55	850.-06-55	850.-26-55	850.-46-55	850.-66-55	850-.-8-6-55
C-12	849.0715	849-.-2-7-15	849.-47-15	849.-67-15	849.-87-15	850.-07-15	850.-27-15	850.-47-15	850.-67-15	850-.-8-7-15
C-13	849.0775	849-.-2-7-75	849.-47-75	849.-67-75	849.-87-75	850.-07-75	850.-27-75	850.-47-75	850.-67-75	850-.-8-7-75
C-14	849.0835	849-.-2-8-35	849.-48-35	849.-68-35	849.-88-35	850.-08-35	850.-28-35	850.-48-35	850.-68-35	850-.-8-8-35
C-15	849.0895	849-.-2-8-95	849.-48-95	849.-68-95	849.-88-95	850.-08-95	850.-28-95	850.-48-95	850.-68-95	850-.-8-8-95
C-16	849.0955	849-.-2-9-55	849.-49-55	849.-69-55	849.-89-55	859.-09-55	850.-29-55	850.-49-55	850.-69-55	850-.-8-9-55
C-17	849.1015	849-.-3-0-15	849.-50-15	849.-70-15	849.-90-15	850.-10-15	850.-30-15	850.-50-15	850.-70-15	850-.-9-0-15
C-18	849.1075	849-.-3-0-75	849.-50-75	849.-70-75	849.-90-75	850.-10-75	850.-30-75	850.-50-75	850.-70-75	850-.-9-0-75
C-19	849.1135	849-.-3-1-35	849.-51-35	849.-71-35	849.-91-35	850.-11-35	850.-31-35	850.-51-35	850.-71-35	850-.-9-1-35
C-20	849.1195	849-.-3-1-95	849.-51-95	849.-71-95	849.-91-95	850.-11-95	850.-31-95	850.-51-95	850.-71-95	850-.-9-1-95

C-21	849.1255	849-.-3-2-55	849.-52-55	849.-72-55	849.-92-55	850.-12-55	850.-32-55	850.-52-55	850.-72-55	850-.-9-2-55
C-22	849.1315	849-.-3-3-15	849.-53-15	849.-73-15	849.-93-15	850.-13-15	850.-33-15	850.-53-15	850.-73-15	850-.-9-3-15
C-23	849.1375	849-.-3-3-75	849.-53-75	849.-73-75	849.-93-75	850.-13-75	850.-33-75	850.-53-75	850.-73-75	850-.-9-3-75
C-24	849.1435	849-.-3-4-35	849.-54-35	849.-74-35	849.-94-35	850.-14-35	850.-34-35	850.-54-35	850.-74-35	850-.-9-4-35
C-25	849.1495	849-.-3-4-95	849.-54-95	849.-74-95	849.-94-95	850.-14-95	850.-34-95	850.-54-95	850.-74-95	850-.-9-4-95
C-26	849.1555	849-.-3-5-55	849.-55-55	849.-75-55	849.-95-55	850.-15-55	850.-35-55	850.-55-55	850.-75-55	850-.-9-5-55
C-27	849.1615	849-.-3-6-15	849.-56-15	849.-76-15	849.-96-15	850.-16-15	850.-36-15	850.-56-15	850.-76-15	850-.-9-6-15
C-28	849.1675	849-.-3-6-75	849.-56-75	849.-76-75	849.-96-75	850.-16-75	850.-36-75	850.-56-75	850.-76-75	850-.-9-6-75
C-29	849.1735	849-.-3-7-35	849.-57-35	849.-77-35	849.-97-35	850.-17-35	850.-37-35	850.-57-35	850.-77-35	850-.-9-7-35
GB	849.1765-	849-.-3-7-65	849.-57-65-	849.-77-65-	849.-97-65-	850.-17-65-	850.-37-65-	850.-57-65-	850.-77-65-	850-.-9-7-6-

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	849.1797	849-.-3-7-97	849.-57-97	849.-77-97	849.-97-97	850.-17-97	850.-37-97	850.-57-97	850.-77-97	850-.-9-7-97
P-6	849.1813	849-.-3-8-13	849.-58-13	849.-78-13	849.-98-13	850.-18-13	850.-38-13	850.-58-13	850.-78-13	850-.-9-8-13
P-5	849.1845	849-.-3-8-45	849.-58-45	849.-78-45	849.-98-45	850.-18-45	850.-38-45	850.-58-45	850.-78-45	850-.-9-8-45
P-4	849.1877	849-.-3-8-77	849.-58-77	849.-78-77	849.-98-77	850.-18-77	850.-38-77	850.-58-77	850.-78-77	850-.-9-8-77
P-3	849.1909	849-.-3-9-09	849.-59-09	849.-79-09	849.-99-09	850.-19-09	850.-39-09	850.-59-09	850.-79-09	850-.-9-9-09
P-2	849.1941	849-.-3-9-41	849.-59-41	849.-79-41	849.-99-41	850.-19-41	850.-39-41	850.-59-41	850.-79-41	850-.-9-9-41
P-1	849.1973	849-.-3-9-73	849.-59-73	849.-79-73	849.-99-73	850.-19-73	850.-39-73	850.-59-73	850.-79-73	850-.-9-9-73

AIR TO GROUND CHANNELS
(Center frequency in MHz)
CHANNEL BLOCK

CHANNEL NUMBER	10	9	8	7	6	5	4	3	2	1
C-1	894.0055	894.-20-55	894.-40-55	894.-60-55	894.-80-55	895.-00-55	895.-20-55	895.-40-55	895-.-6-0-55	895-.-8-0-55
C-2	894.0115	894.-21-15	894.-41-15	894.-61-15	894.-81-15	895.-01-15	895.-21-15	895.-41-15	895-.-6-	895-.-8-

									1-15	1-15
C-3	894.0175	894.-21-75	894.-41-75	894.-61-75	894.-81-75	895.-01-75	895.-21-75	895.-41-75	895-.-6-1-75	895-.-8-1-75
C-4	894.0235	894.-22-35	894.-42-35	894.-62-35	894.-82-35	895.-02-35	895.-22-35	895.-42-35	895-.-6-2-35	895-.-8-2-35
C-5	894.0295	894.-22-95	894.-42-95	894.-62-95	894.-82-95	895.-02-95	895.-22-95	895.-42-95	895-.-6-2-95	895-.-8-2-95
C-6	894.0355	894.-23-55	894.-43-55	894.-63-55	894.-83-55	895.-03-55	895.-23-55	895.-43-55	895-.-6-3-55	895-.-8-3-55
C-7	894.0415	894.-24-15	894.-44-15	894.-64-15	894.-84-15	895.-04-15	895.-24-15	895.-44-15	895-.-6-4-15	895-.-8-4-15
C-8	894.0475	894.-24-75	894.-44-75	894.-64-75	894.-84-75	895.-04-75	895.-24-75	895.-44-75	895-.-6-4-75	895-.-8-4-75
C-9	894.0535	894.-25-35	894.-45-35	894.-65-35	894.-85-35	895.-05-35	895.-25-35	895.-45-35	895-.-6-5-35	895-.-8-5-35
C-10	894.0595	894.-25-95	894.-45-95	894.-65-95	894.-85-95	895.-05-95	895.-25-95	895.-45-95	895-.-6-5-95	895-.-8-5-95
C-11	894.0655	894.-26-55	894.-46-55	894.-66-55	894.-86-55	895.-06-55	895.-26-55	895.-46-55	895-.-6-6-55	895-.-8-6-55
C-12	894.0715	894.-27-15	894.-47-15	894.-67-15	894.-87-15	895.-07-15	895.-27-15	895.-47-15	895-.-6-	895-.-8-

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C-13	894.0775	894.- 27- 75	894.- 47- 75	894.- 67- 75	894.- 87- 75	895.- 07- 75	895.- 27- 75	895.- 47- 75	895- .- 6- 7- 75	895- .- 8- 7- 75
C-14	894.0835	894.- 28- 35	894.- 48- 35	894.- 68- 35	894.- 88- 35	895.- 08- 35	895.- 28- 35	895.- 48- 35	895- .- 6- 8- 35	895- .- 8- 8- 35
C-15	894.0895	894.- 28- 95	894.- 48- 95	894.- 68- 95	894.- 88- 95	895.- 08- 95	895.- 28- 95	895.- 48- 95	895- .- 6- 8- 95	895- .- 8- 8- 95
C-16	894.0955	894.- 29- 55	894.- 49- 55	894.- 69- 55	894.- 89- 55	895.- 09- 55	895.- 29- 55	895.- 49- 55	895- .- 6- 9- 55	895- .- 8- 9- 55
C-17	894.1015	894.- 30- 15	894.- 50- 15	894.- 70- 15	894.- 90- 15	895.- 10- 15	895.- 30- 15	895.- 50- 15	895- .- 7- 0- 15	895- .- 9- 0- 15
C-18	894.1075	894.- 30- 75	894.- 50- 75	894.- 70- 75	894.- 90- 75	895.- 10- 75	895.- 30- 75	895.- 50- 75	895- .- 7- 0- 75	895- .- 9- 0- 75
C-19	894.1135	894.- 31- 35	894.- 51- 35	894.- 71- 35	894.- 91- 35	895.- 11- 35	895.- 31- 35	895.- 51- 35	895- .- 7- 1- 35	895- .- 9- 1- 35
C-20	894.1195	894.- 31- 95	894.- 51- 95	894.- 71- 95	894.- 91- 95	895.- 11- 95	895.- 31- 95	895.- 51- 95	895- .- 7- 1- 95	895- .- 9- 1- 95
C-21	894.1255	894.- 32- 55	894.- 52- 55	894.- 72- 55	894.- 92- 55	895.- 12- 55	895.- 32- 55	895.- 52- 55	895- .- 7- 2- 55	895- .- 9- 2- 55
C-22	894.1315	894.- 33- 15	894.- 53- 15	894.- 73- 15	894.- 93- 15	895.- 13- 15	895.- 33- 15	895.- 53- 15	895- .- 7-	895- .- 9-

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C-23	894.1375	894.- 33- 75	894.- 53- 75	894.- 73- 75	894.- 93- 75	895.- 13- 75	895.- 33- 75	895.- 53- 75	895- .- 7- 3- 75	895- .- 9- 3- 75
C-24	894.1435	894.- 34- 35	894.- 54- 35	894.- 74- 35	894.- 94- 35	895.- 14- 35	895.- 34- 35	895.- 54- 35	895- .- 7- 4- 35	895- .- 9- 4- 35
C-25	894.1495	894.- 34- 95	894.- 54- 95	894.- 74- 95	894.- 94- 95	895.- 14- 95	895.- 34- 95	895.- 54- 95	895- .- 7- 4- 95	895- .- 9- 4- 95
C-26	894.1555	894.- 35- 55	894.- 55- 55	894.- 75- 55	894.- 95- 55	895.- 15- 55	895.- 35- 55	895.- 55- 55	895- .- 7- 5- 55	895- .- 9- 5- 55
C-27	894.1615	894.- 36- 15	894.- 56- 15	894.- 76- 15	894.- 96- 15	895.- 16- 15	895.- 36- 15	895.- 56- 15	895- .- 7- 6- 15	895- .- 9- 6- 15
C-28	894.1675	894.- 36- 75	894.- 56- 75	894.- 76- 75	894.- 96- 75	895.- 16- 75	895.- 36- 75	895.- 56- 75	895- .- 7- 6- 75	895- .- 9- 6- 75
C-29	894.1735	894.- 37- 35	894.- 57- 35	894.- 77- 35	894.- 97- 35	895.- 17- 35	895.- 37- 35	895.- 57- 35	895- .- 7- 7- 35	895- .- 9- 7- 35
GB	894.1765-	894.- 37- 65-	894.- 57- 65-	894- .7- 76- 5-	894.- 97- 65-	895.- 17- 65-	895.- 37- 65-	895.- 57- 65-	895- .- 7- 7- 6- 5-	895- .- 9- 7- 6- 5-
	894.1797	894.- 37- 97 .	894.- 57- 97	894.- 77- 97	894.- 97- 97	895.- 17- 97	895.- 37- 97	895.- 57- 97	895- .- 7- 7- 97	895- .- 9- 7- 97
P-6	894.1813	894.- 38-	894.- 58-	894.- 78-	894.- 98-	895.- 18-	895.- 38-	895.- 58-	895- .-	895- .-

		13	13	13	13	13	13	13	7-8-13	9-8-13
P-5	894.1845	894.-38-45	894.-58-45	894.-78-45	894.-98-45	895.-18-45	895.-38-45	895.-58-45	895-.-7-8-45	895-.-9-8-45
P-4	894.1877	894.-38-77	894.-58-77	894.-78-77	894.-98-77	895.-18-77	895.-38-77	895.-58-77	895-.-7-8-77	895-.-9-8-77
P-3	894.1909	894.-39-09	894.-59-09	894.-79-09	894.-99-09	895.-19-09	895.-39-09	895.-59-09	895-.-7-9-09	895-.-9-9-09
P-2	894.1941	894.-39-41	894.-59-41	894.-79-41	894.-99-41	895.-19-41	895.-39-41	895.-59-41	895-.-7-9-41	895-.-9-9-41
P-1	894.1973	894.-39-73	894.-59-73	894.-79-73	894.-99-73	895.-19-73	895.-39-73	895.-59-73	895-.-7-9-73	895-.-9-9-73

3. Section 22.1109 is amended by revising the introductory text and table, and the text of paragraph (a), and by adding new paragraphs (a)(1) and (a)(2) to read as follows:

Section 22.1109 Geographical channel block layout.

Except as provided in paragraphs (a) and (b) of this Section, ground station locations must be within one mile of the locations listed in this paragraph. The channel block allotted for each location must be used to provide service to airborne mobile stations in flight and may be used to provide service to airborne mobile stations on ground.

Location	N. Latitude	W. Longitude	Channel Block
ALASKA			
Anchorage	61 <<degrees>> 11'06"	149 <<degrees>> 54'42"	8
Cordova	60 33 00	145 43 00	5
Ketchikan	55 21 20	131 42 33	5
Juneau	58 21 18	134 34 30	4
Sitka	57 03 30	135 22 01	7

Yakutat	59 30 30	142 30 00	8
ALABAMA			
Birmingham	33 23 24	086 39 59	2
ARIZONA			
Phoenix	33 35 39	112 05 12	4
Winslow	35 01 17	110 43 02	6
ARKANSAS			
Pine Bluff	34 10 56	091 56 18	8
CALIFORNIA			
Blythe	33 36 39	114 42 24	10
Eureka	40 42 59	124 12 09	8
Los Angeles	33 56 45	118 23 03	4
Oakland	37 51 12	122 12 30	1
S. San Francisco	37 41 15	122 26 01	6
Visalia	36 19 36	119 23 22	7
COLORADO			
Colorado Springs	38 44 39	104 51 46	8
Denver	39 46 45	104 50 49	1
Hayden	40 29 04	107 13 08	6
FLORIDA			
Miami	25 48 27	80 16 30	4
Orlando	28 26 53	81 22 00	2
Tallahassee	30 24 02	84 21 18	7
GEORGIA			
Atlanta	33 39 05	84 25 54	5
St. Simons Island	31 09 22	81 23 14	6
HAWAII			
Mauna Kapu	21 24 24	158 06 02	5
IDAHO			
Blackfoot	43 11 34	112 20 57	8
Caldwell	43 38 45	116 38 44	10
ILLINOIS			
Chicago	41 46 49	87 45 20	3
Kewanee	41 12 05	89 57 33	5
Schiller Park	41 57 18	87 52 57	2
INDIANA			
Fort Wayne	40 59 16	85 11 31	7
IOWA			
Des Moines	41 31 58	93 38 54	1
KANSAS			
Garden City	37 59 35	100 54 04	3
Wichita	37 37 24	97 27 15	7
KENTUCKY			
Fairdale	38 04 48	85 47 33	6
LOUISIANA			
Kenner	30 00 44	90 13 30	3
Shreveport	32 27 09	93 49 38	5
MASSACHUSETTS			
Boston	42 23 15	71 01 03	7
MICHIGAN			

Bellville	42 12 17	83 29 09	8
Flint	42 58 21	83 44 22	9
Sault Ste. Marie	46 28 45	84 21 31	6
MINNESOTA			
Bloomington	44 51 30	93 13 19	9
MISSISSIPPI			
Meridian	32 19 10	88 41 33	9
MISSOURI			
Kansas City	39 18 37	94 41 07	6
St. Louis	38 42 45	90 19 19	4
Springfield	37 14 28	93 22 54	9
MONTANA			
Lewistown	47 02 56	109 27 27	5
Miles City	46 25 30	105 52 30	8
Missoula	47 01 05	114 00 41	3
NEBRASKA			
Grand Island	40 58 00	98 19 11	2
Ogallala	41 07 11	101 45 37	4
NEVADA			
Las Vegas	36 05 35	115 10 25	1
Reno	39 35 13	119 55 52	3
Tonopah	38 03 43	117 13 24	9
Winnemucca	41 00 39	117 45 58	4
NEW MEXICO			
Alamogordo	32 54 46	105 56 41	8
Albuquerque	35 03 05	106 37 13	10
Aztec	36 48 42	107 53 48	9
Clayton	36 27 29	103 11 16	5
NEW JERSEY			
Woodbury	39 50 01	75 09 21	3
NEW YORK			
E. Elmhurst	40 46 21	73 52 42	1
Schuyler	43 09 09	75 07 50	2
Staten Island	40 36 05	74 06 35	9
NORTH CAROLINA			
Greensboro	36 05 54	79 56 42	9
Wilmington	34 16 10	77 54 24	3
NORTH DAKOTA			
Dickinson	46 51 05	102 47 35	7
OHIO			
Pataskala	40 04 38	82 41 57	1
OKLAHOMA			
Warner	35 29 31	95 18 25	4
Woodward	36 24 42	99 28 50	9
OREGON			
Albany	44 38 24	123 03 36	5
Klamath Falls	42 06 30	121 38 00	2
Pendleton	45 35 45	118 31 02	7
PENNSYLVANIA			
Coraopolis	40 30 33	80 13 27	4

New Cumberland	40 11 30	76 52 02	8
SOUTH CAROLINA			
Charleston	32 54 10	80 01 20	4
SOUTH DAKOTA			
Aberdeen	45 27 21	98 25 26	6
Rapid City	44 02 36	103 03 36	5
TENNESSEE			
Elizabethton	36 26 04	82 08 06	7
Memphis	35 01 44	89 56 15	10
Nashville	36 08 44	86 41 31	3
TEXAS			
Austin	30 16 37	97 49 34	2
Bedford	32 50 19	97 08 03	1
Houston	29 54 37	95 24 39	9
Lubbock	33 37 06	101 52 14	7
Monahans	31 34 58	102 54 18	6
UTAH			
Abajo Peak	37 50 21	109 27 42	7
Delta	39 23 15	112 30 44	2
Escalante	37 45 19	111 52 27	5
Green River	38 57 54	110 13 40	3
Salt Lake City	40 39 11	112 12 06	1
VIRGINIA			
Arlington	38 52 55	77 06 18	6
WASHINGTON			
Seattle	47 26 08	122 17 35	4
Cheney	47 33 14	117 43 35	1
WEST VIRGINIA			
Charleston	38 19 47	81 39 36	2
WISCONSIN			
Stevens Point	44 33 06	89 25 27	8
WYOMING			
Riverton	43 03 37	108 27 23	9

(a) Air-ground licensees may use any of the channels to provide service from any location to airborne mobile stations on the ground, provided that no interference is caused to service provided by ground stations operating in accordance with the geographical channel block layout or with paragraph (b) of this Section, and provided that the locations of ground stations providing such service are at least 300 miles from all locations using the channel block(s) for communication with 800 MHz airborne mobile stations in flight.

*****

4. Section 22.1111 is amended by deleting paragraph (b) and by revising the text of paragraphs (a), (c), and (d) as follows:

Section 22.1111 Emission limitations.

*****

(a) All transmitters. The power of any emission in each of the adjacent channels must be at least 30 decibels below the peak envelope power of the main emission and the power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 decibels below the peak envelope power of the main emission. Additionally, for;

(1) airborne mobile stations. The power of any emission in each of the adjacent channels must not exceed -130 dBm at any ground station receiver, assuming a 0 dBi receive antenna. The power of any emission in any of the channels other than the one being used and the adjacent channels must not exceed -148 dBm at any ground station receiver, assuming a 0 dBi receive antenna.

(2) ground stations. The effective radiated power (ERP) of any emission outside of the frequency range allocated to this service (see Section 22.1105) must not exceed -10 dBm. The ERP of any emission in each of the adjacent channels must not exceed -10 dBm. The ERP of any emission in any of the channels other than the one being used and the adjacent channels must not exceed -5 dBm.

(b) (reserved)

(c) If an emission on any frequency outside of the authorized bandwidth causes harmful interference, the Commission may require greater attenuation of that emission than required in paragraph (a) of this Section.

(d) The provisions of Section 22.106 of this Part do not apply to 800 MHz air-ground systems. Instead, the provisions of paragraphs (a) and (c) of this Section apply to systems of the 800 MHz Air-Ground Radiotelephone Service.

*****

5. Section 22.1115 is amended by revising the heading and the text of paragraphs (a) and (d), and by adding a new paragraph (e).

Section 22.1115 Automatic channel selection procedures.

*****

(a) A communications channel is not available for use by a ground station if it is already in use by another ground station at the same location. Ground station equipment must automatically determine whether channels are in use by other ground stations at the same location, and may employ radio frequency signal monitoring to do so. For example, a communications channel may be determined to be in use if the received signal power on that channel at the ground station exceeds -115 dBm, assuming a 0 dB gain 895 MHz receive antenna, which corresponds to a field strength of approximately 19 dBu V/m. Ground stations may employ an alternative method of determining whether a communications channel is in use provided that such procedure is at least as reliable as radio frequency signal monitoring.

*****

(d) A ground station may not transmit on a communications channel unless it has received the proper identification code. After a ground station has begun to transmit on a communications channel, that channel is not available to ground stations other than the one from which service has been requested until the call is terminated.

(e) A call is terminated by the ground station when either a hang-up signal is transmitted by the airborne mobile station, or the signal from the airborne mobile station on the communications channel is lost for a period of 15 *continuous seconds*. The hang-up signal is the on-off keying (50% duty cycle) of an unmodulated carrier over a period of one second with pulse duration of 5 milliseconds. However, if all 800 MHz air-ground licensees agree that an alternative hang-up signal and/or procedure would be more efficient or beneficial, such alternative hang-up signal and/or procedure may be used. The licensees must jointly give prior notification to the Commission if an alternative hang-up signal and/or procedure is used.

(6) Section 22.1117 is amended by revising the text to read as follows:

Section 22.1117 Limitations on effective radiated power.

The effective radiated power (ERP) of airborne mobile station transmitters shall not exceed 30 watts. The ERP of ground station transmitters using the allotted channel blocks in section 22.1109 must not exceed 100 watts. The ERP of ground station transmitters operating pursuant to Section 22.1109(a) must not exceed 1 watt.

(7) Section 22.1119 is amended and by removing the last sentence in the text to read as follows:

Section 22.1119 Assignment of control channels.

The Commission will select and assign exclusively one control channel to each air-ground licensee after receiving written notification that the licensee's system will begin providing service within one month.

(8) Section 22.1121 is added to read as follows:

Section 22.1121 Control channel transition period.

In converting its experimental air-ground system to one that conforms to the other rules of this Section, the experimental licensee is authorized to use the lower 20 kHz of each channel block, which includes communications channels C-1, C-2, and C-3, for control channels until _____ (22 months from the effective date of the MO & O). After that date communications channels C-1 and C-3 will be available to all air-ground licensees as communications channels and the experimental licensee is authorized to use a 3.2 kHz control channel located in communications channel C-2 of each channel block until _____ (60 months from the effective date of the MO & O). After that date communications channel C-2 will be available to all air-ground licensees as a communications channel.

June 25, 1991

SEPARATE STATEMENT OF COMMISSIONER ANDREW C. BARRETT

Re: Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands.

I supported the prior Report and Order that established the air-ground radiotelephone service in the 800 MHz band. [FN1] I believe our open entry licensing policy will promote competition and facilitate the development of new air-ground service providers. In the long run, I believe the public will benefit from competition among various providers of air-ground communications services. [FN2]

I also have decided to support this Memorandum Opinion and Order. This Order corrects certain technical specifications, revises the channelization plan to promote competitive entry, provides a reasonable transition period for GTE, and addresses matters that impact upon a licensee's initial ability to compete in this new service. I write separately to highlight my concern about the technical issues involved with the air-ground service. The Commission should continue to be sensitive to the need for further technical adjustments in the air-ground service where our licensees experience interference problems. While I agree with the decision not to form a technical advisory committee for air-ground service at this time, I am concerned that the Commission's formal rulemaking processes could unnecessarily delay further technical adjustments; particularly where technical interference problems are caused by competing air-ground licensees. Our framework for communications channel sharing and ground station frequency reuse requires a significant degree of mutual cooperation among licensees. Resolving any technical problems, particularly those which cause interference, will be more time-consuming if licensees approach such issues in a contentious manner. Our Order encourages licensees to discuss technical improvements with each other before bringing such proposals to the Commission; and I am hopeful that this occurs. However, if this does not occur, I remain open to considering the formation of an FCC technical advisory committee that could spur cooperation among licensees to resolve technical matters in the air-ground service.

FN1 Report and Order, GEN Docket No. 88-96, released June 15, 1990, 5 FCCRcd 3861 (1990).

FN2 I note that the Commission has granted licenses to 5 air-ground service applicants. A license will be granted to GTE subsequent to this Memorandum Opinion and Order. I am encouraged by the prospects for competitive air-ground services among these licensees.

6 F.C.C.R. 4582, 6 FCC Rcd. 4582, 1991 WL 642868 (F.C.C.)

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EXHIBIT
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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues.	))))	Case No. 95-845-TP-COI

FINDING AND ORDER

The Commission finds:

BACKGROUND:

On September 21, 1995, this Commission formally initiated this proceeding seeking to establish competition in the last segment of monopoly authority in the telecommunications arena—the local exchange market. Establishment of competition in the local exchange market is by far the most ambitious and difficult of all the markets to be opened to competition. The path on which we now embark is daunting, but nevertheless one we must travel especially in light of the enactment of the Telecommunications Act of 1996 (1996 Act). Before commencing on this journey, it is appropriate to briefly review intrastate regulatory initiatives that have led us to this point.

At the turn of the twentieth century, the telephone industry was characterized by many small providers stringing telephone lines throughout the more urbanized areas and connecting users to separate independent networks. Often, these providers competed directly with each other for customers within the same geographic operating areas. In 1911, the newly-reformed Public Service Commission (later renamed the Public Utilities Commission of Ohio) was empowered with broad legislative authority over telephone companies to establish regulations which would protect the public interest in such an environment. In an effort to encourage telephone companies to universally expand their facilities to pass all homes throughout the state, the Commission authorized those providers to establish operating areas. The Commission's authority over competition and its role in encouraging expansion of facilities and services was explicitly acknowledged by the Ohio Supreme Court in *Ashley Tri-County Mut. Tel. Co. v. New Ashley Tel. Co.*, 92 Ohio St. 336 (1915), and *Celina & Mercer County Tel. Co. v. Union-Center Mutl. Tel. Ass'n.*, 102 Ohio St. 487 (1921). This trend was not unique in Ohio and was being pursued throughout much of the country at the time. In fact Congress, in passing the 1934 Communications Act, stated that one of the primary goals of that legislation was to "make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . . ." 47 U.S.C. 153.

The near monopoly provision of local exchange telephone service, characterized by one provider per market, has served well the purpose for which it was intended. The downside of monopoly authority is that regulation and regulators must replace the competitive marketplace in order to ensure that monopoly providers use their authority in a manner which benefits the public interest. The technological advances of the second half of the twentieth century along with legislative changes embodied in Section 4905.02, Revised Code, recently passed Senate Bill 306 and the 1996 Act have made it possible to reconsider the regulatory compact and to determine to what extent, if any, this Commission can substitute competitive market forces in place of regulatory forces.

Due in part to technological developments and an emerging change in the federal regulatory approach, this Commission, in an April 9, 1985, Finding and Order in *In the Matter of the Commission Investigation Into the Regulatory Framework for Telecommunication Services in Ohio*, Case No. 84-944-TP-COI (944), determined that its traditional regulatory approach should be relaxed and streamlined to the degree competition replaced regulation while still safeguarding the public interest. The 944 order recognized that many segments of the telecommunications industry were, by then, no longer characterized by the monopolistic behavior of a few players, but rather by a burgeoning field of entities looking to compete in a competitive telecommunications marketplace. Under 944, the Commission retained full regulatory jurisdiction while affording providers of competitive telecommunication services significant ratemaking flexibility.

On August 2, 1986, the Commission, recognizing that additional ratemaking flexibility was warranted and opened *In the Matter of Phase II of the Commission's Investigation Into the Regulatory Framework for Competitive Telecommunication Services in Ohio*, Case No. 86-1144-TP-COI (1144). Under 1144, the Commission, among other things, established a streamlined proceeding in which a company could, through a self-complaint process, increase the rates for competitive services without having to file a general rate case under the traditional ratemaking methodology. The Commission went on to conclude, however, that it was without the necessary legislative authority to create as flexible a regulatory framework as might have been warranted at the time. On October 14, 1988, legislation was introduced in the Ohio General Assembly which would have among other things, established alternative regulatory requirements for competitive telephone companies and established a policy for the state which embraced diversity of suppliers, universal service, and the maintenance of resonable rates.

On December 15, 1988, Amended Substitute House Bill No. 563 (H.B. 563) was signed into law which enacted several new statutes including Sections 4905.402 and 4927.01 through 4927.05, Revised Code. This legislation (which primarily took effect on March 17, 1989) authorizes the Commission, among other things, to exempt a telephone company, with respect to a competitive telecommunications service it provides, from compliance with existing statutory provisions regarding ratemaking or any other aspect of telephone company regulation, or to prescribe alternative regulatory requirements applicable to such service and company; to use ratemaking methods different than those in existing law to set rates for basic local exchange service and other telecommunications services not found to be competitive; and to exempt certain local exchange carriers (those having less than 15,000 access lines) from various provisions of existing law or to prescribe alternative regulatory requirements for that company and its services. The General Assembly adopted Section 4927.02, Revised Code, which provides that it is the policy of this state to:

(1) Ensure the availability of adequate basic local exchange service to citizens throughout the state;

(2) Maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service;

(3) Encourage innovation in the telecommunications industry;

(4) Promote diversity and options in the supply of public telecommunication services and equipment throughout the state; and

(5) Recognize the continuing emergency of a competitive telecommunications environment through flexible regulatory treatment of public telecommunication services where appropriate.

Following the adoption of H.B. 563, the Commission initiated several dockets designed to implement these provisions. First, the Commission opened *In the Matter of the Commission Investigation Into Implementation of Sections 4927.01 Through 4927.05, Revised Code, as They Relate to Competitive Telecommunication Services*, Case No. 89-563-TP-COI (563), on April 12, 1989. The purpose of this docket was to revisit whether, in light of the legislative changes made by H.B. 563, the then-current regulatory framework for competitive telecommunication service providers was appropriate. By order adopted on October 22, 1993, as modified on rehearing on December 22, 1993, we determined that additional regulatory flexibility was warranted for competitive telecommunication service providers.

Recognizing the small customer bases and limited resources of those incumbent local exchange companies (ILECs) serving fewer than 15,000 access lines in Ohio, on June 20, 1989, the Commission initiated a docket, to address the appropriateness of an alternative form of regulation for small LECs, *In the Matter of the Commission Investigation Into the Implementation of Sections 4927.01 to 4927.05, Revised Code, as They Relate to Regulation of Small Local Exchange Telephone Companies*, Case No. 89-564-TP-COI (564). That proceeding culminated in the adoption of alternative regulatory requirements involving rate and tariff changes effective September 1, 1991.

On July 2, 1992, after a detailed informal workshop process open to all stakeholders, the Commission initiated a docket, *In the Matter of the Commission's Promulgation of Rules for Establishment of Alternative Regulation for Large Local Exchange Telephone Companies*, Case No. 92-1149-TP-COI (1149), to establish a framework whereby large LECs could seek to utilize the flexibility found in Sections 4927.03 and 4927.04, Revised Code, concerning exemption from or alternative regulatory requirements for certain telecommunications services. In adopting our order in that matter, we stated that "[T]hese rules are simply the next step begun in our 944 cases to relax regulation as we move toward a more competitive environment." Today, we take that next transitory step toward a fully competitive market in which consumers benefit from more rapid deployment of advanced technology, more choices of providers, and the potential of lower prices for all.

By entry issued on September 27, 1995, we opened this docket and invited interested stakeholders to formally comment on staff's proposal concerning the establishment of local exchange competition in Ohio. We recognized at that time that staff's proposal had already been the subject of significant input from interested stakeholders.[1] In order to reach out and obtain input from Ohio's telecommunications users and in order to allow those persons not wishing to file formal comments to be heard on this matter, the Commission scheduled and published notice of a number of public meetings to be held around the state. The Commissioners personally conducted public forums at Athens, Cleveland Heights, Cleveland, Warren, Dayton, Cincinnati, Vanlue, Akron, Toledo, and Columbus between October 11 and November 1, 1995. At those meetings, members of the public were invited to share their views and express their concerns regarding the staff's local competition proposal. The public's comments were transcribed and made a part of this docket. In addition, the Commission has received, throughout the comment process, a number of letters from the public which have been made a part of the record in this case. The Commission received initial and reply comments to the staff's proposal from various stakeholders on December 14, 1995, and January 31, 1996, respectively.

Subsequent to the submission of reply comments in this matter, the United States Congress passed legislation and the President signed such legislation overhauling the Communications Act of 1934. This newly enacted legislation (the 1996 Act) touches on a number of issues addressed in the staff's local competition proposal. On February 20, 1996, Ameritech Ohio (Ameritech) filed a motion seeking to establish an expedited supplemental pleading cycle as a result of the passage of the 1996 Act. The attorney examiner assigned to this matter found Ameritech's motion well-made and, consequently, directed interested stakeholders to file supplemental comments by March 8, 1996, and supplemental reply comments by March 15, 1996. The record in this matter

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1 In preparing its proposal for formal comment, staff had already evaluated over 5,000 pages of written material, conducted 17 days of workshops with interested stakeholders, and held numerous additional meetings with individual entities outside the workshop process. Further, staff widely circulated an initial proposal, thoroughly reviewed the comments received on the initial proposal, and revised its proposal accordingly.

reveals that the following entities have, at some point in this proceeding, submitted initial comments, reply comments, supplemental comments, or supplemental reply comments:

> MFS Communications Company, Inc.; Ohio Cable Telecommunications Association; MCI Telecommunications Corporation; Cincinnati Bell Telephone Company; Enhanced Telemanagement, Inc.; Time Warner Communications of Ohio; The Office of the Consumers' Counsel; ALLTEL Ohio, Inc. and The Western Reserve Telephone Company; United Telephone Company of Ohio and Sprint Communications Company, L.P.; Ameritech Ohio; The Ohio Telephone Association; Chillicothe Telephone Company; Century Telephone of Ohio, Inc.; the small local exchange telephone companies of Ohio; ICG Access Services, Inc.; USA Mobile Communications, Inc. II, Maximum Communications, Inc., MobileComm of the Northeast, Inc., Paging Network of Ohio, Inc., and Southern Communication Services, Inc.; City of Columbus; cities of Delaware, Dublin, Upper Arlington, Westerville, Worthington, and the Village of Powell; Telephone Service Company; New Par; Appalachian People's Action Coalition; Telecommunications Resellers Association; Ashtabula County Telephone Coalition; Ohio Direct Communications, Inc. and Ridgefield Homes, Inc.; National Emergency Number Association; Communications Buying Group, Inc.; United States Department of Defense and all other Federal Executive Agencies; City of Cincinnati; Ohio State Legislative Committee of the American Association of Retired Persons; AT&T Communications of Ohio, Inc.; City of Cleveland; Competitive Telecommunications Association; City of Toledo; Ohio Domestic Violence Network; Scherers Communications Group, Inc.; Westside Cellular Inc. dba Cellnet of Ohio, Inc.; GTE North Incorporated; Edgemont Neighborhood Coalition; and TCG Cleveland.

After reviewing the staff's proposal, appended to the September 27, 1995 entry, the comments, reply comments, and supplemental comments submitted in this matter, the testimony given at the forums, and the letters filed in this docket, the Commission is, today, adopting a new regulatory framework to govern local exchange competition in Ohio as set forth in Appendix A. This new regulatory framework will be referred to throughout this order as the revised local competition guidelines (guidelines). References to the initial guidelines appended to the September 27, 1995 entry will be referred to as staff's proposal.

DISCUSSION:

A. Legal Authority

Before commencing with a discussion of the regulatory guidelines which will govern local exchange competition, we must address the Commission's legal authority for promulgating the new guidelines. In its Appendix A filed on December 14, 1995, Cincinnati Bell Telephone Company (Cincinnati Bell)[2], citing to *Canton Storage & Transfer Co. v. Pub. Util. Comm. of Ohio*, 72 Ohio St. 3d 1 (1995), argues that the Commission is a creature of statute and can only operate consistent with its legislative authority. Cincinnati Bell posits that the Commission failed to cite any statutory authority which permits it to adopt rules to govern local exchange competition. Cincinnati Bell claims that Section 4927.02, Revised Code, does not authorize this proceeding and, in fact, Section 4927.03(B), Revised Code, expressly prohibits the Commission from approving or authorizing:

> . . . any exemption from or modification of any provision of Chapter 4905 or 4909 of the Revised Code or order issued under them which would impair the exclusive right of any telephone company under those chapters, rules, or orders to provide basic local exchange service in the local service areas in which such service is provided by the Company on the effective date of this Section.

Since, in many instances, the staff's proposal authorizes exemptions from or modifications to the provisions of Chapters 4905 and 4909, Revised Code, Cincinnati Bell claims that these guidelines impair Cincinnati Bell's "exclusive right" to provide basic local exchange service. Cincinnati Bell further avers that the implementation of local exchange competition is a quasi-legislative function which cannot be delegated to the Commission without express statutory authority. In support of this position, Cincinnati Bell points to Section 1, Article II of the Ohio Constitution which vests all legislative power in the General Assembly and Section 26, Article II of the Ohio Constitution which has been interpreted to prohibit the delegation of this legislative authority except where the General Assembly has provided sufficient, definite standards with which to use the power. *Independent Insurance Agents of Ohio, Inc. v. Duryee*, 95 Ohio App. 3d 7 (1994). Cincinnati Bell maintains that the General Assembly has not enacted the requisite enabling legislation, much less the definite standards necessary to guide the Commission. Cincinnati Bell also opines that the only provision of Ohio law which arguably enables the Commission to create local competition is Section 4905.24,

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[2] Ameritech, ALLTEL Ohio, Inc. (ALLTEL) and The Ohio Cable Telecommunications Association (OCTA) urge the Commission to specify whether these guidelines are being adopted as formal additions to the Ohio Administrative Code (O.A.C.). That issue will be addressed along with the legal arguments raised by Cincinnati Bell.

Revised Code (Cincinnati Bell supp. comments at 5). Cincinnati Bell also argues that it has been denied due process in the certification cases heretofore conducted pursuant to Section 4905.24, Revised Code, concerning Time Warner Communications of Ohio (Time Warner) (Case No. 94-1695-TP-ACE), MCI Metro Access Transmission (Case No. 94-2012-TP-ACE), and MFS Intelenet of Ohio, Inc. (Case No. 94-2019-TP-ACE).

We disagree with Cincinnati Bell's interpretation of our ability to promulgate guidelines governing the establishment of local exchange competition, with its suggestion that its due process rights have been violated in the aforementioned certification cases, and with its inference that this generic docket is the appropriate vehicle in which to raise concerns regarding the certification proceedings. Taking Cincinnati Bell's due process arguments first we find these arguments to be without merit.

In *Application of Time Warner*, Case No. 94-1695-TP-ACE (August 24, 1995), at page 6, we addressed the legal issue of the Commission's authority to authorize Time Warner to provide basic local exchange services in that proceeding, not in some future generic docket. The Commission concluded in 94-1695 that "Time Warner has met its burden of establishing that the granting of its authority is proper and necessary for the public convenience, in that it has demonstrated that it is capable of providing service such that it would promote competition consistent with the state's telecommunications policy." Cincinnati Bell intervened and participated in 94-1695 and has appealed the Commission's determination in that case to the Ohio Supreme Court. Therefore, we find that, notwithstanding its argument to the contrary, Cincinnati Bell has been fully afforded due process to argue the Commission's authority, under Section 4905.24, Revised Code, to certify Time Warner to provide basic local exchange service in Cincinnati Bell's operating territory.

Cincinnati Bell also argues that the Commission failed to cite and, nevertheless does not have, the requisite statutory authority to permit local exchange competition in Ohio. General Code Section 614-52, the precursor of Section 4905.24, Revised Code, clearly enabled the Commission to authorize more than one telephone company to provide telecommunications service in a given area and, by so doing, specifically authorized local exchange competition within Ohio. Section 614-52, General Code, was first adopted in 1911 and continues to this day virtually unchanged as Section 4905.24, Revised Code. Section 4905.24, Revised Code, states, in relevant part:

> [N]o telephone company shall exercise any permit, right, license, or franchise. . .for the furnishing of any telephone service. . .where there is in operation a telephone company furnishing adequate service, <u>unless</u> such telephone company first secures from the public utilities commission a certificate... that the exercising of such license, permit, right, or franchise is proper and necessary for the public convenience. (Emphasis added).

Although there are no modern court cases interpreting Section 4905.24, Revised Code, the Ohio Supreme Court, in a decision rendered in 1921, addressed both the constitutionality of this statute as well as the authority granted the Commission by the legislature under this statute. In confirming the authority of the Commission to certify multiple providers of telephone service and, thereby, sanctioning competition for local telephone service, the Ohio Supreme Court found in *Celina*, at 499:

> It is important to notice that the section (614-52) does not prohibit another company from competing, but makes it a condition precedent to engaging in the business in the way of competition for that company to first apply for and receive a certificate from the Public Utilities Commission. The commission in the act is provided with all the facilities to investigate and determine whether the public convenience will be served, and in so doing must determine first whether the company is furnishing adequate service, and next, irrespective of whether it is or is not so doing, find whether or not the public convenience will be better served by granting the certificate to a competing company.

In discussing the constitutionality of Section 614-52, General Code, the Ohio Supreme Court determined in *Celina* at 505, that:

> Whether or not the principle of permitting or favoring a monopoly in the field in question is one sound in the political and economic view is one obviously for determination by the legislative branch of the government, and not by the judicial branch. In this state the legislature has made that determination in certain fields by various provisions in the public utilities act.

Therefore, as early as 1911, the Ohio General Assembly authorized this Commission to determine whether or not local exchange competition is proper and necessary for the public convenience. With the adoption of H. B. 563, the Ohio General Assembly confirmed, through enactment of Section 4927.02, Revised Code, that the Commission is to consider the policy of this state (which is stated on page 3 of this order) when carrying out Sections 4927.03 and 4927.04,Revised Code.[3] Section 4927.02, Revised Code, clearly complements the Commission's authority to establish local exchange competition. In fact, by its adoption, the Ohio General Assembly was instructing the Commission to consider this policy in its deliberations concerning competitive markets.

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3 Section 4927.03, Revised Code, authorizes the Commission to establish exemptions or alternative regulatory requirements for competitive telephone companies. Section 4927.04, Revised Code, permits the Commission to adopt an alternative method of establishing rates for basic local exchange service for telephone companies.

Since the opening of this docket, Congress passed and the President signed the 1996 Act. The Commission established an additional comment cycle to allow parties to address the impact of the 1996 Act. The Commission is issuing these guidelines to implement both the telecommunications policy of this state embodied in Section 4927.02, Revised Code, and the 1996 Act. Most recently, the Ohio General Assembly by adoption of Senate Bill 306, specifically affirmed the Commission's ability to implement the 1996 Act.[4]

Cincinnati Bell's constitutional arguments addressed in Appendix A, of its December 14, 1995 comments, as well as its reliance upon *Duryee* and *Canton Storage*, are equally flawed. *Duryee* addressed the issue of whether res judicata bars a subsequent action challenging the constitutionality of a statute.[5] The issue decided in *Duryee* by the Franklin County Court of Appeals is not at issue in this preceeding. Assuming arguendo, that the issue was the constitutionality of Section 4905.24, Revised Code, as noted in *Celina supra*, the Ohio Supreme Court has already determined that the involved statute is constitutional. The Commission in this proceeding is merely establishing guidelines to implement the authority already conferred upon us by the Ohio General Assembly. Thus, *Duryee* is inapplicable to this proceeding.

The *Canton Storage* case is also distinguishable from and, therefore, inapplicable to the Commission's authority to promulgate guidelines to govern competition in the telecommunications marketplace. In *Canton Storage*, the appellants challenged a Commission decision to grant 22 contested applications to carry household goods throughout the state of Ohio. In so doing, the Commission was exercising its certification authority for motor transportation companies found in Section 4921.10, Revised Code. The Ohio Supreme Court, in reversing the Commission, found that the record did not support the Commission's determination of a public need for the service and that, in the absence of specific legislation, the Commission was without the statutory authority to promote competition in the motor transportation area. As we have noted previously, the General Assembly has determined through specific legislation that the Commission has the authority to certify multiple providers of local telecommunications service. However, more importantly, the issue now before us does not involve the certification of any particular provider to compete in the local market as *Canton Storage* did. As noted earlier, the appropriate place to raise that challenge is in an individual company certification proceeding which Cincinnati Bell has done in the Time Warner case currently before the Ohio Supreme Court. This proceeding, on the other hand, involves the establishment of guidelines by which local competition for telecommunications service will unfold in Ohio.

As a final matter on this issue, it is interesting to note that Cincinnati Bell is the only ILEC who argued that we lack the requisite legal authority to promulgate these

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4 As of the date of issuance of this Order, the enabling legislation is before Governor George Voinovich for signature.

5 *Duryee* involved a challenge to a decision of the Superintendent of the Ohio Department of Insurance determining the alter ego status of an applicant before the Department of Insurance.

guidelines. Most commenting parties, including a number of ILECs, support the Commission's moves to open the local exchange market to competition. For instance, in their joint comments submitted in this matter, United Telephone Company of Ohio and Sprint Communciations Company L.P. (United/Sprint) stated that "[a]s a local exchange company operating in Ohio, United has consistently declared its support for the introduction of competition into the local exchange market" (United/Sprint, initial comments at 1). Another example of ILEC support comes from Ameritech who declared "Ameritech Ohio supports the creation of fully competitive markets for communications services including the offering of competitive local exchange services" (Ameritech initial comments at 1). Both United/Sprint and Ameritech are equally impacted by any decision to authorize local exchange competition and yet neither argue that we lack the requisite legal authority to do so.

B. **Regulatory Guidelines versus Administrative Rules**

Having determined that local exchange competition has been authorized by the Ohio General Assembly, that the Commission has been empowered with the legislative determination of when, if ever, to sanction competition, and having established the constitutionality of this legislative grant of authority, we must now turn to the issue of our authority to promulgate guidelines, in lieu of administrative rules, to govern local exchange competition. ALLTEL's argument that the Commission must promulgate these procedures as formal additions to the O.A.C. in order for them to have any force and effect.[6] The Commission has, on numerous prior occasions without challenge, adopted guidelines to effectuate competitive policies in lieu of promulgating O.A.C. rules. By so doing, the Commission has relaxed and streamlined regulatory obligations which have benefitted all telephone companies. Examples of such cases include 944, 1144, 563, 564, and 1149. Ameritech and ALLTEL availed themselves of the regulatory guidelines promulgated in several of the aforementioned proceedings at one time or another. Those same parties should not now be heard to complain that this lawful regulatory mechanism in some manner violates their interests in this proceeding.

Having thoroughly considered the comments on this matter, the Commission determines that the most appropriate manner in which to proceed is to adopt these local competition procedures as guidelines as opposed to O.A.C. rules. By treating these as guidelines, we are enabling the Commission to maintain flexibility to make modifications, if found necessary, without having to await the more cumbersome process associated with formal changes to the O.A.C. We find their arguments to the contrary to be shortsighted and potentially inconsistent with the interests of telephone companies.

On this issue, it is instructive to review the Commission's enabling statute, Section 4901.02, Revised Code, which states:

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6 Ameritech likewise sought clarification as to whether these proposals were being adopted as formal O.A.C. rules or whether these proposals were mere statements of policy.

> The Commission shall possess the powers and duties specified in, as well as all powers necessary and proper to carry out the purposes of Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code.

In addition, the Commission is provided ample discretion by other sections of Title 49 of the Ohio Revised Code, such as Section 4905.04, Revised Code, which vests the Commission "with power and jurisdiction to supervise and regulate public utilities," and Section 4905.06, Revised Code, which delegates to the Commission "general supervision over all public utilities within its jurisdiction." Other statutes throughout Title 49 similarly grant to the Commission a large measure of discretion in determining "just and reasonable rates" (Section 4909.15, Revised Code); "adequacy of service" (Section 4905.22, Revised Code); and the "justness" and reasonableness of telephone company rules, regulations, and practices" (Section 4905.381, Revised Code). The General Assembly, in adopting H.B: 563, also directly authorized the Commission to adopt the standards necessary to carry out those provisions.[7] This broad statutory language, coupled with the underlying objective of regulating in the public interest and taking into account the policy of this state as set forth in Section 4927.02, Revised Code. leads this Commission to determine that broad latitude is necessary to adapt regulatory policy to the changing circumstances within Ohio's telecommunications environment.

The Commission also has an independent basis for promulgating guidelines to govern local exchange competition in Ohio. As noted above, the Ohio General Assembly, through adoption of Section 4905.24, Revised Code, the constitutionality of which was established in *Celina*, delegated to this Commission the determination of when and under what circumstances, if ever, to sanction competition in the local exchange market. Through the promulgation of these guidelines, the Commission is merely exercising the authority granted us in Section 4901.13, Revised Code, to adopt and publish rules governing proceedings and to regulate the mode and the manner of valuations, tests, audits, inspections, investigations, and hearings relating to local exchange competition in Ohio. The delegation of legislative authority to the Commission by the General Assembly has long been upheld as constitutional by the Ohio Supreme Court. For instance, in *Matz v. J. L. Curtis Cartage, Co.*, 132 Ohio St. 271 (1937), the court determined that, as a general rule, the Ohio General Assembly cannot delegate legislative authority to an administrative board. The court went on to find, however, that:

> when the discretion to be exercised relates to a police regulation for the protection of the public morals, health, safety, or general welfare, and it is impossible or impracticable to provide such standards, and to do so would defeat the legislative object sought to be accomplished, legislation conferring such discretion may be valid and constitutional without such restrictions and limitations.

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7 Sections 4927.03(E) and 4927.04(D), Revised Code.

The guidelines we are adopting today clearly meet the standards set forth by the Ohio Supreme Court to justify a constitutional delegation of legislative authority to this Commission. First, without a doubt the local competition guidelines are designed to protect the general welfare of all Ohioans. Next, due to the technical nature of the issues involved, it is reasonable for the General Assembly to have declined to enact such detailed pricing formulas, which, by virtue of their being embodied in statute, would restrict Ohio's ability to move forward with and respond to the changing telecommunications environment and thus frustrate the General Assembly's policy set forth in Section 4927.02, Revised Code. Thus, in this instance, the court's test for determining if a proper delegation of legislative authority has been met.

C. Regulatory Symmetry

Another issue raised by many of the commenters was the issue of regulatory symmetry or parity. On the one hand, ILECs claim that the staff's proposal establishes asymmetrical regulations which favor the NECs over the ILECs.[8] The ILECs argue, therefore, that staff's proposal creates an unlawful and discriminatory preference for NECs to the detriment of ILECs. The Ohio Telephone Association (OTA) claims that the authority reserved to the states through Section 253(b) of the 1996 Act mandates parity and symmetry in any local competition guidelines this Commission ultimately adopts (OTA supp. comments at 1-2). Ameritech asserts that the Commission was faced with a similar decision regarding AT&T Communications of Ohio, Inc. (AT&T) at the advent of long distance competition and that this Commission, at that time, rightfully rejected the concept of asymmetrical regulation (Ameritech initial comments at 6). Ameritech also claims that missing from the staff's proposal is a thorough analysis and understanding of the impact of the rules on consumers and the overall public interest as required by Ohio policy. ALLTEL posits that the Commission should conduct a comprehensive review of the existing telecommunications rules and eliminate all current rules deemed unnecessary to protect the public interest. Thereafter, all LECs should be subject to these relaxed rules (ALLTEL reply comments at 37).

The NECs, on the other hand, argue that saddling them with the same regulatory requirements applicable to the incumbents or granting the incumbents the regulatory freedoms requested by them will destroy the nascent competition. The NECs claim that competition and regulation are substitutes for each other and that regulation should be commensurate with the degree of market power exercised by a firm. In order for regulation to be relaxed or eliminated for the ILECs, these commenters maintain that genuine competitive offerings must be widely and easily available to customers. The NECs also encourage the Commission to recognize the necessity of asymmetrical regulation as have the states of Wisconsin, Florida, and Colorado. The NECs generally agree, however, that widespread regulation of new local service providers is unnecessary and would raise costs for the NECs and ultimately for subscribers. They state that extensive regulatory requirements on NECs would also constitute a barrier to

8 Incumbents, incumbent LECs, or ILECs will be used to characterize that class of commenters providing local telecommunication services throughout the 748 exchange areas on the date this order issued.

entry. NECs acknowledge that in limited situations it may be necessary for the Commission to apply certain regulatory requirements on all competitors; however, overall, the ILECs' regulatory symmetry arguments should be rejected as anti-competitive, according to the NECs.

Having thoroughly considered the comments on this issue, we agree that, to the extent feasible, it is appropriate to adopt guidelines that do not unduly favor any LEC over another[9]. However, in developing our final guidelines on local competition we note with approval United/Sprint's challenge that any local competition guidelines should strive for balance between all providers. According to United/Sprint, that does not mean that there must be identical regulatory parity for ILECs and NECs,[10] but neither does it mean that NECs be given free rein (United/Sprint reply comments at 1). With these competing goals in mind and in light of the 1996 Act, the Commission has revised staff's proposal in a manner which appropriately weighs the need for certain NEC regulations balanced against the monopoly power yielded by the ILECs. The guidelines, as revised, still reflect different treatment for ILECs and NECs in certain areas. However, we disagree that to do so amounts to unlawful and discriminatory preference for the NECs. Symmetrical regulation is only appropriate when circumstances are symmetrical. Given that the ILECs, as of the issuance of these guidelines, control essential bottleneck monopoly facilities and retain the attributes of their status such as ownership and control over the assignment of telephone numbers, the circumstances are not perfectly symmetrical. We have, however, looked for establishing symmetry where appropriate, in light of the ILECs' comments. For example, in areas where there is competition we have established symmetrical treatment of ILECs and NECs concerning the timing of new services and related filings where there is an operational competitor in the ILEC's market. We agree with TCG Cleveland (TCG) that the AT&T analogy raised by Ameritech is distinguishable from the situation now before us. As noted by TCG, AT&T in 1985 no longer controlled any essential facilities needed to reach the ultimate consumer. However, for local exchange competition, the ILECs will, for the foreseeable future, continue to control the essential network facilities necessary to feasibly originate and terminate calls for end users. This factor alone justifies a difference in regulatory obligations between the ILECs and the NECs. In addition, we note that, OTA's arguments to the contrary notwithstanding, the 1996 Act has recognized, in Section 251, a distinction in the manner in which ILECs are treated as compared to the NECs. As a final matter, we are committed to continually monitor the guidelines set forth herein and, to the extent the Commission determines in the future it is appropriate to amend any guideline to alter the requirements on any local provider we will do so. We have committed to our own review of these guidelines on an ILEC by ILEC or industry-wide basis no later than three years after the adoption of these guidelines. In addition, we have made other avenues such as

9 In this order, the term LECs will be used to represent both NECs and ILECs.

10 NECs will be used throughout this Order to represent both new entrants as well as the ILEC affiliates which will, as discused more fully below, be permitted to provide service in other incumbents' serving areas.

Sections 4927.03 and 4927.04, Revised Code, available to the ILECs should they feel the need to petition for relief prior to that time.

I. OVERVIEW OF THE GUIDELINES

As noted above, the comprehensive revision of the 1934 Telecommunications Act by the 1996 Act has caused us to revise, significantly, particular areas of staff's proposal. One such area which has been significantly revised is the former Compensation Section which has now been broken down into Interconnection, Transport, and Termination of Traffic Compensation, and Pricing Standards. Another portion of staff's proposal that has been reworked substantially is the Resale Section. The final area which has been significantly revised is the Universal Service Section. These areas will be discussed in more detail below.

II. CERTIFICATION ISSUES

A. Jurisdiction

Staff's proposal stated that all facilities-based and nonfacilities-based entities seeking to provide basic local exchange services in accordance with Section 4905.03(A)(2), Revised Code, would be considered telephone companies subject to Commission jurisdiction. In addition, such entities would be required to obtain a certificate of public convenience and necessity from the Commission prior to offering basic local exchange service in the State of Ohio. A facilities-based provider was defined, for purposes of these guidelines, as a local service provider that directly owns, controls, operates, and maintains a local switch used to provide dial tone to that provider's end users in a specific circumscribed portion of its serving area. Such a carrier would be deemed facilities-based with respect to that circumscribed portion of its serving area to which it provided dial tone via its own local switch. Conversely, a nonfacilities-based provider was defined as a local service provider that does not directly own, control, operate, or maintain a local switch used to provide dial tone to end users in a specific circumscribed serving area. Such a carrier would be deemed nonfacilities-based with respect to those portions of its serving area in which it did not provide dial tone via its own local switch. Other areas of the staff proposal set forth varying rights and responsibilities depending upon whether the NEC was classified as facilities or nonfacilities-based. This portion of staff's proposal engendered significant comments.

Many commenters maintain that the distinction between facilities-based and nonfacilities-based carriers should be eliminated throughout the guidelines (CompTel initial comments at 12-17; MCI initial comments at 50; Cincinnati Bell initial comments, Appendix C at 1; Scherers initial comments at 5; United/Sprint initial comments at 5-6; GTE initial comments, Appendix C at 1-2; AT&T initial comments, Appendix C at 1; TCG initial comments at 11-12). Ameritech and ALLTEL assert that the staff's distinction between facilities-based and nonfacilities-based carriers, based on the control and ownership of a switch, does not comport with the singular definition of a telephone company found in Section 4905.03(A)(2), Revised Code, nor with the Commission's previous certification practices. Ameritech and ALLTEL suggest adopting one definition of local exchange service provider that is consistent with Section 4905.03, Revised Code, and affording all carriers meeting that definition with the rights and responsibilities of common carriers. Ameritech and ALLTEL also suggest amending the staff's proposal to clarify that a telephone company includes not only an entity which owns or controls switching equipment but also one with transport capabilities that result in the transmission of a telephonic message. Ameritech would further clarify the definition by establishing that a lease arrangement falls within the language of Section 4905.03, Revised Code (Ameritech initial comments at 20-21; ALLTEL initial comments at 18).

The United States Department of Defense and All Other Federal Executive Agencies (FEAs) aver that the proposed definition of facilities-based carriers is too restrictive (FEA initial comments at 3). OCTA claims that a better approach would be to distinguish between incumbent providers and new entrants (OCTA initial comments at 3). GTE maintains that the proposed distinction engenders serious opportunities for arbitrage and, in any event, will create administrative nightmares as a NEC's status will always be in a state of flux (GTE initial comments at 1-2). Westside Cellular Inc. dba Cellnet of Ohio, Inc. (Cellnet) argues that the staff's proposal represents a radical departure from past Commission practice established in *The Hogan Company dba Interwats* case.[11] In that case, according to Cellnet, the Commission correctly held that, because *Hogan* did not own or operate switching or transmission facilities, it was not a telephone company as defined in Section 4905.03, Revised Code (Cellnet initial comments at 3).

CompTel supports certification for so-called "pure resellers." The important issue is, according to CompTel, that local facilities ownership should not determine the rate a carrier pays or whether it is entitled to purchase out of a carrier-to-carrier tariff (CompTel reply comments at 13). ETI maintains that a distinction based upon whether a carrier determines to become certified is certainly appropriate. For instance, a reseller which chooses to seek certification and agrees to undertake certain regulatory obligations should be permitted to buy services out of the carrier-to-carrier tariff (ETI reply comments at 3-7). United/Sprint submits that local service requires a higher standard of care than toll services; therefore, the Commission should treat local facilities and nonfacilities-based carriers the same for regulatory purposes (United/Sprint reply comments at 3).

After reviewing all of the comments concerning the facilities/nonfacilities-based distinction, the Commission finds that there is no rational reason to distinguish between facilities-based and nonfacilities-based carriers for most purposes. That is, all certified providers of basic local exchange service should have, except as specifically noted otherwise herein, the same rights and regulatory obligations as the ILECs. There are, however, still reasons for maintaining the distinction between facilities and nonfacilities-based providers throughout a limited number of specific sections of these

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[11] Case No. 90-1802-TP-ACE, Finding and Order issued December 5, 1991.

guidelines (e.g., for universal service and unbundling). The final guidelines have, therefore, been revised accordingly. One such area where the facilities/nonfacilities-based distinction is not a viable one is in the obligation to become certified for those entities meeting the definition of a *telephone company* subject to the Commission's jurisdiction under Section 4905.03(A)(2), Revised Code.

Section 4905.03(A)(2), Revised Code, defines a telephone company subject to Commission jurisdiction as "[a]ny person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, when engaged in the business of transmitting telephonic messages to, from, through, or in this state and as such is a common carrier." By the definitions found throughout Section 4905.03, Revised Code, the Ohio General Assembly is directing the Commission to regulate that aspect of service between the consumer and the entity holding itself out as the provider of service. Thus, in making a determination as to our jurisdiction over providers of local service, we must consider if the entity is (1) engaged in the business of transmitting telephonic messages; (2) to, from, through, or in Ohio; and (3) as such is a *common carrier*.

First, we turn to the question of what is a telephone common carrier. While there is no definition of this term in the Ohio Revised Code or in any legislative history, the Ohio Supreme Court in *Celina*, at page 492, set forth its interpretation of what this concept means. The Court found that a telephone common carrier:

> undertakes, for hire or reward, to carry, or furnish the medium for carrying, messages, news, or information, for all persons indifferently, who may choose to employ it, or use such medium, from one place to another. The telephone company then must serve, without discrimination, all who desire to be served and who conform to the reasonable rules of the company.

Because there is limited precedent dealing with the issue of telephone common carriage in Ohio, it is helpful to look at treatment of the issue in other jurisdictions. One such jurisdiction that has had substantial opportunities to address the issue of common carriage is the Federal Communications Commision (FCC). The FCC applies similar criteria to those set forth by the Ohio Supreme Court in its determinations of what constitutes a *telephone common carrier* subject to FCC jurisdiction; therefore, an evaluation of FCC precedent is helpful to an interpretation of our jurisdictional authority. Criteria the FCC considers includes: (1) whether the entity is offering services to the public indiscriminately; (2) whether the entity transmits intelligence of the user's own design and choosing; (3) whether the entity is providing service for profit; and (4) whether the entity is engaged for hire in interstate or foreign communication.[12]

In evaluating this concept of indiscriminate offering to the public, which is analogous to offering the service, without discrimination, to all persons who desire to

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12 46 ALR Fed 626.

be served, as referenced by the Ohio Supreme Court, the District of Columbia Court of Appeals determined in *AT&T v. FCC*[13] that:

> [T]his does not mean that a given carrier's services must practically be available to the entire public, but rather, one may be a common carrier though the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the population, and business may be turned away either because it is not of the type normally accepted or because the carrier's capacity has been exhausted.

Another factor applied by the FCC to evaluate the indiscriminate offering to the public standard is the concept of offering service for a profit. In approving the use of profit as a criteria in evaluating the indiscriminate offering to the public, the Second Circuit Court of Appeals in *AT&T et.al. v. FCC*[14] stated "[P]rofit is a significant indicium of common carriage; it increases the likelihood that the party making the profit is also making an indiscriminate offering to the public." This consideration of profit as a criteria is similar to the language set forth in *Celina* to the extent that service is offered for hire or reward. The Second Circuit Court of Appeals in *AT&T et al. v. FCC* also noted that the indiscriminate offering of service to the public can be established regardless of the actual ownership or operation of the facilities involved.[15]. Two remaining indicia of an indiscriminate offering to the public were approved by the Second Circuit Court of Appeals. Those criteria are looking to the use of advertising or of short-term joint arrangements; either of which may signal the existence of an indiscriminate offering to the public. *AT&T, supra*.

Regarding the issue of transmitting intelligence of the customer's own choosing, the FCC held in *Frontier Broadcasting Co. v. Collier*[16] that, while the carrier provides the means or methods of communication, the choice of the specific intelligence to be transmitted is the sole prerogative of the subscriber. The final criteria the FCC evaluates in determining an entity's common carrier status is the issue of interstate or foreign communications. This correlates to the standard set forth by the Ohio Supreme Court that the activity in question must be "to, from, through or in" Ohio. Having discussed the similarity between the criteria the FCC uses to determine if a given entity is a common carrier and the standards the Ohio Supreme Court set forth in evaluating the concept of common carriage, we find such precedent compelling and will adopt it in the appropriate areas in making our determinations of what is a common carrier.

At the time the definition of a telephone company in Section 4905.03(A)(2), Revised Code, was established and the order in *Celina* was issued, it was clear that telephone service was only provisioned over telephone facilities owned by the entity

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13 525 F2d 630, cert den 425 US 992 (1978).

14 572 F2d 17, cert den 439 US 875 (1978).

15 In making this determination, the Second Circuit Court of Appeals favorably cited *Mackay Radio and Telegraph Co.*, 6 F.C.C. 562 (1938).

16 24 F.C.C. 251 (1958).

involved and such provision qualified as common carriage under the applicable definitions. New questions have arisen, however, given the state of technology available today. One new practice which raises issues involving telephone service involves parties purchasing private line or bulk-billed services and either sharing service among various parties or reselling or rebilling the service for profit. The FCC in its Docket No. 20097 *(Resale and Shared Use of Common Carrier Services and Facilities)* adopted July 1, 1976; released July 16, 1976) determined that those entities reselling service[17] meet the definition of a common carrier and, thus, fall under the FCC's jurisdiction while those entities merely sharing service do not fall under the definition of common carriage and, thus, do not warrant FCC jurisdiction. For many of the same reasons espoused by the FCC in its *Resale* decision, we determine that those entities involved in the reselling or rebilling of service to consumers satisfy the criteria of being common carriers which may be subject to Commission jurisdiction. Next, we must determine whether those resale/rebiller entities who are common carriers are "engaged in the business of" transmitting telephonic messages.

Crucial to our determination of whether an entity is engaged in the business of transmitting telephonic messages is the relationship the involved entity has with its customers. For example, portraying or holding oneself out to the end user as the entity responsible for establishing service, addressing consumer concerns and complaints, and receiving remuneration for services rendered are all indicia of engaging in the business of transmitting telephonic messages. To the extent a reseller/rebiller satisfies both the "common carrier" and "engaged in the business of" criteria set forth in Section 4905.03(A)(2), Revised Code, we see no difference, except for the ownership of telephone plant, between resale and traditional telephone service. As the FCC stated in the *Resale* decision, "[T]he public neither cares nor inquires whether the offeror owns or leases the facilities. Resellers will be offering a communications service for hire to the public just as the traditional carriers do. The ultimate test is the nature of the offering to the public." We concur with the FCC's reasoning on the issue of resale and, as addressed more fully below, we will exercise our jurisdiction over resellers/rebillers who seek to provide basic local exchange services to end users in Ohio.

The Commission also desires to address the averment raised by Cellnet that our *Hogan* decision requires a different result. Contrary to the arguments raised by Cellnet, *Hogan* does not require a different determination. *Hogan* was specifically limited by the Commission to representations made by the company in its application. This is evidenced by the fact that entities with operations similar to *Hogan* were still directed to file for an affirmative determination as such from the Commission. In finding that there were no public policy concerns which warranted Commission action at that time, the Commission found persuasive the fact that *Hogan* was not holding itself out as an interexchange carrier. Rather, the company was merely serving as an agent for end users in obtaining telecommunication services which satisfied the end user's needs.

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17 Resale was defined by the FCC as "an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications service and facilities to the public (with or without adding value) for profit."

Through this agency relationship, we expected that *Hogan* would act as a consultant evaluating the telecommunications services and facilities of and recommending options to end user's which would most effectively meet the end users needs. It has, however, subsequently been brought to our attention that entities such as *Hogan* have been holding themselves out as the end user's telecommunications provider, the entity actually providing interexchange service to consumers and receiving recurring remuneration for telephone usage of the end user. Therefore, as outlined above, this type of activity qualifies a telecommunications provider who is reselling as a telephone company subject to Commission jurisdiction.

Another primary factor influencing our decision in *Hogan* was that we foresaw no significant public policy concerns which warranted Commission action, including requiring those entities to submit to our direct jurisdiction. History has shown, however, that since the *Hogan* decision, we have received a substantial number of complaints from consumers alleging that their interexchange carrier service had been switched to another carrier without their authority. This process has become known in the industry as "slamming". Many of these slamming complaints are attributable to those entities heretofore deemed to be rebillers like *Hogan*. Finally, the Commission limited its waiver that it granted *Hogan* and similar rebillers to interexchange services. The scope of the applicable regulation of those entities in the provision of local exchange service is being considered, for the first time in this docket. While we need not address in this local competition proceeding the regulations applied to rebillers of interexchange services, the Commission is not ruling out such a proceeding in the future. On the issue of competition in the local exchange service market, however, sound public policy dictates that, at this time, we maintain full jurisdiction over those entities satisfying the criteria, set forth above, which determines what is a telephone company subject to Commission regulation pursuant to Section 4905.03(A)(2), Revised Code. All telephone companies engaged in the business of providing basic local exchange services will be subject to the standards currently applicable to the ILECs. Examples of such standards include, but are not limited to, certification, end user tariffs, annual reporting requirements, the appropriate tax authority, and universal service expectations.

By this decision, we are not ruling out the possibility that later experience may show that the public interest would be better served by revising the regulations applied to all ILECs including resellers and rebillers. If so, to the extent the law allows it, we may review this matter and act accordingly. The Commission would also note that we can utilize the flexibility provided by Section 4927.03, Revised Code, for competitive telephone companies and Section 4927.04(B), Revised Code, for those providers serving less than 15,000 access lines in order to tailor regulatory requirements to meet the individual provider's needs in an appropriate regulatory proceeding. We have done so in the guidelines to tailor our regulation of these entities to address the principal problem that have arisen, namely, fair dealing with Ohio's consumers.

B. Exemptions for Certain LECs

Staff's proposal authorized small LECs (SLECs) to seek a three-year waiver or waivers of the local competition procedures on a guideline-by-guideline basis. SLECs seeking such waivers were directed to justify their request and provide an explanation of the steps the SLECs would take during the waiver period to prepare to address a bona fide request upon the expiration of the waiver period. SLECs granted a waiver were not, however, relieved from entering into arrangements with NECs regarding interconnection and compensation for traffic exchange.

Ameritech supports affording SLECs a three-year period in which the SLECs could apply for an exemption from these rules conditioned upon the SLECs committing to, during this transition period, a specific timetable to correct uneconomic rate structures and to lower access charges and billing and collection rates (Ameritech initial comments at 20). OCC and OCTA sought clarification regarding whether the SLECs had a three-year period in which to request waivers or whether approved waivers would expire at the end of three years (OCC initial comments at 25; OCTA reply comments at 8). Telephone Service Company (TSC) opines that the staff's waiver mechanism is so burdensome that it affords no relief whatsoever. Accordingly, TSC recommends that the Commission incorporate the cooperative waiver mechanism found in 564 which permits the SLECs to work with the Commission's staff to develop the necessary waivers (TSC initial comments at 6).

The Chillicothe Telephone Company (Chillicothe), Century Telephone of Ohio, Inc. (Century), and ALLTEL propose extending the exemption to carriers serving fewer than 50,000, 100,000, and 500,000 access lines, respectively (Chillicothe initial comments at 2; Century initial comments at 3; ALLTEL initial comments at 18). In addition, Century and ALLTEL propose a blanket exemption from all of the guidelines for three and four years, respectively (Century's initial comments at 3; ALLTEL initial comments at 18). Scherers Communications Group, Inc. (Scherers) requests that we clarify the definition of SLECs to specify that the number of lines must be under 15,000 for a company's entire operation, not just the Ohio portion of its business (Scherers initial comments at 6). OCC objects to ALLTEL's proposal because it would leave only Ameritech, GTE, Cincinnati Bell, and United/Sprint subject to competition. OCC sympathizes with Scherers' concern for ILECs that are part of a multi-state operation, but maintains that the Commission already determined that ILECs associated with a holding company could still take advantage of the benefits afforded small telephone companies by Case No. 89-564-TP-COI (OCC reply comments at 47).[18]

The Ohio Small Local Exchange Carriers (OSLECs) sought, as a class, a seven-year exemption from local exchange telephone service competition conditioned upon their refraining from seeking to compete outside of their service territories (OSLECs initial comments at 4). While appreciative of staff's consideration of their unique circumstances, the OSLECs aver that the staff's proposal contemplating rule-by-rule

[18] Supplemental Finding and Order issued August 15, 1991, at 6.

waivers is inadequate, unworkable, unduly complex, and very expensive to implement (OSLECs initial comments at 5). According to the OSLECs, the SLECs do not have the requisite accounting, economic, legal, and engineering resources available "in house" to allow them to realistically seek waivers on a rule-by-rule basis. Moreover, it is their belief that any such proceeding seeking individual company-specific waivers will undoubtedly be met with opposition by certain LECs which will, in effect, discourage applications for waivers from even being filed. For all of these reasons, the OSLECs claim that relief for the SLECs must be across the board and for a period sufficiently long to permit the scrutiny and observation of competition as it emerges in low-cost and metropolitan areas and to afford the SLECs time to prepare for competition (OSLECs initial comments at 6).

OCTA, on the other hand, opposes granting the SLECs a seven-year exemption from competition in their service areas. OCTA claims that the SLECs have already had seven years from the effective date of H.B. 563 to prepare for competition. More importantly, according to OCTA, the Ohio General Assembly afforded SLECs an opportunity, through Section 4927.04(B), Revised Code, to seek exemptions from most of the provisions of Chapters 4905 and 4909 by filing an application with the Commission (OCTA reply comments at 10). OCTA recommends, therefore, that the Commission reject the SLECs' call for a blanket seven-year moratorium on competition in SLEC service areas. MFS further states that there is no compelling reason to deny, for such a lengthy period, SLEC customers the benefits of competition that will be available to other Ohioans far sooner (MFS reply comments at 5). In any event, OCTA avers that any waiver provisions should similarly apply to the NECs as well as the SLECs because such entities will be equivalent to or smaller than SLECs (OCTA initial comments at 5).

The 1996 Act affords rural telephone companies (RLECs) and rural carriers, as defined therein, exemptions and the opportunity to seek suspensions or modifications of various obligations under the 1996 Act. Specifically, Section 251(f)(1) affords RLECs with an automatic exemption from the obligations imposed generally on all ILECs by the 1996 Act.[19] This exemption may be terminated by a state commission following receipt of a bona fide request for interconnection, services, or network elements and a finding by the state commission that the request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 (universal service provisions) of the 1996 Act. Section 251(f)(2), on the other hand, authorizes rural carriers to seek a suspension or modification of an obligation or obligations under the 1996 Act. The state commission shall grant such petition to the extent that, and for such durations as, the state commission determines that such suspension or modification is necessary to avoid a significant adverse economic impact on users of telecommunications services generally, to avoid imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically

[19] These exempted provisions include: 1) the duty to negotiate in good faith under Section 252 particular terms and conditions of agreements; 2) the duty to permit interconnection at any technically feasible point within the network; 3) unbundled access to any requesting telecommunications carrier; 4) resale at wholesale rates; 5) notice of changes necessary for transmission and routing; and 6) physical collocation.

infeasible. In addition, the state commission must find that the petition is consistent with the public interest, convenience, and necessity.

The OSLECs submit that, notwithstanding the 1996 Act, the Commission maintains the full authority to grant the seven-year exemption from competition requested by the small companies. However, should the Commission conclude that it preferred to grant the requested relief in the context of the 1996 Act, the OSLECs request that the Commission treat their comments in this matter as a joint petition for relief under Section 251(f)(2) of the 1996 Act (OSLECs supp. comments at 1-2). In the alternative, the small companies request that the Commission find that a presumption exists that suspension is necessary for all of the small companies and that the suspension be granted for a period not to exceed seven years upon the filing of a simple request for suspension. Any intervening party opposing the request would bear the burden of overcoming the presumption and the Commission would have 180 days to determine the matter. The small companies maintain that this process would satisfy the intent of the 1996 Act that small companies serving rural areas be treated differently than large telephone companies (OSLECs supp. comments at 2-3).

Century and Chillicothe maintain that, as defined in the 1996 Act, they are RLECs and, therefore, receive an automatic exemption from the obligations set forth in Section 251(c) of the 1996 Act (Century supp. comments at 1; Chillicothe supp. comments at 1-2). ALLTEL asserts that a state may require, consistent with the authority provided under Section 253(f), that a telecommunications carrier seeking to provide service in an area served by a RLEC meet the requirements of an eligible telecommunications carrier under the 1996 Act before being permitted to provide such service (ALLTEL supp. comments at 4). OCTA and Time Warner maintain that the Commission should review any requests for exemption under the 1996 Act from those other than traditional SLECs strictly and that the burden of substantiating the request must be on the requesting party (OCTA and Time Warner supp. comments at 14-15). OCC agrees that the burden of proof must be on the entity seeking a rural carrier modification or suspension (OCC supp. comments at 28).

Having thoroughly reviewed the comments on this provision of staff's proposal and being fully informed of the treatment afforded RLECs and rural carriers under the 1996 Act, the Commission now makes the following determinations. Those ILECs meeting the definitions of a RLEC or a rural carrier will be afforded either an exemption or an opportunity to seek a modification or suspension from the applicable provisions of the 1996 Act. Those RLECs who seek an exemption under Section 251 of the 1996 Act or who seek a waiver of these guidelines shall submit a plan, within 12 months of the issuance of this order, or within 60 days of the receipt of a bona fide request for interconnection, services, or network elements, whichever occurs earlier, explaining the steps the carrier will take to prepare for the introduction of local competition in its service area. This plan must include, at a minimum, an explanation of how the plan will benefit the public interest; the steps the involved carrier will take to prepare itself for competitive entry in the form of specific milestones and a timeline; a timetable and outline of information to be included in progress reports regarding the preparations for competitive entry; and any other information relevant to support its plan including, but not limited to, empirical information (with supporting documentation) concerning economic burden, technical feasibility, and impact on universal service.

The exemption afforded RLECs by Section 251(f)(1) of the 1996 Act will automatically apply to all providers meeting the qualifications of an RLEC. This exemption shall remain in place until the RLEC receives a bona fide request for interconnection, services, or network elements and for which the Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with universal service. RLECs which have an exemption still have a duty to provide resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation to all requesting telecommunications carriers. In addition, RLECs that have an exemption must still, unless granted a waiver, comply with the remaining guidelines set forth in this matter. As a final RLEC matter, the Commission shall issue an order within 120 days of receipt of a bona fide request which either terminates the exemption and establishes an implementation schedule or an order which outlines its findings pertinent to the bona fide request.

Likewise, each rural carrier seeking an exemption under Section 251 of the 1996 Act or which seeks a waiver of these guidelines must submit a plan to the Commission for the Commission's review and approval which shows how it is preparing for the introduction of local competition in its service area. For rural carriers that are also RLECs, the plan must be filed within one year from the date the Commission adopts these guidelines or 60 days after the receipt of a bona fide request, whichever is earlier. For rural carriers that are not also RLECs, the plan must be filed within 180 days from the date the Commission adopts these guidelines, or 30 days after the receipt of a bona fide request, whichever is earlier. This plan must include, at a minimum, the same factors required in an RLEC plan. Upon a petition from a rural carrier for a modification or suspension of the application of a requirement or requirements under the 1996 Act, the Commission shall issue an order within 180 days after receiving such petition. Pending action on the request, the Commission may suspend enforcement of the requirement or requirements to which the petition applies. In considering a petition from a rural carrier, the Commission will consider if the request is necessary in order to avoid a significant adverse economic impact on users of telecommunications services generally, to avoid imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically infeasible. The request must also be found to be consistent with the public interest, convenience, and necessity. Having addressed the modifications to staff's proposal necessitated by the adoption of the 1996 Act, it is now appropriate to discuss the positions expressed by the commenting parties.

The OSLECs' request for a blanket exemption, for seven years, from local exchange competition premised upon their refraining from competing outside their service territories is denied. A recurring theme running throughout the 1996 Act is to promote local exchange competition. In enacting this legislation, it is important to note that while Congress did afford RLECs and rural carriers with certain protections, the 1996 Act does not provide any carrier with a blanket exemption from competition nor are there any provisions specifically affording these carriers with a time line to prepare themselves for competition. The attached guidelines do provide the OSLECs with an automatic exemption from certain obligations placed upon ILECs generally. In addition, the OSLECs have the ability to seek a modification or suspension from specific requirements upon a proper showing. For these reasons, the OSLECs request for a blanket, seven-year exemption is denied.

The OSLECs' joint petition seeking a suspension of the application of the requirements of subsections (b) and (c) of Section 251 of the 1996 Act is also denied. The 1996 Act contemplates that, in considering a petition for modification or suspension by a rural carrier under Section 251(f)(2), a state commission will make certain very distinct findings regarding economic impacts on users of telecommunications services or on the petitioner or the technical feasibility of the request. In addition, the state commission must find that the request is consistent with the public interest, convenience, and necessity. In order to satisfy our obligations under the 1996 Act, it will be necessary for an ILEC seeking a determination under the rural carrier provisions to make a separate application to the Commission setting forth with particularity the provisions from which it seeks a modification or suspension and all relevant information necessary for the Commission to make that determination. The joint petition sought by the OSLECs in this proceeding fails to provide any information from which the Commission can make the required findings on an individual company basis. Specifically, the OSLECs' joint petition fails to provide us with any information necessary to make a determination on the impact such a petition will have on users of telecommunications services generally, the economic burden these requirements place upon the OSLECs; or the technical infeasibility of these standards. In addition, nothing has been presented which substantiates that this request is consistent with the public interest, convenience, and necessity. By this determination, we are specifically denying the joint petition submitted by the OSLECs. Moreover, as set forth in more detail within the guidelines, we envision that rural carrier exemption requests will be filed on an individual company-specific basis and not in a mass joint petition such as was filed by the OSLECs in this proceeding.

Several ILECs urged us to broaden the definition of a SLEC to include those companies serving up to 500,000 access lines. As pointed out in the comments, this definition would exclude all but the four largest ILECs operating in Ohio. It is unnecessary for us to adopt such an expansive definition in these guidelines. To the extent that a RLEC or rural carrier serving greater than 15,000 access lines believes it is unique, the 1996 Act affords those companies either an automatic exemption from certain provisions of the 1996 Act or offers those companies an opportunity to seek, on a rule-by-rule basis, a modification or suspension from many of the provisions affecting that carrier. In considering such requests for modification or suspension, the state commission is directed to determine if the request is necessary to avoid significant adverse economic impact on users generally, to avoid imposing unduly economically burdensome requirements, or to avoid imposing technically infeasible requirements and find that the request is consistent with the public interest. This process provides LECs meeting the requirements of the 1996 Act adequate opportunities to seek exemptions or modifications based upon the unique circumstances of an individual company. No other waiver process is necessary for these LECs.[20] As a final matter, any LEC seeking a waiver(s) pursuant to Section 251 of the 1996 Act, or which seeks a waiver(s) of these guidelines shall specify the period of time for which it seeks such waiver(s) and a detailed justification therefore.

C. Complaints

Ameritech suggests clarifying this section by simply stating that both LECs and NECs, as telephone companies, are subject to the complaint process set forth in Section 4905.26, Revised Code (Ameritech initial comments at 22). OCC disagrees with this proposal and suggests, as an alternative, that failing to abide by the rules established in this docket constitutes an unjust and unreasonable practice pursuant to Section 4905.26, Revised Code (OCC reply comments at 51). OCTA recommends referencing that the Commission has recognized the importance of differentiating between "regular" complaints brought pursuant to Section 4905.26, Revised Code, and carrier-to-carrier complaints as addressed in the Regulatory Oversight section (OCTA initial comments at 6). OCC asserts that the Commission should specify that the complaint process is available to consumers (OCC initial comments at 26). TCG Cleveland (TCG) recommends that the Commission adopt an expedited complaint process to be completed within 120 days following the filing of a complaint (TCG initial comments at 4).

As noted in the attached guidelines, the reference to complaints has been removed from the Certification section altogether. The revised guidelines address carrier-to-carrier complaints under the Regulatory Oversight section while consumers' complaints are now addressed in the Consumers' Safeguards section. This should alleviate many of the concerns raised by the commenters on this issue. However, while sympathetic to the arguments raised by TCG regarding resolving complaints within 120 days of filing, we find it unwise to adopt such an approach. Some carrier-to-carrier disputes involve such technical issues that it would be impossible to always guarantee conclusion of a complaint within the suggested time frame. Moreover, the Commission's ability to expeditiously resolve disputes is, to some degree, dependent upon the cooperation provided by the parties. For example, endless discovery disputes would certainly affect the timing of the Commission's order. We have already made changes to streamline our complaint process in our administrative rules and in our arbitration guidelines. Moreover, any complainant can request use of a Commission-

[20] The status as to whether ALLTEL and Century are either RLECs or rural carriers under the Act is unclear. ALLTEL and Century are directed immediately to provide supporting memoranda to the staff concerning their position on this issue. The Commission will resolve this issue upon a waiver filing by ALLTEL and Century.

authorized alternative dispute resolution process. We believe that no further clarification is needed in these guidelines.

D. Minimum Requirements

GTE recommends removing the minimum requirements establishing an applicant's corporate standing, listing of the officers and directors, illustrative proposed end user and carrier-to-carrier tariffs, newspaper notification, and information pertaining to similar operations in other states (GTE initial comments, Appendix at 4). Scherers maintains that the requirement for illustrative tariffs prior to certification is not warranted but instead would recommend a brief explanation of the services to be provided. Scherers points out that, in a competitive market, illustrative tariffs will eliminate the competitive edge for new providers (Scherers initial comments at 6). OCC avers that adopting GTE's position would deprive the Commission of information pertinent to a finding of public convenience as required by Section 4905.24, Revised Code (OCC reply comments at 52). AT&T objects to maintaining detailed maps at the Commission delineating service areas, arguing that to do so is an unnecessary regulatory requirement (AT&T initial comments, Appendix A at 10-11). ALLTEL and GTE suggest making the provision of exchange maps one of the enumerated minimum requirements (ALLTEL initial comments, Attachment 2 at 5; GTE initial comments, Appendix B at 4). OCC agrees with ALLTEL's and GTE's proposed revision. OCC also notes that a high degree of confusion could result if there is no central repository defining service territories, particularly once current exchange boundaries begin to dissolve (OCC reply comments at 52). TCG asserts that NEC applicants should not be required to submit pro forma income statements and a balance sheet because, given the varying types of corporate structures available, staff may want different kinds of financial materials from NECs (TCG initial comments at 4).

We disagree with GTE and Scherers that illustrative tariffs need not be submitted with the initial filing seeking certification. Illustrative tariffs provide the Commission insight into the services being proposed by an applicant as well as the terms and conditions under which the proposed services will be offered. We acknowledge, however, that it may not be possible at the time a certification proceeding commences to have a full and complete tariff. Therefore, final tariffs need not be filed until the applicant is prepared to commence serving consumers. However, the final tariffs may not differ from those offered in support of the application. *Public Utility Service v. Pub. Util. Comm.* , 62 Ohio St. 2d 421 (1980). In any event, we fail to see how providing illustrative tariffs is any more onerous than submitting a written explanation of the services the applicant proposes to provide. Further, we agree with OCC that accurate, detailed, up-to-date maps delineating service territories will be even more important in a competitive market than in monopoly markets of the past. Therefore, this requirement will be maintained. Finally, we note that TCG's argument concerning financial information need not be adopted in these revised guidelines. Financial wherewithal to provide basic local exchange service is one of the key elements the Commission must determine before certifying an applicant. Thus, some sort of financial showing must be demonstrated in the certification proceeding. To the extent, however, that an applicant can demonstrate to the Commission its financial wherewithal through financial information other than pro forma income statements and balance sheets, the Commission would be willing to consider such alternative information.

E. Accounting Standards

Certain commenters support the staff's proposal that accounting records for all local providers affiliated with cable TV providers be consistent with the Uniform System of Accounts (USOA). GTE and Cincinnati Bell recommend adopting relaxed accounting principles for all providers but concede that if the ILEC is required to follow the USOA, then the NECs should as well (GTE initial comments, Appendix C at 5; Cincinnati Bell initial comments, Appendix B at 2 and Appendix C at 8). The NECs primarily maintain that they should not be subject to any accounting standards which could constitute a barrier to entry. AARP registers a concern regarding the lack of a requirement for separate cable and telephony operations. AARP submits that any local service provider which also operates another monopoly service, such as cable, should be required to insulate the finances and operations of these services to the greatest extent possible (AARP initial comments at 3-4). Cincinnati Bell concurs with AARP's separate affiliate concern (Cincinnati Bell initial comments, Appendix B at 2). Providing accounting records consistent with USOA would also require the application of USOA affiliate transaction rules according to Ameritech. It would then be appropriate to reevaluate this requirement for all local providers following the transition to a competitive market (Ameritech initial comments at 24).

The Commission determines that, at this time, all LECs must maintain their accounting records in accordance with the USOA. NECs, however, may utilize Class B USOA accounts. Compliance with the USOA is the only truly effective method to afford this Commission the ability to gauge the types of facilities and equipment being utilized by all local providers. In addition, utilization of USOA standards allows the Commission to make some comparisons among company accounts and, along with use of necessary separations processes, will guard against market abuses associated with cross-subsidization. USOA will also be critical in the separation of video and telephone services for both regulatory and for tax purposes. We have relaxed our requirements in response to the filed comments by only requiring Schedule B of USOA which is significantly easier to comply with. We will entertain waivers for unique circumstances and pledge to review the issue once the transition period is complete and a true "level playing field" is established. Due to the flexibility afforded companies associated with keeping accounting records in accordance with Generally Accepted Accounting Principles, that method of record-keeping is inferior to USOA for the purposes we intend to use the information. We may revisit the necessity of this requirement in the future.

F. Certification Process

The staff proposal confirms that the Commission will act expeditiously on all applications for certification to provide local services. In addition, the proposal confirms that a hearing may be called pursuant to Section 4905.24, Revised Code. Several new entrants suggest that the Commission adopt specific time frames in which the certification process would have to be completed. TCG submits that the 1996 Act has already determined that competition is proper and necessary for the public convenience. Therefore, the need for a certification hearing becomes moot (TCG supp. comments at 3). AT&T recommends that those companies already certified in Ohio should be permitted to amend their existing certificate to provide local service seven days after filing the information outlined in Section II.B.7 of the proposed rules (AT&T initial comments, Appendix A, Part 1 at 10).

The Commission possesses the statutory authority to certify multiple telephone companies pursuant to Section 4905.24, Revised Code. In order to meet the "proper and necessary for the public convenience" standards set forth in the statute, the Commission will evaluate an applicant's financial, managerial, and technical capabilities to provide the proposed service. Satisfactory demonstration of an applicant's technical, financial, and managerial capabilities establishes that the public convenience is served by certifying the applicant. To confirm the Commission's commitment to act expeditiously on applications for certification, the guidelines have been revised to reflect a 60-day automatic approval process for certification applications absent full or partial suspension. We acknowledge, however that, in some cases in which interested entities have filed a motion to intervene and have set forth sufficient concerns related to the financial, managerial and technical capabilities of the applicant, it may be appropriate to judge a particular applicant's qualifications through a hearing procedure.

An applicant seeking a certificate to provide basic local exchange services will also no longer have to publish legal notice of the pendency of its application. Those persons interested in such applications are directed to consult the Commission's docketing division or check the Commission's internet home page for a list of daily docketing activity. This certification process is entirely consistent with the 1996 Act. Section 253(B) of the 1996 Act authorizes state commissions to impose competitively neutral requirements which are necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication services, and safeguard the rights of consumers.

Regarding AT&T's proposal to allow currently certificated entities who are providing competitive services to merely amend their authority, on seven days notice, to provide local services, we find that such suggestion should not be adopted. The Commission agrees with OCC that the General Assembly, in adopting H.B. 563, has drawn a distinction between the provision of toll services and basic local exchange services. Due to the importance of basic local exchange service for all subscribers, this Commission has regulated local service more pervasively than any other telecommunications service. For instance, we have adopted telephone service standards and made those standards applicable only to local exchange carriers. In addition, under 92-1149, we have created categories into which all services are placed and reserve the most stringent regulation over the provision of services classified as basic local exchange services. With this background in mind, we have to date been requiring all providers, including AT&T (and any other provider already authorized to provide a telecommunications service in Ohio), who desire to provide basic local exchange service, to obtain a certificate to offer local services. We believe that this procedure is necessary in order to fulfill our statutory obligation to ensure that the public convenience standard has been met by all local exchange providers.

G. ILECs as NECs

This provision of the staff proposal and the questions associated with it in Appendix C engendered significant comment from the interested parties. Several ILECs maintain that the Commission should permit them to establish subsidiaries to act as NECs outside of their current local service territories. Ameritech, while requesting clarification of the staff's proposal, set forth its understanding that an ILEC could seek to expand its existing service area as well as be permitted to establish a subsidiary which could provide service both within and without the ILECs's current service areas (Ameritech initial comments at 23). Commenting on the affiliate transaction requirements, United/Sprint maintains that none of the Commission's fears from the United Telephone Long Distance (UTLD) proceeding (Case No. 86-2173-TP-ACE) (Finding and Order dated December 7, 1988) have come to pass and that, therefore, the FCC's affiliate transaction guidelines should be sufficient to ensure that a subsidiary company does not gain an undue advantage in the marketplace (United initial comments at 8). OCC and many of NECs object to the LEC's positions on ILECs being NECs. The supplemental comments filed in this matter generally reflect that, in light of the 1996 Act, this provision of the staff's proposal is no longer valid.

The Commission finds that staff's proposal should be amended. The revised guidelines reflect that an ILECs will be permitted to establish an affiliate to compete as a NEC in both contiguous and noncontiguous exchanges outside the incumbents' existing service areas. ILEC affiliates will, however, be subject to the affiliate transaction standards embodied in the UTLD processing and Ameritech Advanced Data Services, Inc. (Case No. 93-1081-TP-UNC, Finding and Order dated August 19, 1993) and any other requirements the Commission may impose. There are a number of reasons supporting the revisions to staff's proposal in this area. First, as noted by several of the ILECs commenting on this section, the staff's proposal would have the effect of removing additional competitors from the pool of potential entities providing competitive telecommunication services in Ohio. In many instances, ILEC affiliates operating outside of the ILECs own existing service areas will have little or no market power that can be yielded against other competitors since there will be no ownership of essential telecommunication facilities on the date the affiliate begins serving end users. All parties are put on notice that we will be diligently reviewing the terms and conditions of all arrangements in which an ILEC affiliate is interconnecting with another ILEC to ensure that other LECs are not treated in a discriminatory or anti-competitive manner. We also agree with United/Sprint that there have been no significant problems concerning UTLD; however, we believe that it is precisely due to the affiliate requirements adopted in that case that there have not been any problems. Therefore, we determine that it is in the public interest to permit the ILECs to compete, through a separate subsidiary, in areas where they have no essential telecommunication facilities at this time.

H. Expansion of Operating Authority

Staff's proposal set forth a procedure whereby NECs would be permitted to expand their operating authority. Staff's proposal drew a distinction between expansions into areas where publication had already occurred and expansions into areas where publication had not already occurred. Several commenters interpret staff's proposal to mean that a hearing would not be permitted on an expansion request into areas where publication had not already taken place. Ameritech states that both NECs and ILECs should be permitted to expand their operating authority by providing the same information required in the initial certification application.

The Commission finds it appropriate to clarify the staff's proposal. A NEC desiring to expand its service area beyond that which was authorized in its certification proceeding must file with the Commission an application to amend its certificate. The application should include a detailed description of the new proposed service territory and supporting documentation indicating that the applicant is technically, financially, and managerially capable of conducting operations on an expanded basis. Applications to amend a certificate will be subject to a 30-day automatic approval process. ILECs will continue to be prohibited from expanding their existing service areas other than through the Commission's EAS process. ILECs will, however, as set forth above, be permitted to establish separate NEC affiliates that can seek to provide service in any of its non-affiliate exchanges throughout Ohio.

I. Serving Area: Self-Definition and Service Coverage

Staff's proposal permits NECs to self-define their service area, but requires them to do so by established ILEC exchanges. TCG submits that both NECs and ILECs should be permitted to self-define the area in which they will serve customers (TCG initial comments Appendix A at 7). Ohio Direct/Ridgefield Homes jointly posit that customers are harmed by the archaic boundary lines which define the ILECs service territories. Requiring NECs to provide service based upon the current telephone boundaries only exacerbates the problem (Ohio Direct/Ridgefield Homes initial comments at 3).

The staff's proposal also placed an obligation on the NECs to provide service to all customers upon request, unless unable to purchase services for resale from the relevant ILEC. Several parties argue that this is a reasonable restriction upon the services to be provided by the NECs. Ameritech would add that the services must be offered at just and reasonable rates (Ameritech initial comments at 28). Other commenters note that restricting NEC serving areas to ILEC exchange boundaries creates a barrier to entry and would effectively mandate resale by NECs which have no interest in resale. Consumer commenters are concerned that such a requirement will perpetuate the existing exchange boundary problems that exist today.

The Commission agrees with those commenters suggesting that the Commission remove the requirement that NECs' self-defined service coverage be accomplished by current ILEC exchanges. Staff's rationale for this requirement was that it would minimize customer confusion and require the NECs to fully consider all of the ramifications of serving a particular exchange area. While laudable goals, we believe that customer confusion can be minimized by providing to the customers clear and concise marketing and educational materials. Experience with competition in the long distance market has shown us that customers are generally wary of changing their existing utility service. Thus, the NECs will have significant obstacles to overcome in order to entice customers to leave their incumbent provider and switch to a NEC. That fact alone will require the NECs to expend significant resources to explain the services and the service coverage offered by them. With so much to overcome to entice customers to switch their local service, we believe that NECs will already have thoroughly considered all of the ramifications before seeking to provide service in a particular area. Therefore, we find this requirement unnecessary. We have, however, added a provision making it clear that a NEC will have an obligation to serve all customers requesting service on a nondiscriminatory fashion. By making this determination, we are not foreclosing the filing of complaints against a NEC pursuant to Section 4905.26, Revised Code.

Although we are not adopting staff's initial recommendation to require all NECs to serve all customers in an exchange, we remain concerned with the potential for "cream skimming" and unequal obligations of ILECs and NECs in this regard. We have addressed this issue by requiring NECs who do not serve an appropriate proportion of residential and business customers to contribute more to the universal service fund than the ILEC on a proportional basis. We also are providing all LECs with a financial incentive to serve low income customers through a credit to their universal service fund obligations if they serve such customers in an exchangethrough expanded lifeline programs. We think that addressing the issue through universal service funding is far more appropriate than the "command and control" approach, advocated by OCC and others which would discourage niche providers from entering specialized markets.

J. Local Calling Areas

Staff's proposal would permit NECs to establish their own local calling areas. Staff also sought comment on whether a ILEC should be permitted to redefine its local calling area at this time. Century and Ameritech propose that ILECs should be permitted to adjust their local calling areas to meet the local calling areas established by the NECs within their service territories with whom they compete (Century initial comments at 5; Ameritech initial comments at 29). Century maintains that NECs should be prohibited from billing calls as toll while paying only local traffic termination charges (Century initial comments at 5).

Of course ILECs will continue to have the current EAS procedures available to them in order to expand their local calling areas on a nonoptional basis. However, we recognize that there may be situations where the ILECs may need to respond to a competitive market. Therefore, we would allow ILEC flexibility in situations Where competitors have entered the market and begun serving customers to propose optional alternative local calling plans through an ATA process. We are also committed to speeding up the current EAS process wherever appropriate and will continue to do so. We have already indicated a willingness to accept alternatives that may meet specialized needs as evidenced by the Commission's acceptance of a county-wide calling plan for Ashtabula County. See Board of County Commissioners et al. v. Western Reserve, United, Conneaut, and Orwell Telephone Companies, Case No. 95-168-TP-PEX (April 25, 1996) and comments of Ashtabula County Telephone Coalition. ILECs are encouraged to work with the Commission and its staff in order to find satisfactory methods to expedite the process and explore new alternatives that meet the needs of customers in a nondiscriminatory and pro-competitive manner. We also affirm that NECs should be permitted to establish their own local calling area which can arguably vary from the ILECs. As pointed out by staff, end users should ultimately benefit from this proposal because they will have the ability to compare providers based not only upon price, quality, and perceived value but upon calling area as well. Additionally, as staff pointed out, we anticipate that the need for customers to file for EAS will lessen as NECs commence serving customers through local calling areas that do not coincide with the ILECs' calling areas.

K. Minimum Service Requirements

The staff's proposal would subject facilities-based and nonfacilities-based providers to the Commission's minimum telephone service standards (MTSS). In addition, all ILECs and NECs would be permitted, as is presently the case, to seek a waiver or modification of a particular standard based upon their own unique circumstances. Several commenters claim that competition will lessen the need for any minimum standards and, therefore, these providers encourage the Commission to reevaluate and lessen, where possible, the MTSS in the newly competitive environment.

The Commission will certainly continue to review and revise provisions within the MTSS which are outdated or no longer warranted. In addition, it should be made clear that, as set forth in the proposed guidelines, LECs may seek a waiver or modification of any minimum standard when circumstances so warrant. Having made that determination, we also find it appropriate to retain the requirement, except for the revisions discussed below, that all NECs and ILECs abide by the MTSS which currently exist and as may be modified by this Commission.[21] These standards set forth the minimally acceptable service that end users should be able to expect from the company providing them local exchange service. It may be that, over time, competition evolves to the point that it is reasonable to do away with some of these standards. At this time, however, we believe that the most appropriate manner in which to proceed is to address company-specific waiver requests as is our current practice.

III. INTERCONNECTION

As noted previously in this order, adoption of the 1996 Act has caused substantial revision to the Compensation Section of the staff's proposal. In fact, the issues associated with compensation have now been broken out into three new sections entitled Interconnection, Compensation for the Transport and Termination of Traffic, and Pricing Standards. An overview of the requirements found within these three new sections is set forth below. Issues raised in the earlier comments in this docket, to the extent those concerns are still relevant, will be addressed herein.

The revised standards make it clear that all LECs (ILECs and NECs) have a duty to interconnect with the facilities and equipment of other telecommunication carriers upon bona fide request. All LECs have the duty to negotiate the terms and conditions of the interconnection agreements in good faith. Interconnection to the existing network is to be accomplished through Feature Group D type interconnection. The requested interconnection is to be accomplished at any technically feasible point in the network with quality at least equal to that provided by that LEC to itself. All LECs have a duty to provide physical collocation unless such request is impractical for technical reasons, space limitations, or because the interconnecting carrier requests virtual collocation. Interconnection rates, terms, and conditions shall be established through negotiation or arbitration. The rates, terms, and conditions of interconnection shall be set forth in agreements which must be reviewed and approved by this Commission. Interconnection arrangements, approved by this Commission pursuant to Section 252 of the 1996 Act, must be made available to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. Rates, terms, and conditions may also be established through tariffs approved by the Commission. The Commission reserves the right to require the filing of tariffs establishing interconnection rates, terms, and conditions. The interconnecting NEC may mirror the ILEC's interconnection rates or establish its own interconnection rates.

The revised guidelines also set forth a detailed explanation of what is to be included in a bona fide request. Generally, a bona fide request must identify the: requested meet point; type of collocation requested; compensation arrangement desired; unbundled network components required, if any; necessary access to poles, conduit, and

21 Staff has begun the process of formally revising the MTSS rules to make them moore relevant to the needs of today's consumers. All stakeholders should avail themselves of the opportunity prior to the formulation and publication of specific MTSS standards to discuss their views on this issue with staff.

other right-of-way; requested retail components to be offered for resale, if any; type of interim number portability, until a long term solution is available; access to essential databases; and a requested completion date.[22] The providing carrier may charge a reasonable application fee, subject to Commission authorization, which covers the reasonable cash outlays expended in the course of fulfilling the bona fide request.

The revised guidelines also set forth a procedure whereby parties may negotiate or arbitrate, if necessary, the terms and conditions of an interconnection agreement.[23] In addition, the revised guidelines reflect that the Commission will act on interconnection arrangements adopted pursuant to negotiation or arbitration within a certain period of time following submission of the agreements to the Commission for review. The Commission's guidelines clarify that existing EAS compensation arrangements for the transport and termination of traffic between non-competing carriers shall be maintained in certain circumstances. We further clarify that such arrangements were not approved by the Commission pursuant to Section 252 of the 1996 Act and shall only be available to other similarly situated LECs establishing an arrangement with a non-competing LEC. As a final matter pursuant to the 1996 Act, Ameritech is provided the opportunity to prepare and file a general statement of the terms and conditions of interconnection which complies with these guidelines and with the 1996 Act. The statement will take effect 61 days after filing, unless Ameritech agrees to an extension or unless the Commission disapproves the statement. The Commission may continue to review the statement after the 60-day period expires.

Ameritech acknowledges that the 1996 Act obligates ILECs to provide physical collocation, but the company urges this Commission to place a similar obligation on the NECs. Ameritech maintains that physical collocation for NECs is not precluded by the 1996 Act and, in fact, is an example of a competitively neutral requirement contemplated by Section 253(b) (Ameritech supp. comments at 7; OCC supp. comments at 34). Cablevision urges the Commission to adopt for ILECs some of the standards listed in the 1996 Act regarding location and quality of interconnection. TW/OCTA posit that Section 252(a) of the 1996 Act requires ILECs to submit to this Commission all interconnection requirements negotiated prior to the date of enactment (TW/OCTA supp. comments at 12). Cincinnati Bell maintains that TW/OCTA and other commenters have misconstrued the interconnection requirement set forth in Section 252(a). The correct interpretation, according to Cincinnati Bell, is that Section 252(a) was meant to apply to existing arrangements between ILECs and NECs arrived at through negotiation in states where local exchange competition was authorized prior to the enactment of the 1996 Act (Cincinnati Bell supp. reply comments at 13).

As pointed out by Ameritech, the 1996 Act places a variety of obligations on ILECs. However, nothing in the 1996 Act precludes this Commission from applying

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[22] This is an overview of the list of items to be included in a bona fide request for interconnection. This list is not an exhaustive one.

[23] See also the Commission's guidelines and procedures governing negotiation and arbitration in Case No. 96-463-TP-UNC.

similar conditions upon the NECs. Interconnection of competing networks is such a fundamental function to the provision of local exchange competition, we can find no valid reason to not apply the obligations and standards of interconnection equally upon all providers (both ILECs and NECs). Nothing in the proposed guidelines prohibits a LEC and an interconnector from mutually agreeing to institute service on a virtual collocation basis nor are LECs prohibited from seeking to provide virtual collocation where facilities are limited by space or technical constraints. Regarding existing EAS compensation arrangements, we determine that such arrangements were not entered into and approved pursuant to Section 252(a) of the 1996 Act. Rather, the Commission considers such arrangements pursuant to Section 4905.48, Revised Code.

IV. COMPENSATION FOR THE TRANSPORT AND TERMINATION OF TRAFFIC

The revised guidelines set forth that all LECs[24] have a duty to establish reciprocal compensation arrangements for the transport and termination of traffic originated by another carrier and terminated over their network facilities or over facilities leased by them through the purchase of unbundled network elements from another underlying facilities-based LEC. Notification-base LECs are not eligible for the transport and termination of traffic. All ILECs and NECs are to measure local and toll traffic if technically and economically feasible. Carriers unable to measure traffic may use a percentage of local use (PLU) factor to bill originating carriers. Such records are subject to periodic audits for validation of traffic jurisdiction. An ILEC's local calling area, as of the date a NEC is actually operating within an individual ILECs' local calling area, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end, shall be treated as a local call, irrespective of subsequent changes in the ILEC's local calling area. The Commission shall specify the date upon which a NEC is deemed operational in an ILEC local calling area in effectuating this guideline.

For local traffic termination by carriers, the revised guidelines permit negotiated or arbitrated arrangements which provide for the mutual and reciprocal recovery by each carrier of the costs associated with transporting and terminating traffic over its facilities and which represent a reasonable approximation of the additional costs of terminating such a call. Arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements such as bill and keep, are not precluded by this subsection. Interim interconnection arrangements that adopt bill and keep for one year and that require evaluation of the appropriateness of utilizing such method shall be considered just and reasonable according to the guidelines. LECs shall be required to offer flat-rate (per port capacity) compensation rates to other LECs requesting such method of compensation. Additionally, reciprocal compensation may be usage-sensitive, or a combination of usage-sensitive and flat-rate. For the Commission to find a proposed rate structure of compensation for the transport and

24 The revised guidelines do not address interconnection and compensation arrangements between LECs and cellular carriers. Such arrangements remain subject to the FCC and Commission requirements.

termination of local traffic to be reasonable, a complete, well-developed cost study shall be submitted and evaluated.

For the transport and termination of toll traffic, ILECs shall use their current intrastate exchange access tariffs for compensation of toll traffic. NECs' transport and termination of toll traffic compensation shall be tariffed and may either mirror the rates of the ILEC providing service in the NEC's service area or the NEC may choose to establish its own rates. An intermediate LEC whose network is involved in the transmission of transit traffic must be compensated at either its applicable exchange access rate or, if technically feasible, by providing direct interconnection if both originating and terminating carriers are collocated in the intermediate carrier's central office. The revised guidelines also address an interim interexchange access revenue distribution procedure for use when number portability is provided on a remote call forwarding basis (RCF), to remain in effect until a permanent number portability solution is implemented.

The revised guidelines continue the Originating Responsibility Plan/Secondary Carrier Option (ORP/SCO) as a method by which ILECs reimburse each other for transporting and terminating toll traffic. Modifications have been made to the ORP/SCO arrangement which involve compensating intermediate ILECs for use of their network and revising the compensation to reflect tariffed rates now in effect as opposed to the rates in effect when the agreements were entered into. The revisions made to the existing ORP/SCO arrangements must be filed with and approved by the Commission. The guidelines also clarify that NECs are not permitted to participate in ORP/SCO arrangements as secondary carriers. As a function of being interconnected on a Feature Group D basis, NECs will be compensated for transporting and terminating traffic through the Carrier Access Billing System (CABS). Thus, NECs need not participate in ORP/SCO. However, we would point out that the interconnection arrangements between Primary Exchange Carriers (PECs) under ORP/SCO and the applicable rate elements shall be the same as under Meet Point Billing (MPB), the difference is only in the billing systems used which comply with requirement set forth in the 1996 Act (Section 251(c)(2)). As a final matter, the guidelines require that MPB arrangements be utilized in billing of compensation for all types of traffic between ILECs and NECs.

Ameritech expresses concern that the guidelines do not require the actual measurement of local and toll traffic. Between ILECs, according to Ameritech, the distinction between local and toll are currently identified through the use of separate trunk groups. This is the most efficient and effective method for separately identifying these two types of traffic and should remain the industry standard according to Ameritech. Only if both carriers mutually agree should combined trunk groups be permitted (Ameritech initial comments at 33). Several NECs maintain that, as a practical matter, establishing the ILECs' current local calling area as the standard by which local and toll calls are determined will constrain NECs from economically offering local calling areas which differ from the ILECs' calling areas Moreover, as MFS points out, this compensation provision apparently is not reciprocal. To elevate this inequity, MFS proposes that a LATA-wide bill and keep mutual compensation proposal be adopted (MFS initial comments at 16).

The ILECs generally oppose the imposition of bill and keep as the compensation method for termination of local calls. Cincinnati Bell and OTA even maintain that bill and keep compensation is unlawful (Cincinnati Bell initial comments, Appendix B at 5; OTA initial comments at 11). Following enactment of the 1996 Act, the ILECs argue that bill and keep as a compensation arrangement cannot lawfully be mandated. According to these commenters, Congress did recognize, through adoption of Section 252(d)(2)(B), that in some circumstances parties may negotiate a bill and keep arrangement to offset their reciprocal obligations and waive mutual recovery.

The NECS and OCC argue, following adoption of the 1996 Act, that bill and keep is specifically recognized as an appropriate compensation method by Section 252(d)(2)(B). OCC also disputes the ILECs' arguments that the 1996 Act allows bill and keep as a compensation arrangement only if mutually agreed to by the involved carriers (OCC supp. reply comments at 9). In any event, OCC argues the ILECs have already voluntarily entered into bill and keep arrangements with each other; therefore, those same arrangements must be offered to all similarly-situated parties seeking interconnection (*Id.*). TW/OCTA jointly argue that any distinction between local and toll traffic is inconsistent and inappropriate in light of the federal legislation (TW/OCTA supp. comments at 5). These commenters also posit that cost-based compensation rates are the only appropriate method of compensation to be utilized, if bill and keep is not utilized (Id. at 7).

For termination of toll traffic, CompTel and Ameritech claim that NEC switched access rates should be capped at those of the ILEC (CompTel initial comments at 33; Ameritech initial comments at 34). OTA supports the proposition that NECs use the lowest prevailing termination access rate in the state (OTA initial comments at 10). MFS also asserts that the guidelines concerning MPB arrangements need to be modified. According to MFS, Section 251(c)(2) of the 1996 Act imposes on ILECs an obligation to interconnect with NECs for the transmission and routing of telephone exchange service and exchange access service at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Therefore, according to MFS, the guidelines should make it clear that ILECs are required to offer NECs the same MPB arrangements that the ILECs have with each other through ORP/SCO (MFS supp. comments at 8).

Ameritech's concern regarding the measurement of local and toll traffic will be lessened under the revised guidelines since all LECs (ILECs and NECs) are to measure traffic if technically and economically feasible. On the other hand, we also acknowledge that, under certain conditions, it may be appropriate for a LEC to measure and bill traffic based on a percentage of local use factor. We expect the use of PLU factors, in lieu of traffic measurement, to only be used in rare instances. The revised guidelines also leave open the possibility that carriers may mutually agree to separate dedicated trunks for local, intraLATA toll, and interLATA toll traffic.

Therefore, as NECs establish operations within individual ILEC local calling areas, the perimeter of each such local calling area, as revised to reflect EAS, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end, shall be treated as a local call, irrespective of subsequent changes in the ILEC's local calling area. The Commission shall specify the date upon which a NEC is deemed operational in an ILEC local calling area in effectuating this guideline. Nothing in these preclude the Commission for deciding on a case-by-case basis that an ILEC's local calling area should be expanded, thereby expanding the definition in this section for what should be treated a local call for traffic termination compensation purposes.

Most commenters now agree that the 1996 Act maintains bill and keep as a method of compensation for transport and termination of local traffic. Cincinnati Bell, while claiming that the Commission should not generically adopt bill and keep as a method by which all local traffic should be compensated, even acknowledges that bill and keep is not precluded pursuant to the 1996 Act. Thus, the argument that bill and keep is an unlawful compensation method need not be further addressed. The Commission also interprets Section 252(d)(2)(B) of the 1996 Act to authorize us to impose bill and keep arrangements in an arbitration process and does not limit our authority to authorize bill and keep if arrived at only through voluntary negotiations.

We also disagree with the assertion made by the NECs that a distinction between local and toll traffic is now prohibited under Section 252(d)(2) of the 1996 Act.[25] These commenters are essentially arguing that the 1996 Act has preempted current access charges when toll calls are terminated. This analysis fails to take into account other requirements of the 1996 Act. Section 251(g) of the 1996 Act states that:

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent it provides wireline services, shall provide exchange access, information access, and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment. . . until such

[25] We recognize that this determination addresses an issue raised in AT&T's's complaint, Case No. 96-36-TP-CSS against Ameritech. However, we specifically note that a remaining issue is the rate AT&T must pay for access. That issue remains open for resolution in Case No. 96-336-TP-CSS.

> restrictions and obligations are explicitly superseded by regulations prescribed by the Commission. . . .

Further, the legislative history of Section 251 eliminates any argument that Interexchange access charges are affected by the 1996 Act. The Joint Explanatory Statement of the Committee of Conference at page 117 states:

> The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission access charge rules.

V. PRICING STANDARDS

The revised guidelines set forth general principles of pricing. These guidelines apply to the facilities, functionalities, and services offered by all LECs except for the resale pricing standards which apply only to ILECs. In most cases, prices shall be set so that the LEC recovers its LRSIC and a reasonable contribution to joint and common costs incurred by the LEC.[26] This contribution level may vary among services. However, essential non-competitive funcitionalities, facilities, and services included in the definition of state universal service, shall bear no more than a reasonable share of the joint and common costs necessary to provide those services. Rather, those subsidies associated with the provision of universal service shall be identified and recovered separately through the state universal service fund. Volume and geographically-based deaveraging discounts shall be made available to all LECs on a nondiscriminatory basis.

The revised guidelines further set forth that prices for interconnection and unbundled network elements shall be set so that the LEC recovers its LRSIC for providing interconnection and unbundled rate elements and a reasonable contribution to the joint and common costs incurred by the LEC. The profit level included in the LRSIC shall be the cost of capital which shall constitute "reasonable profit" for purposes of the 1996 Act. In the event a LEC believes that the cost of capital does not provide a reasonable profit, it has the burden of proof to establish, to the Commission's satisfaction, that a higher profit is warranted. The price for interconnection rate elements or unbundled network rate elements shall be set at LRSIC, plus an appropriate allocation of joint costs, plus 10 percent of the sum of LRSIC and allocated joint costs for the recovery of common costs. A LEC seeking a waiver from this pricing standard shall have the burden of proving that such price level is not compatible with the price established for the comparable functionality or facility provided by the LEC for the transport and termination of local traffic and to demonstrate any detrimental financial impact of such pricing. The revised guidelines also set forth a method of allocating

[26] The exception to this general standard would be the pricing guidelines applicable to interim and long-term number portability for all LECs and wholesale pricing applicable to ILECs only.

joint costs among services as well as a methodology for developing LRSIC for interconnection and unbundled network elements.

Transport and traffic termination prices shall be set at a level that allows the carrier to recover LRSIC and a reasonable contribution to the joint and common costs incurred by the LEC. Prices shall be set above a price floor reflecting LRSIC, an appropriate allocation of joint costs, plus 10 percent of the sum of LRSIC and allocated joint costs for the recovery of common costs. The price shall also be set at a level that allows the LEC to pass an imputation test for local traffic in the aggregate on a total customer basis (i.e., residence and business). The price ceiling shall be the maximum price to be established such that it allows the LEC to pass an imputation test.

Prices for interim number portability utilizing RCF or DID shall be set at a level that takes into account of the relative inferior quality of the service provided, its interim nature, and its necessity for the development of a competitive market for local exchange services. The costs of long-term number portability shall be borne by all carriers on a competitively neutral basis. ILEC retail services offered at a discount or as a promotion shall be available to other carriers at a wholesale price that reflects either the promotional rate minus 10 percent or the wholesale rate, whichever is lower. As a final pricing matter, ILECs'[27] retail services shall be available for resale and priced on a wholesale basis. ILECs' wholesale prices shall be based on the retail rate charged to end users excluding the portion attributable to any marketing, billing, collection, and other costs that will be avoided by the ILEC.

ILECs shall be subject to certain imputation requirements if a service under review is offered by at least one other provider in the relevant market or geographic area if the competitor's service relies upon an essential input provided by that ILEC in the relevant market and if the ILEC uses the same essential input to provide its comparable service. The price of an ILEC service subject to the imputation requirement shall be equal to or greater than the sum of the tariffed rate for the essential input actually used by the carrier in its service offering as such rate would be charged by that carrier to any purchaser of that essential input with that market as well as the LRSIC of all other components of the carrier's service offering. An ILEC shall submit an imputation test for Commission review and approval whenever it files tariffs to introduce a new service subject to imputation requirements, files tariffs to reduce rates for a service subject to imputation requirements, or files tariffs to increase rates for essential inputs which are utilized in providing a competitive service. Included in the Commission's review of an imputation test will be the reasonableness of the relevant market or geographic area defined by the ILEC.

[27] Pursuant to Section 251(b)(1) of the 1996 Act and the Resale Guidelines discussed below, NECs have an obligation not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services. However, NECs are not subject to any pricing standards on resold services other than the unreasonable or discriminatory standard discussed above.

MFS asserts that Section 252(d)(1) of the 1996 Act requires that ILEC rates for the interconnection of facilities and equipment and for unbundled network components must be based on the cost (determined without reference to a rate-of- return proceeding) of providing the interconnection or network element and be non-discriminatory. Based on these factors, MFS maintains that the Commission must price ILEC unbundled network elements at LRSIC with no contribution (MFS supp. comments at 9). MFS further avers that Section 252(d)(2) of the 1996 Act requires that reciprocal and mutual compensation rates must be based upon the incremental costs (LRSIC) of transporting and terminating calls. Staff's proposal to include contribution in traffic termination rates is clearly at odds with the incremental pricing methodology contemplated by the 1996 Act according to MFS. In establishing mutual and reciprocal traffic termination rates, MFS encourages the Commission to base those rates on the hypothetical long run incremental cost of an efficient LEC operating in a competitive market (MFS supp. comments at 7). In their supplemental reply comments, MCI and MFS reject ALLTEL's assertion that the 1996 Act contemplates the use of embedded costs for pricing interconnection and network elements since embedded costs reflect historical costs, not forward looking costs (MCI supp. comments at 6; MFS supp. comments at 4). TCG posits that Ameritech's citation to Section 252(d)(2)(A)(ii) of the 1996 Act as support for including the cost of capital in the calculation of "additional costs" for calculating traffic termination rates is clearly erroneous because the cost of capital is the focal point of a rate proceeding (TCG supp. reply comments at 4).

Ameritech argues that a close analysis of the language in the 1996 Act reflects that rates for interconnection, network elements, and terminating traffic be set at a level that recovers both LRSIC and a contribution to joint, common, and other costs (Ameritech supp. reply comments at 4-5, 8). Ameritech also asserts that MFS' suggestion that a hypothetical carrier's LRSIC be created to establish traffic termination rates does not comply with Section 252(d) of the 1996 Act which requires that recovery be provided for "by each carrier of costs. . .on each carrier's network facilities" (*Id.* at 7). ALLTEL asserts that Section 252(d) of the 1996 contemplates the use of embedded costs for pricing of interconnection, network elements, and transport and traffic termination rates (ALLTEL supp. comments at 5). As support for the argument that contributions to joint and common costs are to be recovered through pricing of all services, ALLTEL notes that Section 254(k) of the 1996 Act only authorizes the recovery of a reasonable allocation of joint and common costs from services defined as universal services. Therefore, the remaining joint and common costs must be recovered from the remaining services (*Id.*). GTE maintains that the 1996 Act, in Section 252(d)(1), authorizes the recovery of a reasonable profit in rates charged for interconnection and unbundled network elements. However, before a reasonable profit can be generated, a company must have recovered some contribution toward the recovery of joint and common costs (GTE supp. comments at 8).

As noted in the revised guidelines regarding interconnection and unbundled network element pricing as well as the pricing for transport and traffic termination, we disagree with the interpretation of MFS and other NECs that ILECs must price these functionalities at LRSIC with no contribution to joint and common costs. Section 252(d)(1)(a) of the 1996 Act is clear that state commissions in determining the justness and reasonableness of the rates established for the interconnection of facilities and equipment as well as network elements shall determine the rates *based on the cost* of providing interconnection and network elements and whether the rates are nondiscriminatory. In addition, a state commission may include a reasonable profit. If Congress had intended that the rates for interconnection and network elements be established at cost (LRSIC) then it would have so stated. It is also important to note that Congress included in the pricing guidelines that the rates may include a reasonable profit. Before a LEC could recover a profit on a particular rate, as permitted by this legislation, the LEC would have to recover some portion of its joint and common costs which are recognized by the Commission as costs incurred by the LEC in directly providing a family of services (joint costs) and indirectly in providing all services offered by that LEC (common costs). Further, as noted by several ILECs, Section 254(k) of the 1996 Act requires the FCC, for interstate services, and the states for intrastate 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. By definition, therefore, a LEC has to recover the rest of its joint and common costs from the remaining services. Finally, as a matter of economic principle, it is not possible for a firm to price all its services at its LRSIC without recovering its joint and common costs from those services. The plus 10 percent factor we have adopted will avoid disputes as to whether the LEC has excess joint and common costs. It is also consistent with our application of alternative regulation to Ameritech and Cincinnati Bell, where a plus 10 percent standard for recovery of joint and common costs was adopted.

For similar reasons, we reject the NECs arguments that the rates for transport and traffic termination must be set at LRSIC. Rather, we have determined that the rates should allow all LECs to recover their LRSIC of providing the service plus a reasonable contribution to the joint and common costs incurred. We also reject MFS' suggestion that the rates for transport and traffic termination be set at a rate based upon the LRSIC of a hypothetical efficient LEC. The suggestion is clearly at odds with the provisions of Section 252(d) of the 1996 Act which state that such rates provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the facilities of another carrier. Moreover, no commenter in this proceeding shares MFS' view on this matter.

Regarding interim number portability pricing, we recognize that the prices LECs may charge other carriers for this service are not at the level ILECs have heretofore been able to charge end users. Since these are interim solutions which will be replaced with a permanent solution in the near future, no carrier will be harmed by such an approach. Moreover, adoption of this interim pricing proposal recognizes the inferior quality provided by RCF and Direct Inward Dialing (DID) as a number portability mechanism.

This is not surprising, however, given that RCF and DID were not designed for this purpose.

We further dismiss ALLTEL's position that embedded costs be used to establish the rates for interconnection, network elements, transport, and traffic termination. Embedded costs represent the historic method of setting rates in a rate case-type proceeding. In evaluating the justness and reasonableness of interconnection and network rate elements, the 1996 Act directs state commissions to consider the costs without reference to a rate-of-return or rate-base proceeding. Similarly, in determining the appropriate charges for transport and traffic termination, the state commissions are not to engage in any rate regulation proceeding to establish with particularity the additional costs associated with transport and traffic termination nor are we to require carriers to maintain records with respect to the additional costs of calls. As indicated previously, we will not guarantee a "make whole" between LRSIC, and embedded costs. The appropriate treatment of such revenues will be examined closely if an ILEC seeks to increase a basic local exchange rate under Sections 4909.18 or 4927.04, Revised Code.

The final argument we must address in the pricing section is whether or not capital costs are an appropriate element to recover in a calculation of the "additional costs" associated with traffic termination rates. Since capital costs are an appropriate factor to include in the LRSIC calculation and since the guidelines permit all LECs to set their prices at a rate that recovers LRSIC, we find that capital costs are an appropriate factor for recovery in traffic termination rates. Moreover, as noted above, the capital costs will be included in a LRSIC study and not established pursuant to rate-of-return or rate case-type proceeding as addressed in the 1996 Act. As a result, we will make the determination concerning an appropriate forward-looking cost of capital rather than use the cost authorized in the company's last rate-of-return proceeding.

VI. TARIFFING REQUIREMENTS

Due to revisions made throughout the other sections of staff's proposal, the tariffing requirements section has been significantly edited. This section has also been rewritten in order to clear up much of the confusion evident among the commenters. The revised guidelines require all LECs to maintain end user tariffs. NECs affiliated with competitive telecommunication service providers can retain 563 treatment provided the NEC and CTS provider are separate affiliates and comply with the applicable affiliate transaction guidelines. Otherwise, all NEC services will be regulated according to the procedures set forth in these guidelines. New service applications for NECs shall be subject to a 30-day prefiling notice and a 0-day effective date following filing with the Commission. The Commission retains the right, however, to impose a full or partial suspension under the appropriate circumstances. ILECs' tariff filings, will be subject to their currently applicable regulatory framework.

NECs will establish their end user rates based upon the marketplace and are not required to develop and submit LRSIC studies justifying the rates charged. In addition, NECs are authorized to file flexible rate schedules. Flexible rate schedules have an established minimum and maximum rate, with the rates applicable at any given time within the range of minimum and maximum levels being set forth in price lists on file with the Commission. A change in rates, either upward or downward, within the approved flex band schedule will not require any action on the part of the Commission, because the prior approval of the minimum and maximum levels constitutes approval of each rate within the range. The Commission reserves the right to apply specific pricing limitations on certain NEC services.[28] The Commission also, reserves the right to request cost or other information and NEC pricing practices are subject to Section 4905.33, Revised Code. Although we are not, at this time, reviewing the end user rates of the NECs, we reserve the right to do so if, as suggested by OCC, a NEC becomes dominant in the marketplace. A NEC with significant market power and dominance can be potentially as damaging to effective competition as an ILEC with unregulated control of bottleneck monopoly facilities. ILECs' end user rates will be subject to each ILEC's currently applicable regulations (i.e., alternative regulation, traditional regulation, or 564).

Additionally, those carriers providing service through their own facilities or in combination with its own facilities will be required to maintain carrier-to-carrier tariffs which shall include services, features, and functionalities for purchase by any certified LEC. Only certified carriers will be permitted to purchase from the carrier-to-carrier and carrier resale tariffs. An ILEC's initial carrier resale tariff filing will not be subject to any automatic approval process. A facilities-based NEC's initial carrier resale tariff filed with a certification application will be subject to an automatic 60-day approval process. unless suspended. A LEC may also prepare and file with the Commission a carrier-to-carrier tariff, other than for resale, which contains the terms and conditions for services, features, and functionalities that such company generally offers. Any negotiated terms and conditions between carriers which have been approved by the Commission must be made available on a nondiscriminatory basis to any certified carrier. Initial carrier-to-carrier service tariffs filed by ILECs will not be subject to an automatic approval process. Initial carrier-to-carrier tariffs filed by a NEC shall be subject to an automatic approval process if filed within the context of the NECs' certification proceeding..

For carrier-to-carrier new services following the initial tariff filing, NECs shall be subject to a 30-day prefiling notice to the Commission's staff followed by a 0-day effective date unless suspended. ILECs' carrier-to-carrier tariff filings after the initial tariff filing, will be processed based upon the ILEC's currently applicable framework; however, an ILEC may apply for tariff filing parity under certain circumstances. NECs will also be permitted to change the terms and conditions of an existing service or withdraw an existing service by filing an ATA. Such application will be subject to a 30-day automatic approval procedure and will become effective 31 days after filing unless suspended. In applications seeking to withdraw a service or to change the terms of an

[28] For example, NEC surcharges and MTS rates offered in conjunction with alternative operator services will be capped at the levels established by the Commission in 563.

existing service the NEC must provide documentation that prior customer notice was given to the affected customers.

Notice of price list changes must be filed by the NEC in its TRF docket and shall be effective upon filing. Moreover, where end user customers or resellers or both are affected by a price list increase, within an approved range of rates as opposed to an overall rate increase, prior notice must be given to such customers. NEC increases outside of an approved range will be processed pursuant to the Ohio Revised Code. An ILECs' price list filings shall be processed based upon their currently applicable regulatory framework; however, an ILEC may apply for tariff filing parity.

NECs will also be permitted to offer end user and carrier resale promotions provided the terms and conditions of all promotions are identified in price lists filed in the NEC's TRF docket. NEC promotional offerings shall be effective on the day of filing. End user promotional tariff offerings must be filed in writing with the Commission and shall be treated as applications not for an increase in rates provided the company has a provision in its tariff which indicates that it may from time-to-time, upon approval of the Commission, engage in special promotions. Promotional tariff offerings will be presumed to be just and reasonable, unless the Commission finds otherwise, and thus, will be allowed to automatically go into effect upon filing absent contrary Commission action. The Commission considers a promotional tariff offering to be a trial service offering of limited duration (i.e., not to exceed 90-days per trial period per customer) designed to attract new customers to a particular carrier or to increase an existing customer's awareness of a particular tariff offering of the carrier. Promotional tariff offerings only affect recurring end user charges; there is not limit upon a waiver of non-recurring charges. Section 4905.33, Revised Code, shall apply to all promotional offerings. End user promotional tariff offerings must be available for resale to other certified carriers pursuant to the pricing standards set forth in Section V. E. 4. The 10 percent discount in the promotional rate is designed to prevent a price squeeze by recognizing 10 percent as a proxy for the resellers joint and common costs which would need to be recovered. Absent the differential, we would be sanctioning price squeezes and predatory pricing in contravention of the pro-competitive policies embodied in state law and the 1996 Act. ILEC promotional tariff offerings will be processed based upon the ILEC's current regulatory framework. An ILEC may apply for tariff filing parity.

Requests for geographic market-based deaveraging by customer type or class, submitted in accordance with Sections 4909.18 and 4909.19, Revised Code, will be considered by the Commission only when the carrier can demonstrate that the request is consistent with the public interest, is a necessary and appropriate response to differences in prevailing market prices, and will not serve to discourage entry or lessen competitive forces. The revised guidelines also establish procedures for consideration of both end user and carrier-to-carrier contracts, including fresh look, termination liability, and coverage of allegedly proprietary information. As a final matter, ILECs, once there is an operational NEC operating in its service territory, may file an application to receive tariff filing flexibility as afforded the NECs. In order to receive such flexible treatment, the ILEC must docket a UNC case subject to Commission approval.

Several ILECs maintain that, in a competitive market, there is no rational reason to treat ILEC and NEC tariff filing requirements in a dissimilar fashion. OCC submits that in a truly competitive market the rationale for this distinction may cease to exist, but a competitive local exchange market does not exist at this time (OCC reply comments at 88). Several consumer groups reject deaveraging as being premature. According to OCC, a LEC seeking to deaverage should have to demonstrate that the request is in the public interest, is a necessary and appropriate response to the prevailing market, will not discourage entry or lessen competitive forces, will result in a price reduction, and will not be permitted on less than an exchange basis (OCC initial comments at 56). United/Sprint and OCC assert that unbundled services should not be made available to end users (United/Sprint initial comments at 29; OCC reply comments at 89). OCC also argues that permitting NECs to set their prices based on the marketplace without cost support and the filing of minimum/maximum ranges for basic services is unlawful. OCC claims that the only method whereby a NEC could seek to change a basic rate would be to file an application pursuant to Section 4909.18 or Section 4927.04, Revised Code. The legal arguments, notwithstanding, OCC notes that instantaneous rate increases should be forbidden. At a minimum, OCC avers, end users should be given a 30-day notice during which end users could drop or change service before incurring any costs.

As noted above, there have been modifications made in the tariff filing process. While NECs have been afforded greater tariff and pricing flexibility, an ILEC may seek similar treatment in an appropriate regulatory proceeding once it has a NEC operating in its service territory. By so doing, we are adopting policies which, under the appropriate circumstances, can allow the ILEC to achieve parity with NECs in the filing of new services. This is a significant improvement for ILECs, especially for those ILECs which have not yet availed themselves of the alternative regulation process. ILECs are also not prohibited at any time from filing an alternative regulation case, even before it is subject to competition, seeking more flexible treatment of its tariff and pricing standards. The guidelines, as adopted, afford the ILECs adequate opportunities to meet competition within their service territories.

The Commission also finds that, contrary to the implicit argument made by consumer groups, geographic market-based deaveraging will not automatically be approved. As set forth in the proposed guidelines, the Commission will consider deaveraging requests; however, those petitions are contingent upon an appropriate showing by the requesting LEC and are certainly contingent upon the Commission approving the application pursuant to Sections 4909.18 and 4909.19, Revised Code. Further, any interested person or group has the ability to challenge the request for deaveraging by filing a motion seeking intervention. Finally, as is always the case concerning any public utility service, an aggrieved party has an opportunity to file a complaint pursuant to Section 4905.26, Revised Code.

We also determined that the existence of certain long-term arrangements raise potential anticompetitive concerns since these arrangements have the effect of locking out the competition for an extended period of time and prevent consumers from obtaining the benefits of this competitive local exchange environment. To address this, we conclude that certain ILEC consumers with long-term arrangements should be given an opportunity to take a one-time "fresh look" to determine if they wish to avail themselves of a competitive alternative. Recognizing the administrative difficulties inherent in an unlimited fresh look opportunity, we have indicated that the Commission will establish the time period for any fresh look opportunity and will establish appropriate procedures for any customer notification. Moreover, if a customer chooses to terminate a long-term arrangement within the prescribed period, the termination charge will be limited. Upon inquiry, an ILEC must fully inform the customer of the opportunity attributable by this section.

The final issue we need to address under tariffing concerns the issues raised by OCC. Specifically, OCC challenges the lawfulness of permitting NECs to establish their end user prices without cost support and the authority of the Commission to authorize a minimum/maximum pricing range for basic telecommunication services. In its comments, OCC claims that NECs can only make a change to basic rates through Section 4909.18, Revised Code, based upon the method set forth in Section 4909.15, Revised Code, unless the Commission approves an alternative method under Section 4927.04, Revised Code. The Commission disagrees. Section 4905.31, Revised Code, provides the Commission the statutory authority to establish flexible pricing. Section 4905.31, Revised Code, provides, in relevant part:

> [E]xcept as provided in section 4933.29 of the Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code do not prohibit a public utility from filing a schedule or entering into any reasonable arrangements with another public utility or with its customers, consumers, or employees providing for. . .[A]ny other financial device that may be practicable or advantageous to the parties interested.

The Commission's authority to establish flexible pricing through the use of minimum and maximum bands was specifically upheld by the Ohio Supreme Court in *Armco, Inc. v. Pub. Util. Comm.*, 69 Ohio St. 2d 401 (1982). The Court found that flexible pricing was, for purposes of the statute, a financial device which provided customers a more meaningful range of telecommunications options (*Id.* at 408). The Court also noted that Section 4905.31, Revised Code, was an exception to the general ratemaking formula and that the premise underlying the Commission's flexible pricing treatment for the involved carrier was the existence of increasing and effective competition from unregulated suppliers in the marketplace. Moreover, the provisions of Chapter 4927, Revised Code, governing providers with less than 15,000 access lines provide additional support for our determination.

As we have heretofore noted in this docket, the whole purpose behind the adoption of these guidelines is to foster the development of a competitive local exchange marketplace which will benefit customers by providing them with innovative services and features, better customer service, and competitive prices. As such, a competitive local market is certainly practicable and advantageous to both customers and end users. Moreover, from the NECs' perspective, the competition that they are facing is the ILEC, certainly a formidable opponent and one that serves, at the present time, practically all of the landline local telecommunications market. Thus, from the NECs' perspective, there will be stiff competition in the market they seek to provide service in. Moreover, NEC customers are still protected under these guidelines because the Commission has reserved its right to request cost or other information required to audit a NEC's rates. NEC competitors are protected from unreasonable pricing policies because, as noted above, the Commission retains the ability to audit NEC rates and, further, we are subjecting NEC rates to Section 4905.33, Revised Code, which prohibits furnishing service below cost for the purpose of destroying competition. We would also note that OCC's arguments on this issue have not been wholly disregarded because the guidelines, as revised, now require prior notice to residential customers affected before a price list increase takes effect.

VII. FILING PROCEDURES AND REGISTRATION FORM

A. GENERAL GUIDELINES

1. Registration Form

There are two forms which all NECs must use in implementing the procedures established under the local competition guidelines. One such form is the Local Exchange Carrier Registration Form (Registration Form).[29] This all-purpose form should accompany virtually every filing made by a NEC on or after August 15, 1996. For example, this form would be used for purposes including, but not limited to: receiving initial certification to provide basic local exchange service in Ohio; changing any element of a NEC's operations; changing any element within a NEC's tariff, including textual revisions and price adjustments; and seeking approval of a negotiated agreement between carriers or seeking arbitration.

Essentially, the Registration Form will function as a standardized cover letter for virtually any type of filing pursuant to the guidelines set forth in Appendix A. As such, if properly completed, it should serve to help identify the nature of the filing in terms of its appropriate standing within the overall local competition procedural framework. The Registration Form may be revised from time to time. Changes of either a non-

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29 Appendix A, Attachment B.

substantive or informational nature may be made by the Commission or its staff, and will not necessarily be the result of action taken specifically by order or entry. The staff will maintain, at all times, an updated and current copy of the Registration Form. In addition, an updated Registration Form will be maintained on file in this docket.

2. Service Requirements Form

In an attempt to reduce the volume of standardized language which would otherwise be required to appear in a NEC's informational tariff, the Commission has devised the Service Requirements Form for use in conjunction with the Registration Form on or after August 15, 1996. The purpose of this form is to set forth specific Commission-mandated language which, if it did not appear within the Service Requirements Form, would need to be included in the tariffs of each NEC subject to competition, as applicable to the scope of its operations. Rather than have the required standardized language repeated in so many tariffs, the Commission will permit each NEC subject to competition to file a Service Requirements Form along with the Registration Form indicating which language pertains to the provider's operations. In addition, on the face of the Registration Form, the provider will commit to conducting its operations in conformity with all applicable service requirements indicated thereon. The Service Requirements Form may be revised from time to time. Changes of either a non-substantive or informational nature may be made by the Commission or its staff, and will not necessarily be the result of action taken specifically by order or entry. The staff will maintain, at all times, an updated and current copy of the Service Requirements Form. In addition, an updated Service Requirements Form will be maintained on file in this docket.

3. TRF Docket

By entry dated February 6, 1990, in Case No. 89-500-AU-TRF (89-500), the Commission established tariff filing and maintenance procedures for all utilities. At that time, the Commission began the practice of assigning a separate tariff docket (under a TRF purpose code) to each utility. TRF dockets are designated for the filing of final tariffs and are maintained by the Commission for each utility company, including LECs subject to competition. Under the local competition guidelines the Commission will continue to employ the tariff filing and maintenance procedures established in 89-500.

4. Tariffs

Under the local competition guidelines, in order to provide local exchange services in the state of Ohio, a LEC must maintain on file with the Commission, complete tariffs which, at a minimum, must include a title page, a description of all services offered, including all terms and conditions associated with the provision of each service, a description of the actual serving and local calling areas, a complete price list, and a notation reflecting both the issuance and effective date.

5. Time Frames

Certain filings pursuant to these guidelines will be handled through an automatic process. With the exception of 0-day filings, an automatic time frame will begin on the day after a filing is made with the Commission's Docketing Division. Furthermore, under an automatic process, if the Commission does not take action before the expiration of the fiiling's applicable time frame, the filing shall become effective as early as the following day. However, nothing in these guidelines precludes the Commission from imposing a full or partial suspension on 0-day filings on or after the effective date.

6. Suspensions

Under the local guidelines, the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner may fully or partially suspend an application for either a definite or indefinite period of time. If the suspension is for an indefinite period of time, the Legal Director, Deputy Legal Director, or Attorney Examiner may remove the suspension and reinstate a new automatic time frame for approval. A full suspension, which can be imposed either before or after the passing of any automatic or notice time frame, will prevent the suspended service offering or involved regulated activity from either becoming or remaining effective. Under a partial suspension, the service offering or involved regulated activity is allowed to become or remain effective, subject to its continued review, and possible modification, by the Commission. Incompleteness of an application made pursuant to the local competition guidelines may constitute grounds for suspension. Suspensions may be for either a definite or indefinite period of time. The Commission further authorizes the Legal Director, Deputy Legal Director, or Attorney Examiner to remove the suspension imposed on an application which may be suspended for an indefinite period of time and to reinstate a new automatic approval time frame.

VIII. UNBUNDLING

Under the staff's proposal, all LECs had the obligation to unbundle their network and associated functionalities into the most reasonably disaggregated components capable of being offered for resale upon bona fide request of a certified provider or end user. Staff's proposal also set forth the major categories of components subject to unbundling, general unbundling requirements, and the rate requirements associated with purchasing unbundled components. Cincinnati Bell argues that the staff's mandatory unbundling proposal violates the constitutional guarantee against a "taking" of private property for a public use without adequate compensation. A discretionary unbundling provision would, according to Cincinnati Bell, pass constitutional muster. Provided the legal concerns can be addressed, Ameritech suggests adopting a set of criteria by which the appropriateness of an unbundling request could be judged (Ameritech initial comments at 58). A number of commenters suggest that the Commission more fully define the major categories of components subject to the unbundling requirement. For instance, ICG requests clarification of whether local access includes loop facilities or not (ICG initial comments at 4). Several parties maintain that requiring the NECs to unbundle upon their entrance into the local market is unfair and may actually slow down the penetration that NECs would be able to achieve in the local market. These commenters urge the Commission to afford NECs an incubation period. As a final matter, it has been suggested that the Commission price the unbundled LEC components for use by certified carriers at LRSIC instead of at LRSIC plus some level of contribution.

Several NECs maintain that the 1996 Act significantly affects staff's proposal. For instance, Cablevision and MFS aver that Section 251(c)(3) of the 1996 Act only obligates ILECs to unbundle their systems and that a requirement which forces NECs to unbundle constitutes a barrier to entry (Cablevision supp. comments at 4; MFS supp. comments at 11-12). Ameritech, on the other hand, posits that the FCC will determine the appropriate level of unbundling and, therefore, staff's proposal is superseded by the 1996 Act (Ameritech supp. comments at 8-9). CompTel claims that the 1996 Act provides carriers the opportunity to combine elements into a network platform configuration (CompTel supp. comments at 5). Regarding pricing, MFS maintains that, under the 1996 Act, the ILECs have to set the rates for unbundled components at LRSIC (MFS supp. comments at 12). ALLTEL, on the other hand, suggests that since the services that are part of universal service can only recover a reasonable allocation of joint and common costs, this infers that the remaining joint and common costs will be recovered through other services such as interconnection, unbundled elements, and traffic termination rates.

As pointed out by several parties, the adoption of the 1996 Act obligates ILECs, under Section 251(c)(3), to provide nondiscriminatory access to network elements on an unbundled basis.[30] Therefore, the argument that unbundling should be at the option of the ILEC is moot. The 1996 Act also requires the FCC, within six months following the date of enactment, to establish all regulations necessary to determine what constitutes network elements. In making its determinations, the FCC is directed to consider the proprietary nature of the network elements and whether the failure to provide access to any network element would impair the ability of a telecommunications carrier to provide the services it proposes. Under Section 251(d)(3), the FCC may not preclude any state commission regulation, order, or policy that establishes access and interconnection obligations of LECs[31]; is consistent with the requirements of the 1996 Act; and does not substantially prevent implementation of the requirements and purposes of the 1996 Act.

The final guidelines have been modified in light of the provisions of the 1996 Act to reflect that ILEC and facilities-based NECs shall unbundle their respective local

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30 This obligation applies to all ILECs not subject to the RLEC exemption or for which a modification or suspension has been obtained pursuant to the procedures outlined for rural carriers in Section 251(f)(2).

31 LECs are defined under the 1996 Act as any person engaged in the provision of telephone exchange or exchange access. This definition would include LECs and NECs as those terms are used within this order.

network into elements at any technically feasible point upon bona fide request of a certified carrier. Unbundling shall include access to necessary customer databases such as LEC-owned or controlled 9-1-1 databases, billing name and address, directory assistance, line information database, and 800 databases. Such unbundling should also include operator service, and SS7 functionalities. Unbundled network rates, terms, and conditions shall be established through negotiation between LECs upon receipt of a bona fide request or through arbitration. Rates, terms, and conditions may also be established through tariffs ordered and/or approved by the Commission.

Regarding the pricing of unbundled network elements, Section 252(d)(1)(A) and (B) of the 1996 Act sets forth the parameters a state commission must consider when pricing the unbundled network components. A state commission's determination of a just and reasonable rate shall be based upon the cost of providing the network element, nondiscriminatory, and may include a reasonable profit. Staff's proposal regarding the pricing of carrier-to-carrier services (i.e., LRSIC plus a reasonable contribution to joint and overhead costs) appears to be neither inconsistent with nor would prevent implementation of the 1996 Act; therefore, staff's proposal on pricing as revised to reflect the previous discussion in the Pricing Standards section of this order will be adopted.

We also disagree with Cincinnati Bell's position that staff's unbundling proposal would effectuate an unlawful taking of ILEC private property. According to the company, the Commission has no authority to order a taking of ILEC private property. Cincinnati Bell mischaracterizes the issue by failing to recognize that Cincinnati Bell is a public utility and a common carrier under Title 49 of the Ohio Revised Code. As such, it has voluntarily dedicated the property through which it provides telephone service to a public use. As stated by the United States Supreme Court in *Munn v. Illinois*, 94 U.S. 113 (1877), when private property is devoted to a public use, it is subject to public regulation.[32] The Commission, in compelling the ILECs (such as Cincinnati Bell) to restructure the provisioning, pricing, and interconnecting of their networks which have been devoted to a public use into unbundled components, is well within the authority vested in it by the Ohio General Assembly, pursuant to Sections 4905.05 and 4905.06, Revised Code.

Cincinnati Bell further maintains that, even if the Commission did have such authority, Article I of the Ohio Constitution and the Fifth Amendment of the United States Constitution, as made applicable to the states by the Fourteenth Amendment, mandate that when private property is taken for public purposes, the owner shall be compensated. According to Cincinnati Bell, just compensation includes recovery of embedded plant investment and facilities that become stranded as a result of the

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32 Conspicuously absent from Cincinnati Bell's legal analysis is any discussion of the most recent United States Supreme Court cases to address taking claims as they relate to public utility property. Additionally, the Ohio Supreme Court, in *Celina*, supra, rejected an unconstitutional taking claim holding that utilities which are subject to regulation by the public utilities act, Section 614-2a, General Code, are subject to different taking standards than private businesses.

introduction of local exchange competition. Assuming arguendo that the unbundling proposal amounts to a compensable taking of property,[33] Cincinnati Bell will be justly compensated by the pricing standards for unbundled network components. Under revised guideline V.B., ILECs', including Cincinnati Bell, prices for unbundled network components shall be set so that the ILEC recovers its LRSIC (economic costs) of providing unbundled rate elements plus a reasonable contribution to the joint and common costs incurred by the company as discussed previously in the Pricing Standards section.

. In addition, the revised guidelines provide that prices for unbundled network elements may include a reasonable profit. We also disagree with Cincinnati Bell's premise that just compensation includes recovery of investment stranded by the establishment of local exchange competition. First, it is premature to consider this argument as there are no competitive local providers operating in Cincinnati Bell's service territory; therefore, there can be no "stranded investment" at this time. Cincinnati Bell further fails to show with particularity the investment that is in danger of becoming stranded once competition emerges in its service territory. Finally, it is even questionable whether unbundled network facilities purchased by competitors can be properly classified as stranded investment. As noted previously, it is premature and thus unnecessary to address these issues at this time. For all the foregoing reasons, Cincinnati Bell's arguments concerning the unlawfulness of the unbundling proposal are without merit.

As a final matter, we conclude that providing NECs a general incubation period or waiver from the obligations of unbundling does not appear warranted. As pointed out by OCC, while the 1996 Act does not obligate NECs to provide unbundled access to network elements, the 1996 Act does not prohibit this Commission from adopting such a requirement (OCC supp. comments at 18-19). Such a requirement is neither inconsistent with nor does it prevent implementation of the 1996 Act. Further, we find that this obligation is fully consistent with the authority reserved to the states through Section 253(b) of the 1996 Act. We also agree with staff that, because the NECs are likely to have more advanced and efficient networks, providing unbundling will allow the market to utilize the efficiencies and economies of these new networks. Staff recognized that such a proposal will also minimize the unnecessary and uneconomic duplication of facilities. Imposing this obligation on NECs will not create an undue burden as it is unlikely that NECs will be asked to do much unbundling in the near term and then only upon a bona fide request. The bona fide request standard should minimize the economic effects that unbundling will impose on new entrants.

IX. RESALE

Adoption of the 1996 Act also caused significant revisions to the staff's resale proposal. Consequently, the guidelines addressing the resale issue have been fully

[33] By addressing this argument, the Commission is in no way conceding that Cincinnati Bell's taking argument is valid.

rewritten. Section 251(b)(1) and Section 251(c)(4)(B) of the 1996 Act places a general duty on all LECs (both ILECs and NECs) not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. The 1996 Act also places an obligation on ILECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Finally, the 1996 Act requires state commissions to determine wholesale rates on the basis of retail rates, excluding the portion attributable to any marketing, billing, collection, and other costs that would be avoided by the local exchange provider.

The revised guidelines reflect that all tariffed services in a LEC's end user tariff shall be available for resale. In addition, those LECs providing local service through their own facilities or in combination with its own facilities must maintain a carrier-to-carrier tariff including its resale service offerings and make its service available to any other LEC through resale. In order to offer volume discounts, a LEC may do so through negotiation, arbitration, or through a tariff offering. Finally, LECs may, subject to Commission approval, place reasonable restrictions on the resale of residential services to business customers.

Following adoption of the 1996 Act, most commenters modified somewhat their respective positions on resale. Cablevision argues that while a NEC could not prohibit resale, a NEC could lawfully defer resale until some future event has occurred or time frame has expired (Cablevision supp. comments at 3). MFS, OCC, and OTA agree that all carriers have a responsibility to offer their services for resale following adoption of the 1996 Act (MFS supp. comments at 12; OCC supp. comments at 50; OTA supp comments at 2). CompTel, MFS, and United/Sprint assert, however, that the 1996 Act only sets pricing parameters for resold services on the ILECs (MFS supp. comments at 13; CompTel supp. comments at 10; United/Sprint supp. comments at 5-6). TCG notes that reasonable restrictions on resale are specifically permitted by the 1996 Act (TCG supp. comments at 8). Ameritech also maintains that the 1996 Act permits reasonable limitations on the resale of telecommunications services. Therefore, according to Ameritech, the Commission should adopt a guideline placing limitations upon the resale of services being offered at promotional rates. Such a limitation is necessary, according to the company, in order to encourage LECs to offer promotions to customers; otherwise, carriers will be discouraged, to the detriment of end users, from offering these beneficial services (Ameritech supp. comments at 12).

In adopting the revised guidelines governing the issue of resale, we have been guided by the principle expressed in the 1996 Act that, at a minimum, a LEC should reasonably offer its services to other providers on a resold basis. We agree that resale is a significant method by which to encourage new providers to enter the market. Therefore, we are adopting guidelines which place reciprocal resale obligations upon all carriers. As a final matter, in accordance with the provisions of the 1996 Act, we direct the ILECs to resubmit new tariff pages which remove all blanket resale restrictions other than restrictions of the resale of residential services to business customers.

X. DIALING PARITY/1+ INTRALATA PRESUBSCRIPTION

Staff's proposal requires all primary exchange carrier (PEC) ILECs, except Ameritech and GTE, to provide intra and interLATA equal access to end users within 12 months of this order. All NECs were to provide intraLATA and interLATA equal access to end users upon their initial offering of certified local exchange service. Ameritech and GTE were directed to implement intraLATA equal access at such time as they were granted interLATA approval or the Commission pledged to revisit the issue. Staff also recommended implementing intraLATA presubscription on a smart or multi-presubscribed interexchange carrier (PIC) basis. Finally, the staff addressed the procedures whereby current and new subscribers could choose a different intraLATA toll provider.

In the attached guidelines, the Commission has made one substantive revision to the staff's proposal. This revision was necessitated by enactment of the 1996 Act which provides interLATA relief to GTE and conditioned intraLATA dialing parity for the Bell Operating Companies[34] (BOC) on removal of the interLATA restrictions on those companies. In the event that a BOC has not received interLATA relief within three years of the date of enactment, a state may, at that time, implement intraLATA presubscription. The guidelines have been revised accordingly. While smart or multi-PIC presubscription[35] represents a worthy long-term goal, based on a review of the comments, we recognize the general availability of smart or multi-PIC technology and we therefore find that a full 2-PIC methodology is a suitable substitute in the near term. Full 2-PIC presubscription still offers end users the flexibility of choosing the same or different toll providers for their intraLATA and interLATA calls.

The comments on this proposal reflect that NECs believe that they should not be required to offer 1+ presubscription. ICG and AT&T recommend moving up the date that ILECs must offer 1+ presubscription. As previously noted, several commenters recommend implementing intraLATA dialing parity on a full 2-PIC methodology as opposed to a smart or multi-PIC method. Few commenting parties disagreed with staff's proposal that balloting not be used to implement intraLATA toll presubscription. Other commenters disagree with the amount of the intraLATA service order PIC charge that a LEC could recover from end users following expiration of a 90-day grace period. Several ILECs claim that the Commission should tie Ohio's rate to the interstate PIC rate. Other parties propose that a reasonable, cost-based, switching rate be applied. OCC disagrees with both suggestions and recommends adoption of staff's proposal on this issue. A number of parties recommend revising the staff proposal on implementation costs to spread the cost recovery on the basis of intraLATA and interLATA minutes of use (MOUs) as opposed to only intraLATA MOUs.

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34 Ameritech is one of the Bell Operating Companies.

35 Smart or multi-PIC presubscription enables subscribers to select multiple carriers for various subdivisions of their intra and interLATA calls.

The Commission determines that commenters have provided no rationale sufficient to justify modifying the staff's proposal regarding the implementation time frame for 1+ intraLATA presubscription. NECs are not harmed by this proposal as the engineering and programming required to permit intraLATA presubscription can be programmed into the switches during installation of facilities prior to commencing operations. In fact, we envision that NECs can use intraLATA presubscription availability as a tool to market their local service in an attempt to obtain customers. The guidelines also recognize that similar engineering and reprogramming of ILECs' switches will have to take place in order to implement this proposal. Therefore, providing them a 12-month period of time to accomplish this task is justified. Regarding the service order charge, we are unconvinced by the arguments seeking to modify the staff's position. In any event, no party offered substantive proof that the proposed charges are either uncompensatory or burdensome nor was there any significant support for an alternative position.

The final issue involves the appropriate compensation method for recovering the implementation costs of intraLATA presubscription. We find that the most appropriate method of cost recovery is to spread the implementation costs over all minutes of use presubscribed on an intraLATA basis rather than over combined interLATA and intraLATA MOUs. Basing cost recovery solely upon intraLATA MOUs was approved by this Commission in *Cincinnati Bell*, Case No. 93-432-TP-ALT, Opinion and Order (May 5, 1994) and *Western Reserve*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994). In those two cases, Cincinnati Bell and Western Reserve, as part of their respective alternative regulation plans, agreed to implement intraLATA presubscription. Those two ILECs have not, to date, argued that a cost recovery mechanism based solely upon intraLATA MOUs overburdened them. Further, as one commenter noted, basing cost recovery for intraLATA presubscription partially on interLATA MOUs could unequitably cause cost recovery from providers not involved in the intraLATA market.

XI. NON-DISCRIMINATION BETWEEN COMPETITORS

Staff's proposal requires LECs to report and justify, on an ongoing basis, denied and unfulfilled carrier service requests. The NECs commenting on this issue suggest that the staff's proposal did not go far enough. CompTel and AT&T set forth comprehensive lists of additional support services and interfaces that are necessary for NECs to successfully compete against the ILECs (CompTel initial comments at 25-28; AT&T initial comments, Appendix A, Part 1 at 45). AT&T also recommends that the Commission require the incumbents to establish mechanized interfaces essential to providing prompt customer service (AT&T initial comments, Appendix A, Part 1 at 45). The ILECs generally argue that this provision should be deleted. However, should the Commission desire to maintain this requirement, the ILECs recommend clarifying this requirement by stating that only unfulfilled bona fide requests need be reported.

The proposed guidelines would also require all LECs to submit annual TPM data submissions. There was almost universal opposition from all commenters to the provision of this information in a competitive environment. Ameritech even claims that Section 256 of the 1996 Act eliminates this Commission's role of overseeing coordinated network planning. If the information were to be provided, however, a number of commenters suggest the submissions be required on a less frequent basis. Further, staff's proposal prohibits LECs from accessing the customer proprietary network information (CPNI) of another interconnecting carrier or reseller for the purpose of marketing services to the interconnecting carrier or resellers customers. MFS urges the Commission to broaden this provision to include prohibiting ILECs from soliciting a NEC's customer where the competitive carrier is in the process of ordering bottleneck facilities from the LEC in order to provide service to the end user (MFS initial comments at 45). Ameritech maintains that the LEC should have every right to seek to retain customers when a competitor is ordering a facility such as the local loop. In any event, Ameritech claims that there is no need to expand the CPNI requirements beyond those set forth by the FCC (Ameritech reply comments at 48). The staff's final proposal in this section addresses installation and maintenance. This provision requires ILECs and NECs to provide to competing carriers installation, maintenance, and repair within the same time intervals that the carrier provides itself. Ameritech suggested revising this to reflect that all carriers treat other certified carriers in a nondiscriminatory manner while MFS argues that staff's proposal is absolutely necessary in order to avoid potential discrimination (Ameritech initial comments, Appendix 3 at 40; MFS initial comments at 41).

We find that the provision of TPM data by all LECs will afford us a valuable tool to measure the extent to which competition is advancing throughout the state. In *Telecommunications Performance Measurement Database*, Case No. 91-52-TP-UNC (January 17, 1991), we established that the TPM includes market information, network data, and service quality data. Contrary to Ameritech's position, nothing within the 1996 Act prohibits this Commission from requiring the submission of TPM data to monitor the competitive marketplace in Ohio. In fact, we have noted that the purpose of the TPM data is to monitor market information, network data, and service quality. To the extent these filing requirements are imposed on all providers in a competitively neutral fashion, we find that submission of TPM data is necessary 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 all in accordance with the authority reserved to the state's through Section 253(b) of the 1996 Act. Such information is also necessary since the states have been given an advisory role under the 1996 act concerning BOC entry into long distance.

The Commission does not find any justification for broadening the staff's proposal regarding CPNI. The proposal as written is sufficiently broad to encompass a variety of situations. By attempting to list every potential act which may constitute a violation of this guideline we run the risk of misleading carriers into believing that a nonlisted action does not constitute an unreasonable practice. Should any local provider be the subject of an act which they deem discriminatory, the recourse is to file a complaint under Section 4905.26, Revised Code. Finally, we determine that staff's installation, maintenance, and repair proposal should be adopted as proposed. Ameritech's revision could be interpreted such that a provider would be in compliance even if it offered a lesser installation, maintenance, and repair interval than it provides itself as long as it treated all other LECs in a similar fashion. Staff's proposal, on the other hand, requires all carriers to provide the same service to others as it provides to itself. This standard is superior to Ameritech's standard.

XII. RIGHT-OF-WAY

Staff's proposal set forth standards to guide all local service providers regarding the issue of public and private right-of-way. Those commenters representing the interests of municipalities express concern that staff's proposal affects their ability to regulate the public right-of-way within their jurisdictions. United/Sprint maintains that the Commission is without jurisdiction to promulgate guidelines which attempt to regulate these arrangements (United/Sprint initial comments at 37). Several ILECs state that the proposed provision regarding private building, riser, and conduit space amounts to an impermissible finding of fact and conclusion of law. MFS submits that the Commission should seek legislation to prevent building owners from denying NECs access to their buildings or charging exorbitant fees for such access (MFS initial comments at 42). The next section of staff's proposal set forth the terms and condition under which carriers could obtain access to and the rates to be charged for access to poles ducts, conduits, and right-of-way. The ILECs commenting on this section express concern regarding the ability of poles and conduit to hold more capacity. The ILECs also generally claim that the FCC pole attachment formula is not the appropriate compensation mechanism to charge competitive providers for pole attachments. MFS asserts that the Commission should maintain the FCC pole attachment formula and should require rates for conduit space and access to right-of-way to not exceed LRSIC (MFS reply comments at 28).

The 1996 Act places a duty on all local exchange carriers to provide access to the poles, ducts, conduits, and right-of-way to competing providers of telecommunications services on rates, terms, and conditions consistent with 47 U.S.C. 224. The 1996 Act also provides that both the terms and conditions of access to poles, ducts, conduits, and right-of-way of a telecommunications carrier shall be resolved through negotiation. Further, the FCC, pursuant to Section 703(e)(1) of the 1996 Act, is directed to prescribe regulations to resolve compensation matters when the parties fail to resolve a dispute on their own.

Based upon the comments submitted on this proposal, the Commission finds that some clarification is warranted. We do not read staff's proposal as affecting any of the constitutional or statutory rights presently possessed by municipalities in governing the public right-of-way within their jurisdictions. Neither are we attempting, by adoption of these standards, to extend our jurisdiction into areas where we have no legislative authority. It is indisputable that NECs must have nondiscriminatory access to right-of-way. The General Assembly has afforded the Commission jurisdiction over a number of right-of-way issues. Given the importance of this issue to the provision of competition for local services, we find that it is appropriate to promulgate guidelines outlining the rights and responsibilities of public utilities on this issue. Thus, we find that it is appropriate to adopt staff's proposal in this regard with a minor revision. We will revise the language dealing with building riser space to clarify that any arrangements entered into between a telephone company and a private building owner should not exclude the use of riser space, conduit, and closet space by other telephone companies. We find that, with these minor textual revisions, the staff's proposal provides a framework informing local service providers of their rights and responsibilities under both Ohio and federal law. Finally, in light of the fact that the FCC will not promulgate rules to govern the compensation of local carriers for providing access to poles, ducts, conduits, and right-of-way for up to two years, staff's recommended compensation method is a reasonable proposal.[36]

XIII. UNIVERSAL SERVICE

Like compensation, the staff's proposed guidelines concerning universal service have undergone significant revision due to the enactment of the 1996 Act. Therefore, in lieu of setting forth the staff proposal, we will set forth the revised proposal and then address only those comments which are applicable to the revised proposal. The Definitions Section sets forth a list of services that, at a minimum, must be made available at affordable rates to all who desire such services. In the revised guidelines, the reference to a 400-minute usage package has been replaced by a requirement to make available flat-rate service. The list of services comprising universal service will be reviewed periodically by the Commission as telecommunications and information technologies and services advance and as societal needs dictate. We note that the ability to transmit data at a minimum base rate of 9600 offered as a part of universal service will facilitate use of and access to the internet. Also reflected in the revised guidelines are separate and distinct components for universal service funding (USF) assistance, determinations and calculations for USF contributions, targeted and specific high cost and low income support programs and withdrawal criteria, and a selection procedure for a USF administrator subject to Commission oversight.

Several commenters claim that inclusion of a usage package as part of the basic telecommunications service is problematic. Consumer interests maintain that these commenters have provided no support or rationale for their position. The Ashtabula Coalition notes that there will be consumer revolt should the Commission fail to include some level of flat-rate service under universal service (Ashtabula Coalition initial comments at 7). Other commenters seek to eliminate, add, or modify various services to the universal service list. ALLTEL and GTE recommend restructuring the proposal to eliminate the second tier of universal service (ALLTEL initial comments,

36 Under the terms of 1996 Act, any increases in the rates for pole attachments that result from adoption of the requirements in the act are to be phased in over a period of five years following the date of enactment.

Attachment 2 at 28; GTE initial comments, Appendix B at 35). Ameritech and GTE seek to broaden the funding sources of the USF (Ameritech initial comments, Attachment 3 at 43; GTE initial comments, Appendix B at 37-38). New Par, on the other hand, argues that the Commission lacks the requisite authority to require cellular providers to contribute to a universal service fund (New Par initial comments at 6-7). Consumer interests urge the creation of a Telecommunications Literacy and Access Fund with all carriers being assessed to offset the costs of this program.[37] In addition, OCC maintains that a portion of low income assistance should include funding to provide equipment to allow the communicatively impaired access to the telecommunications network (OCC reply comments at 114).

A number of commenters, currently engaged in the provision of interexchange services, sought a dollar-for-dollar access charge or other targeted funding requirement (i.e., carrier common line charge and residual interconnection charge) reduction based upon the revenues paid into the USF for each ILEC and SLEC. According to MCI, such a dollar-for-dollar reduction is necessary in order to ensure against a double recovery from interexchange carriers (MCI initial comments at 49). Several ILEC commenters assert that only incumbent carriers should be able to obtain USF monies because only ILECs have carrier of last resort (COLR) obligations. Other ILEC commenters propound that only facilities-based carriers should have access to universal service funds. OCC rebuts the ILECs' assertion by stating that the costs to serve high cost areas do not arise primarily from the COLR obligation (OCC reply comments at 113). Similarly, OTA recommends that the ILECs should only bear the carrier of last resort obligations for three years by which time the Commission will have concluded a proceeding to establish the appropriate standards for COLRs (OTA initial comments at 30).

Regarding low income assistance, OTA posits that adoption of an expanded telephone assistance program beyond what is currently in place would be clearly contrary to the General Assembly's intent. Moreover, if the proposal is to allow recovery of the costs of expanding the current telephone assistance programs through the current universal service funds, such an event would necessitate an amendment to the statutes relating to the current tax credit. Since the Commission is without authority to amend programs enacted by the General Assembly, OTA argues the Commission should revise the proposal accordingly (OTA initial comments at 31). OCC argues that the current statutes only speak to the parameters of the program to be supported by tax revenues; it did not forbid any other program funded by telecommunication users (OCC reply comments at 116).

Numerous commenters responded to the questions appended to the staff proposal concerning the appropriate manner in which to design a high cost proxy model that is representative of high cost subscribers generally, and that could be used in

[37] The City of Cleveland also proposes liberalized payment arrangements, local disconnection only for the nonpayment of local service charges, and the establishment of a minimum repayment requirement in order to reestablish service. As pointed out by Ameritech, these issues are under consideration by the Commission in Case No. 95-790-TP-COI and need not be addressed in this docket.

place of detailed company-specific cost studies. Cincinnati Bell claims that there is substantial variability between individual ILECs; thus, it is impractical to establish a statewide average cost to identify low versus high cost areas (Cincinnati Bell initial comments, Appendix D at 4-5). Cincinnati Bell also argues that due to the unique characteristics of each ILEC, all LECs would need to perform their own cost studies (*Id.*). OCC submits that the variability between individual ILECs may have more to do with management decisions and little to do with actual local cost characteristics (OCC reply comments at 120). OCC also notes that Cincinnati Bell fails to acknowledge that, unless the LEC performs a cost study for each subscriber, any combined cost study is necessarily a proxy for true costs. Therefore, according to OCC, unless individual cost studies are to be performed, a statewide proxy makes more sense than individual company-specific studies (*Id.*).

OTA and United/Sprint aver that the administrative expenses associated with the development of company-specific studies are quite large and, consequently, could prove to be burdensome to the ILECs (OTA initial comments at 41; United/Sprint initial comments at 53). For this reason, United/Sprint recommends that the Commission use the Benchmark Cost Model (BCM) as a proxy for individual telephone company developed costs.[38] Ameritech maintains that the BCM may be an appropriate mechanism to distribute funds from the USF but it is not an appropriate vehicle for sizing the universal service fund (Ameritech reply comments at 60). Ameritech further avers that, until all parties are comfortable that the BCM is a reasonable proxy for actual cost, actual cost should be used to determine the need for high cost funding (*Id.*). OCTA submits that the use of company-specific or proxy-costing studies is not likely to produce any useful information due to the variables and inputs used to develop such studies (OCTA initial comments, Appendix C at 12).

Having thoroughly reviewed the voluminous comments submitted on universal service, the Commission makes the following determinations. The arguments concerning adoption of a particular usage package are no longer relevant in that the revised guidelines require that NECs desiring to receive USF funds must only make a flat-rate service option available. Those commenters seeking to eliminate, add, or modify various services included on the list of universal services have failed to justify their positions; therefore, those positions need not be further addressed. The Commission does, however, agree with those commenters seeking to eliminate the second tier of universal service.

On the issue of which carriers should contribute to Ohio's USF, we note that all Commission-registered telephone companies having intrastate regulated revenues shall pay into the intrastate fund. Moreover, contrary to the argument raised by New Par, Section 254(f) of the 1996 Act specifically provides that "(e)very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." New Par also

[38] The BCM was jointly developed by MCI, NYNEX Corporation, Sprint Corporation, and US West Inc.

submits that the proposed revenue tax funding mechanism is anti-competitive and discriminatory against wireless providers. New Par's assertions regarding the lawfulness of a revenue tax funding mechanism are premature at this time. As noted above, the Commission is proposing to base Ohio's USF upon the TOTAL intrastate revenues of all certified providers. By this order, the Commission is not calculating any certified carriers' specific USF obligation. To the extent New Par desires to raise this issue in a future USF proceeding, the company is not prohibited from doing so.

Regarding the dollar-for-dollar decrease argument raised by the IXCs, we agree with the arguments raised by OCC that this proposal incorrectly assumes that all support for universal service comes from access charges. Moreover, we note that, with the exception of the recent stipulation reached in the Ameritech alternative regulation proceeding, there has been no corresponding commitment made on behalf of the IXCs to pass the savings from access charge reduction on to consumers in the form of lower toll rates. In addition, the IXCs presented no proposal to ensure that those monies are returned to consumers proportionally to how they were collected. Other commenters have argued that only ILECs should have the ability to withdraw funds from the USF due to the requirement that the incumbent providers continue as the carrier of last resort at the present time. We determine that the most appropriate manner in which to encourage facilities-based providers to serve all high-cost subscribers is by allowing all such providers to withdraw from the state USF at least during this interim period until and unless a bidding process, or some other mechanism to assign carrier of last resort obligations, is finalized and an award has been made. Otherwise, there would be little if any incentive for NECs to seek to serve areas determined to be high cost. Contrary to the concern raised by OTA that the ILECs will be forced to continue as the COLR, we are committed to evaluating whether to implement a bidding process or some other mechanism for the COLR obligation within 12 months of issuance of these guidelines. Obligating ILECs to continue, for such a short time frame, the responsibilities they already are performing does not appear overly burdensome.

Concerning OTA's argument on the expansion of low income assistance, we agree with OCC that the current statutes only affect the parameters of the program to be supported by tax revenues. We have required NECs to immediately offer telephone service assistance and service connection assistance to eligible customers. Moreover, we have indicated our intent to establish an incentive for the offering of expanded lifeline programs, such as those offered in the Ameritech alternative regulation case, through a crediting to USF obligations for those ILECs and NECs who offer such programs outside of alternative regulation committments. We have also, through the revised guidelines, adopted a proxy model based upon the BCM to identify high cost support benchmark costs. In so doing, we are acknowledging the concerns expressed that the administrative costs associated with performing company-specific cost studies are quite burdensome for all LECs. In adopting this approach, we also recognize that there are alternative methods of calculating benchmark costs. Therefore, any LEC may petition the Commission to adopt alternative benchmark costs based on a company-specific analysis.

The burden of proving to the Commission that the alternative method more accurately reflects true LRSIC costs within a given high-cost study area is on the applicant.

The final issue which needs to be addressed on this subject involves establishing a procedure to implement the universal service guidelines adopted by this order. Contrary to the position expressed by Cincinnati Bell, we determine that it is not necessary to have a universal fund mechanism in place prior to promulgating these guidelines governing local competition. To adopt Cincinnati Bell's position would indefinitely delay the commencement of competition in this state and would shore up the ILECs' monopoly position within their service territories. Cincinnati Bell's position also could be deemed a barrier to entry generally prohibited by adoption of the 1996 Act. We have, however, in response to Cincinnati Bell's comments, set forth a specific framework which details obligations of NECs and a model for cost recovery by the ILECs so that there will be little doubt of our policy intentions in this area.

XIV. NUMBER PORTABILITY

Staff's principles concerning number portability recommended that end users should have the ability to retain the same telephone number when changing from one local provider to another as long as the end user remains within the same NXX code. To accomplish that end, staff proposed that, where facilities permit and upon a bona fide request for interconnection by a certified local service provider, a providing carrier would have an obligation to provide true service provider number portability. Where facilities do not permit, staff maintains that interim service provider portability be provided on a DID or RCF basis. Staff also proposed Ohio-specific number portability guidelines which any number portability solution must support.

One commenter, Cincinnati Bell, questions whether number portability is really necessary for local exchange competition (Cincinnati Bell initial comments, Appendix B at 28-29). Cincinnati Bell further opines that the costs associated with any form of number portability will be significant and, therefore, the Commission must conduct an analysis to determine whether the costs outweigh the benefits of number portability received by customers. Several ILECs also maintain that requiring a permanent number portability solution within 12 months of a bona fide request for interconnection is an impossible implementation schedule. The NECs commenting on this issue primarily argue that a permanent number portability solution is one of the most significant factors necessary to establish local exchange competition. Without a numbering solution, the NECs claim that local competition will never happen due to customer inertia and because, without a permanent solution, many sophisticated feature package functions (such as CLASS services) cannot be offered or can only be offered in an inferior manner thus rendering NECs' service less than adequate as compared to the ILECs' service. On the timing issue, the NECs assert that there are a number of ongoing number portability trials and that the Commission should merely adopt one of those and make any minor adjustments necessary to provide an Ohio-specific solution.

There was no debate among commenters in this matter that, to the extent technically feasible, number portability is required of all LECs under Section 251(b)(2) of the 1996 Act. Further, the 1996 Act instructs the FCC to adopt guidelines on this matter within six months of the date of enactment. In addition, the parties agree that the 1996 Act mandates that the costs of a number portability solution shall be borne by all telecommunications carriers on a competitively neutral basis. New Par asserts that the 1996 Act does not impose number portability obligations on wireless providers or other non-LEC telecommunication service providers and neither should this Commission. The primary area of disagreement over the 1996 Act pertains to the appropriate cost recovery mechanism for interim number portability solutions. Ameritech claims that the 1996 Act does not set forth rate standards governing interim number portability and, as a result, this service is subject to the just, reasonable, and compensatory rate standard under Ohio law (Ameritech supp. comments at 15). OCC opines that, since interim number portability falls under the definition of a network element as used in the 1996 Act, the Commission can require its provision at LRSIC and need not include a reasonable profit in the price. MFS maintains that Section 251(e)(2) of the 1996 Act precludes the Commission from assigning the costs of interim number portability exclusively to consumers whose numbers are forwarded or to the carriers from which they have elected to take service (MFS supp. comments at 15).

The Commission is of the opinion that a permanent true number portability solution has significant benefits for establishing effective competition in this state in addition to providing greater choice benefits to end users. During the comment cycle established in the proceeding, Illinois adopted location routing number (LRN) true service provider number portability. LRN refers to a database system which does not rely on an absolute need to transport ported calls through the ILEC's network. In addition, unlike RCF and DID, LRN allows enhanced calling services relying on number identification to function as designed. We find that the benefits promised by adoption of LRN true service provider number portability far outweigh any unspecified problems. Therefore, we find it appropriate for Ohio to adopt LRN true service provider number portability as the appropriate permanent number portability solution for Ohio. The Commission shall schedule a state-wide LRN number portability workshop within 120 days of the issuance of these guidelines. The workshop will seek to establish the time frame and manner of the implementation of LRN number portability in the state of Ohio. The costs of implementing this permanent number portability solution shall be borne by all telecommunication carriers in accordance with Section 251(e)(2) of the 1996 Act.

Where facilities do not permit the introduction of LRN true service provider number portability upon a bona fide request, we find that number portability is sufficiently important to warrant the imposition of interim number portability on an RCF or DID basis. The rates which are established to provide an interim number portability solution will be an appropriate issue for inclusion in an interconnection agreement. This determination is consistent with the statement of the congressional Committee of Conference which found that the method of providing interim number portability and the amount of compensation, if any, for providing such service is subject to the negotiated interconnection agreement pursuant to Section 251 of the 1996 Act.

As a final matter, we agree with New Par that, to the extent an entity is engaged solely in the provision of commercial mobile service pursuant to 47 U.S.C. 332(c), neither interim nor permanent number portability must be offered at this time. However, we would note that the 1996 Act places a general duty on all telecommunications carriers, including commercial mobile service providers, not to install network features, functions, or capabilities that do not comply with the guidelines and standards to be established by the FCC concerning access by persons with disabilities and coordination for interconnectivity. We expect all commercial mobile service providers to abide by this standard in engineering and installation of their systems.

XV. NUMBERING ASSIGNMENT AND ADMINISTRATION

Staff proposed that, prior to a resolution of number assignment and administration responsibilities on a national or industry level, there should be no state-specific requirement for Cincinnati Bell and Ameritech to transfer these responsibilities. Several commenters suggested that the Commission insert a nondiscrimination requirement in the proposed rule while other commenters opine that the Commission should establish a numbering administration oversight committee or transfer the responsibilities to a neutral third party. The 1996 Acts directs the FCC, as the entity with jurisdiction over the North American Numbering Plan pertaining to the United States, to create or designate one or more impartial entities to administer telecommunications numbering and to make numbers available on an equitable basis. The 1996 Act permits the FCC to delegate to the state commissions all or any portions of its jurisdiction.

In light of the fact that the FCC has pending an investigation on number administration issues (CC Docket 92-237) and because the 1996 Act requires the FCC to take action in this area, the Commission can find no reason, at this time, to establish a mechanism to address number assignment and administration responsibilities.

XVI. DIRECTORY LISTINGS

Staff's proposal reiterates the customer listing requirements placed on LECs by the MTSS. The proposal also clarifies that LECs may purchase the provisioning of published directories and directory assistance from other providers. The proposal makes clear, however, that it is the carrier's responsibility to comply with the MTSS in provisioning service to end users. Finally, the staff's proposal touches on competitor listings and updates to published directory and directory assistance listings. Those ILECs commenting on staff's proposal suggest that all LECs should be responsible for providing directories covering their own local calling areas and that such a proposal may satisfy customer needs at greater convenience and less cost. The NECs essentially assert that the ILECs should be obligated to provide directories and directory assistance at no charge to the NECs. The Ashtabula Coalition posits that, without a requirement that a carrier's local calling area encompass the end user's entire county of residence, the directory issue will just further confuse end users (Ashtabula Coalition's initial comments at 8-9).

Having fully considered the comments filed concerning the proposed guidelines, we determine no changes are warranted. Staff's proposal correctly recognized that the obligation to provide directories, directory listings, and directory assistance is one most appropriately placed on the serving LEC. Staff's proposal also affords the NECs flexibility in that it recognizes that there are different methods by which a NEC can fulfill its regulatory obligations to consumers. The NEC may provide this service itself or the NEC may obtain these services from other parties, including ILECS which have the duty to negotiate such matters in good faith. Further, we fully expect that, with the advent of local competition, there will be an increase in the number and services provided by alternative providers of directories and directory assistance. Adopting staff's proposal regarding directory listings will maintain accountability for directory provisioning, creates no unequal burdens, allows market forces to benefit carriers and end users, and keeps a check on end users' need to utilize the ever-increasing numbers of directories to access local numbers. Placing the obligation of providing directories on NECs' will benefit end users by providing them with a single directory which encompasses all local listings in the service area. Placing this obligation upon the ILECs may be unreasonable because the ILEC may not have all necessary customers in its database to produce a directory since NECs have the ability to self-define their service and local calling areas. As a final matter, we acknowledge the concern raised by the Ashtabula Coalition and pledge to monitor and take corrective action as necessary to address situations involving end user confusion.

XVII. INTERCONNECTION TECHNICAL STANDARDS

Staff's proposal on this issue touches on a number of areas including disclosure requirements, network modifications, facilities, minimum compliance, technical requirements and changes in technical standards, service quality, federal requirements, and support functions. Consumer groups, new entrants, and the FEAs concur with these provisions of staff's proposal. NENA asserts that prompt access to 9-1-1 and E9-1-1 should not depend on the success of free-ranging negotiations and, therefore, this commenter suggests adoption of a non-discriminatory, cost-based tariff to allow carriers to use one another's databases (NENA initial comments at 4). ILECs maintain that, where another carrier's technical requirements require a modification to the ILECs facilities, the cost of those modifications should be recovered on an individual basis. There was some agreement among the commenters that "essential support functions" should be provided on a cost-based, nondiscriminatory basis (ICG initial comments at 5; Ameritech initial comments Attachment 3 at 53; AT&T initial comments, Appendix A, Part 2 at 50).

In considering whether any revisions are necessary to this portion of the guidelines, we note our agreement with the FEAs that "business and residence subscribers have benefited from cooperation between interexchange carriers and local exchange carriers" and that "they correctly expect the same level of cooperation between multiple local carriers" (FEAs initial comments at 25). Having set forth that guiding principle, we affirm for the most part staff's proposed guidelines on this issue. One revision necessitated by adoption of the 1996 Act is that the cost of network modifications relating to interconnection tariffs should be removed and replaced with a requirement to negotiate the costs of non-standard interconnection arrangements among interconnecting carriers. Another revision made necessary by the 1996 Act is that the technical standards section should be amended to reflect that a LEC must make available to other LECs technical interfaces that are at least equal in quality to that which it provides itself and such interfaces must be made available to similarly situated carriers upon request. The final revision was made to reflect that changes in technical requirements must be provided to other interested parties at the same time notice is given to all interconnecting carriers and to the Commission.

XVIII. CONSUMER SAFEGUARDS

Under this section, staff proposed standards that would apply to all LECs concerning customer information and education as well as prohibiting certain marketing practices. Specifically, the staff recommends that carriers should provide full and complete materials from which customers can make informed decisions. However, the Commission, should it encounter a LEC abusing this section, reserves its right to require, review, or request modification to customer notices and other education materials. Regarding marketing, the staff proposes to prohibit certain unfair or deceptive marketing practices. Finally, the staff noted that certified carriers engaging in the practice of unauthorized switching of an end user's LEC would be subject to penalties and remedies under the Ohio Revised Code.

Several ILECs commenting on the customer education proposal maintain that this provision is unnecessary and would result in needless regulatory burden with no articulation of the possible benefits. Commenters representing consumer interests applaud the staff's proposal and sought additional requirements that would, in their opinion, strengthen the proposal. Regarding marketing practices, United/Sprint and Ameritech assert that the Consumer Sales Practices Act (CSPA), set forth in Chapter 1345, Revised Code, specifically exempts transactions between public utilities and their customers from its coverage (United/Sprint initial comments at 60; Ameritech initial comments at 122). Consumer commenters point out that the CSPA exempted public utilities due to the extent of regulation those entities were subject to by the Commission. Thus, to the extent the Commission loosens regulation in this proceeding, it would be appropriate to subject those carriers to the CSPA. OCC even recommends that the Commission seek the lifting of the exemption the CSPA provides public utilities (OCC initial comments at 84). Toledo asserts that the Commission should affirmatively afford end users the same ability to seek redress of violations of the

CSPA as the Commission has reserved to itself (Toledo initial comments at 5). Many commenters recommend expanding the slamming provisions to include all local exchange services.

The Commission determines that the guidelines concerning customer education and prohibitions on deceptive marketing practices should be adopted. Contrary to the arguments set forth by the ILECs on customer education and marketing, we believe that these are perhaps the most important consumer provisions within these guidelines. As all parties, acknowledge, including the ILECs, it is the consumers who should benefit from basic local exchange service competition. To the extent that all LECs clearly and accurately inform customers of their respective service offerings and point out, where appropriate, customers' options, the Commission has no reason to require pre-approval before certain marketing and customer education material is utilized. However, past experiences have taught us that it would be unwise to merely allow the companies to compete for customers and market services without some level of regulatory review. As a result of competition in the interexchange market, Ohioans have been subjected to a host of deceptive marketing practices, including slamming. According to records maintained by our consumer services department, complaints to our Public Information Center (PIC) hotline on these matters have increased from 375 slamming contacts in 1993 to 1398 contacts in 1995. Moreover, in the first five months of 1996, our PIC hotline has logged 993 contacts concerning slamming. Following some reasonable period under which we are operating in a competitive market, the Commission may reevaluate the rationale for this requirement and, should conditions warrant, revise or remove it accordingly.

We also acknowledge that the CSPA specifically exempts transactions between public utilities and its customers from its provisions. Thus, we decline to adopt OCC's proposal to simply write the CSPA into these guidelines. However, we agree with the staff proposal to apply certain particular principles embodied within the CSPA to transactions between public utilities and its customers for the same reasons which justify our continued review of customer notices and educational materials. In fact, in this new regulatory environment, it is imperative that consumers have even more protection from the potential abuses of competitive entities than under traditional regulation because under traditional regulation it was clear to consumers who they had a complaint against whereas in a competitive environment it may not be as clear. Finally, we agree with the consumer interests who posit that public utilities were exempted from the CSPA due to the extent of regulation applied by this Commission over utility practices. With adoption of these guidelines, however, the regulatory paradigm is changing. We do think it appropriate that the Commission, rather than common pleas and municipal courts throughout the state, remain the forum for adjudication of these disputes. The Commission's expertise in this area make it better equipped at this time to address these claims. Commission jurisdiction will benefit carriers and consumers alike and will avoid inconsistent rulings throughout the state.

As a final matter, we find that it is appropriate to make a modification to the staff's slamming proposal. The guidelines, as revised, highlight that a customer whose telecommunications carrier has been switched without the appropriate authorization may file a complaint under Section 4905.26, Revised Code, with the Commission. This is in no way a modification of, but rather an affirmation of, the rights already afforded end users pursuant to Section 4905.26, Revised Code.

XIX. REGULATORY OVERSIGHT

By this section, staff set forth the Commission's obligations to ensure that the regulatory framework for competing LECs encourages the establishment of a healthy competitive market while safeguarding the public interest as set forth in Section 4927.02, Revised Code. According to the staff proposal, the Commission reserves its right to impose alternative requirements upon certified providers. In addition, the Commission recognizes that it is Commission policy to monitor and to relieve, whenever appropriate, ILECs from certain regulatory requirements to the extent that those requirements place unreasonable obligations upon ILECs. Therefore, no later than three years after adoption, the Commission shall review on an ILEC-specific basis the continuing appropriateness of these guidelines. Should an ILEC desire to be relieved of certain regulatory obligations prior to the Commission's review, it may request relief pursuant to Sections 4927.03 or 4927.04, Revised Code. As a final matter, the guidelines set forth a streamlined formal complaint process, under Section 4905.26, Revised Code, for resolving disputes among carriers.

The ILECs (both LLECs and SLECs) commenting on this section primarily argue that the Commission's guidelines should reflect on the service being provided and not upon the entity providing the service. In addition, the competitive milestones suggested by staff, according to the ILEC respondents, place an undue burden on the incumbent local exchange providers. ALLTEL and Ameritech also propose striking the dispute resolution forum as having no legal standing or enforcement capabilities (ALLTEL initial comments at 29; Ameritech initial comments at 126). The NECs and OCC opine that staff's proposed competitive milestones are inadequate. In support of this position, AT&T points out that the FCC did not relax regulation on it until its share of the competitive toll market had dropped to 58 percent (AT&T initial comments, Appendix A, Part 2 at 56). Regarding a dispute resolution forum, OCC asserts that negotiation is preferable to litigation and, therefore, negotiation should be attempted prior to resorting to a Section 4905.26, Revised Code, complaint proceeding. However, to make this option more effective, the Commission needs to commit to resolving carrier-to-carrier disputes within a reasonable time frame (MFS initial comments at 56-57). OCC also notes that a similar expedited complaint process should be available to consumers as well as carriers (OCC initial comments at 92).

The Commission notes that we have already dismissed the arguments raised by the ILECs that the Commission must require symmetric regulation of carriers with vastly different market shares and control of bottleneck facilities. Those arguments need not be restated here except to reaffirm our position that we will continue to monitor and reevaluate, where appropriate, alternative requirements upon any LEC (ILEC or NEC) abusing the guidelines addressed herein.

Attachment A to Appendix A (LRSIC)

Appended as an attachment to the staff's proposed guidelines was a discussion of the factors associated with performing LRSIC studies as well as a definition of terms utilized. While several commenters note that the staff's proposal represents a decent starting point in defining the factors associated with LRSIC studies, numerous comments and suggested edits were submitted to the staff's proposal. For example, the OCTA was concerned that the guidelines, as proposed, permit the ILECs to make a large number of arbitrary decisions in the process of developing a LRSIC study. To solve this concern, the OCTA recommends that the Commission identify a "task force" charged with monitoring the inputs into ILEC LRSIC studies. In addition, periodic studies addressing all services are necessary in order to ensure accuracy of any LRSIC study according to OCTA. The OCTA also notes that, of greater methodological concern, is the use of historical and current costs, data, and technologies in the development of a LRSIC study. The OCTA points out that the staff's proposal is inconsistent in this area. While not disputing the factors staff proposes to be included in a LRSIC study, Cincinnati Bell proposes a number of specific definitional edits to the staff's LRSIC attachment.

The Commission finds that clarification of this section of the proposal is appropriate. First, we would note that the purpose for including this detailed explanation of LRSIC studies is to provide a framework for LECs to use in creation of their own company-specific LRSIC studies. These guidelines represent the manner in which staff recommends providers conduct LRSIC studies. This does not mean, however, that a LRSIC study which varies from these guidelines and which is appropriately justified by the company submitting the study will not be given appropriate consideration by the Commission and its staff because we recognize that company and product-specific factors may warrant a deviation from the proposal. We do go on record, however, that we will look more carefully at the inputs into all LRSIC studies by permitting only inclusion of costs properly allocable to the intrastate telephone service operations as opposed to those more appropriately allocated to advanced video or related services. We also will more closely scrutinize the type of costs included. As a final matter, we make clear that LRSIC is a pricing tool primarily to be used to establish price floors. If the ILEC chooses to price at LRSIC, however, does not automatically establish a right for that ILEC to recover the difference between LRSIC and the fully embedded cost (including an allocation of joint and common costs) from other monopoly services. The merits of such recovery is open to considerable debate and will be carefully scrutinized before we authorize an increase in monopoly basic exchange rates.

Having thoroughly considered OCTA's proposal[39] that the Commission establish a task force to monitor the inputs into ILEC LRSIC studies, the Commission finds such recommendation to be unnecessary. Currently, when an ILEC submits a LRSIC study, the staff performs an in-depth review of the methodology and inputs used in creating the study. The staff then formulates a recommendation for the Commission to consider. Parties which may be affected by the ILECs proposal are given an opportunity to object to the ILEC's proposal either by filing an objection if it is a new service or by filing a complaint if it is an established service. It is unclear from the OCTA's comments whether the recommended task force would replace the role of the Commission's staff or whether it would represent an additional layer of approvals an ILEC would have to obtain prior to receiving approval of its LRSIC study. In any event, we do not agree with the implication that staff is not equipped to properly review these ILEC LRSIC studies. OCTA's comments also suggest that the proposed task force would be empowered to review the ILEC inputs which we interpret to mean actual costs. To the extent this task force is comprised of the ILEC's competitors, there would certainly arise a justified concern regarding the provision of confidential, proprietary, or trade secret information to this task force without appropriate protection. For these reasons, OCTA's proposal on this issue is rejected.

We also note that Cincinnati Bell raises some legitimate concerns and proposes some specific language to correct particular provisions of the LRSIC attachment. Many of these proposed revisions are designed to correct the inconsistency between staff's proposal that LRSIC studies should be based on forward-looking factors and specific sections which referred to using historical-type data. We agree with Cincinnati Bell that this inconsistency needs to be clarified and have made the appropriate revisions to require that, subject to the caveats listed previously in this opinion and in the guidelines, the data inputs must be based upon forward-looking information.

TRANSITION:

To provide for an orderly transition over to the local competition guidelines, the Commission concludes that the guidelines should become effective on August 15, 1996, and all certified local exchange carriers and current applicants should be automatically transitioned over to the guideline procedures as of that date. All pending NEC applications and NEC applications filed between the issuance of this Finding and Order and August 15, 1996, will be processed using the procedures currently in place at the time of this order. While these applications would not be subject to the 60-day automatic time frame, so as not to delay NECs from entering the local market, we will continue to process and approve applications pursuant to the current procedures. We are commited to reviewing the applications currently pending on an expedited basis by

39 This concept was not well developed in OCTA's comments.

significantly reducing the time frames in place, especially for those cases that are not contested. For those cases that are contested, the Commission will consider such actions as limiting discovery time frames as well as narrowing the scope of discovery and limiting testimony. Any case which is filed prior to August 15, 1996, and is still pending as of August 15, 1996, and would appropriately be subject to an automatic time frame under the local competition guidelines, will automatically be converted over to the automatic approval process and will be treated as if the filing were made on August 15, 1996. Any pending NEC applications for which there is no automatic time frame established in the guidelines will be handled according to the procedures deemed appropriate by the Commission. In order to clarify the actual results of this transition procedure, the Commission will issue a procedural entry prior to the effective date of the guidelines for those NEC applications pending at that time.

The first filing of any type made by NECs on or after August 15, 1996, must include a completed Registration Form (See Attachment B to Appendix A) and the exhibits required for that type of case. For any application which is filed pursuant to an automatic time frame established in these guidelines, the automatic time frame will not begin to run until the appropriate Registration Form is filed.

CONCLUSION:

In light of the enactment of the 1996 Act, dramatic changes are occurring in the local exchange market which warrant a reevaluation of this Commission's traditional regulatory practices concerning the provision of basic local exchange services. The regulatory principles outlined above and in the attached Appendix A, represent, in this Commission's view, the appropriate guidelines by which to regulate those segments of the competitive marketplace while still affording us the ability to safeguard the public interest. The principles addressed herein will not only foster a competitive local exchange environment, but will also afford the Commission the ability to monitor the effectiveness of competition as well as the ability to redress problems with this model should any arise.

ORDER:

It is, therefore,

ORDERED, That, in accordance with the above findings, it is in the public interest to adopt, and as a result we hereby adopt, a new regulatory framework for the provision, within Ohio, of competitive local exchange telecommunication services, as set forth in Appendix A to this Finding and Order. It is, further,

ORDERED, That ILECs resubmit tariffs within 60 days of this Finding and Order which remove all restrictions on resale of services except as specifically noted otherwise in this Finding and Order. It is, further,

ORDERED, That the ILECs submit for Commission approval the revisions to ORP/SCO discussed in this Finding and Order and in Appendix A. It is, further,

ORDERED, That any telephone company currently offering basic local exchange service, who has not yet been certified to do so, shall file an application for certification pursuant to the attached guidelines. It is, further,

ORDERED, That all ILECs and NECs shall comply with this order and the attached guidelines. It is, further,

ORDERED, That the effective date of the guidelines shall be August 15, 1996. It is, further, ORDERED, That copies of this Finding and Order be served upon all local exchange telephone companies, interexchange carriers, radio common carriers, cellular carriers, and competitive access providers operating in this state; all former and current RRJ applicants; The Ohio Telephone Association; The Office of the Consumers' Counsel; the Association of Township Trustees; County Commissioners Association; Ohio Chamber of Commerce; Ohio Farm Bureau; Ohio Council of Retail Merchants; Ohio Municipal League; the cities of Cleveland, Columbus, Cincinnati, Delaware, Dublin, Upper Arlington, Westerville, Worthington, and the Village of Powell; Ohio Cable Telecommunications Association; Appalachian People's Action Coalition; Telecommunications Resellers Association; Ashtabula County Telephone Coalition; Ohio Direct Communications, Inc. and Ridgefield Homes, Inc.; National Emergency Number Association; United States Department of Defense and all other Federal Executive Agencies; Ohio State Legislative Committee of the American Association of Retired Persons; Competitive Telecommunications Association; Ohio Domestic Violence Network; Westside Cellular Inc. dba Cellnet of Ohio, Inc.; Edgemont Neighborhood Coalition; all other persons or entities who have filed pleadings in this docket; all person or entities who have filed pleadings in Case No. 95-790-TP-COI; all applicants for authority to provide local exchange service; and upon all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Richard M. Fanelly

Ronda Hartman Fergus

David W. Johnson

JRJ/gm

Entered in the Journal

JUN 1 2 1996

A True Copy

Gary E. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation)
Relative to the Establishment of Local Exchange) Case No. 95-845-TP-COI
Competition and Other Competitive Issues.)

ENTRY ON REHEARING

The Commission finds:

(1) On June 12, 1996, this Commission, in Case No. 95-845-TP-COI (845), adopted guidelines to effectuate local exchange competition in Ohio. The Commission's finding and order in 845 comprehensively addressed matters involved in the establishment of local exchange competition including, among other issues, interconnection, compensation for the transport and termination of traffic, and pricing standards.

In an entry on rehearing adopted on November 7, 1996, the Commission addressed the substantive arguments raised by interested persons on rehearing. While the November 7, 1996 rehearing entry primarily denied rehearing, certain clarifications and modifications of the Commission's local competition guidelines were made.

(2) Ameritech Ohio (Ameritech), GTE North Incorporated (GTE), and The Ohio Telephone Association[1] (hereinafter referred to as OTIA), on behalf of all its members, have sought rehearing or clarification on a limited number of additional 845 issues. AT&T Communications of Ohio, Inc. (AT&T) timely filed a memorandum in opposition to the applications for rehearing and requests for clarification submitted by Ameritech and OTIA.

(3) By entry issued December 24, 1996, the Commission granted rehearing solely to afford the Commission a limited amount of additional time to consider the issues on which rehearing and clarification have been sought.

(4) OTIA, in its application for rehearing, argues that it was unlawful, unreasonable, and an abuse of discretion for the Commission, without any record evidence concerning the cost or present technical capability of the existing network, to

1 Ohio Telecommunications Industry Association (OTIA) formerly known as The Ohio Telephone Association.

require a data transfer specification of 14,400 bits per second (bps) by December 31, 1998. As a result, OTIA maintains that the Commission should delete, in its entirety, any reference in the local competition guidelines to a bps standard. Should the bps standard remain in the local competition guidelines, OTIA urges the Commission to clarify that each telephone company will have a reasonable amount of time, upon a customer's specific request, to provide the ability to transmit or receive data at a specified rate. Further, OTIA requests that the Commission clarify that transmission at the specified data rate at all times and in all places in Ohio is not being required.

Regardless of whether rehearing is otherwise granted, OTIA requests clarification on five issues raised by the November 7, 1996 entry on rehearing, namely: (1) that guideline V.E.1, relating to the submission of supporting materials, be clarified by changing the word "file" to "submit" to clarify that supporting work papers and source documents be available to the Commission's staff but not formally filed with the Commission's docketing department; (2) that guideline VI.J.1, relating to "fresh look" of certain contracts, be clarified by confirming that this guideline does not apply to agreements or contracts for Centrex services; (3) that guideline VI.J.1, relating to "fresh look" of certain contracts, be clarified by confirming that the term "local service" refers to basic local exchange service and that where the termination liability provided for in such contracts does not exceed the remaining revenue associated with the competitive elements of said contract that the customer is obligated to pay over the remaining term of the contract, then those contracts are not subject to a "fresh look"; (4) that guideline X.B.1, relating to the time frame for implementing 1+ dialing parity on an intraLATA basis, be clarified so that the 12-month period for institution of intraLATA dialing parity becomes November 7, 1997, not June 12, 1997; and (5) that the first sentence of subsection 3 of guideline XV.C.3, relating to directory listings, be amended to clarify the first appearance of the word "TELRIC"[2] was inadvertent and unintended and that the subject of this sentence is directory listings used for directories and directory assistance.

(5) In its application for rehearing, GTE echoes the reasoning behind OTIA's rehearing request concerning the application of a bps standard to all telephone lines throughout Ohio. In

2 The acronym TELRIC stands for Total Element Long Run Incremental Costs.

addition, GTE submits that, while a vast majority of its lines in Ohio are capable of meeting either the 9,600 or 14,400 bps standard embodied in the guidelines, approximately two percent or 16,680 GTE lines served by analog carrier facilities are not capable of meeting either data transmission rate. GTE estimates that the expense involved in replacing all analog carrier facilities in Ohio is $45 million or approximately $2,700 per GTE customer served by these systems. Moreover, even assuming the expense involved was warranted, GTE claims that it would require approximately 400,000 man-hours to perform the work necessary to upgrade the network. To complete the upgrade by June 12, 1997, would require nearly 400 employees working full time on the project according to GTE.

GTE also submits that it is unreasonable, unlawful, and contrary to the principles embodied in the Telecommunications Act of 1996 (1996 Act) to determine eligibility for high cost support on a carrier's return on equity. GTE maintains that, as currently written, the Commission's high cost support program, set forth in guideline XIII.E.1.h, fails to eliminate the implicit subsidies that have historically funded universal service and replace them with a specific, explicit, and predictable universal service support mechanism.

(6) Ameritech adopts and incorporates by reference the application for rehearing and request for clarification submitted by OTIA. In addition, Ameritech maintains that the Commission erred by failing to eliminate the requirement that a primary toll carrier remain as a toll carrier of last resort when its secondary carrier implements intraLATA 1+ dialing parity. Ameritech asserts that the Commission's action to require 1+ intraLATA dialing parity raises a number of issues regarding the relationship between primary and secondary toll providers commonly referred to as ORP/SCO agreements. These ORP/SCO agreements, first entered into in 1989, were the product of a different regulatory environment according to Ameritech and their foundation was based upon the concept of a single provider of 1+ intraLATA toll serving the secondary carriers' exchanges. In conclusion, Ameritech argues that the Commission erred by not incorporating in the local competition guidelines flexibility for carriers to alter the ORP/SCO arrangements in a changed 1+ intraLATA environment and in not calling for an industry plan to address the financial and network issues related to the

implementation of 1+ presubscription in the secondary carriers' exchanges.

(7) In its memorandum contra, AT&T submits that it opposes three of the five requests for clarification set forth by OTIA and incorporated by reference in Ameritech's application for rehearing. Two requested clarifications opposed by AT&T involve the "fresh look" provisions found in guideline VI.J.1. The third clarification which AT&T opposes is related to the implementation of 1+ dialing parity embodied in guideline X.B.1.

Regarding the "fresh look" provisions, AT&T maintains that OTIA and Ameritech are merely seeking "clarification" of termination liability and Centrex contracts, issues raised by them in their first rehearing and which were fully addressed by the Commission in the November 7, 1996 rehearing entry.[3] AT&T maintains that there is no ambiguity in the Commission's November 7, 1996 entry on rehearing and, thus, nothing to clarify. AT&T submits that it is likewise unnecessary to clarify the time frame for all incumbent local exchange carriers (ILECs) to implement 1+ intraLATA dialing parity.

(8) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a proceeding may apply for a rehearing with respect to any matter determined in the proceeding by filing an application within 30 days of the order in the Commission's journal. The Commission may grant and hold a rehearing on the matters specified in the application if, in its judgment, sufficient reason appears.

(9) The applications for rehearing of OTIA, GTE, and Ameritech have each been filed timely as required by Section 4903.10, Revised Code.

(10) The first issue we will address is the issue raised by both OTIA and GTE[4] concerning adoption of a bps data transmission standard. As to whether or not a bps data transmission standard should be included under universal service, we believe that OTIA and GTE have neither raised any new arguments which the Commission has not already considered

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3 November 7, 1996 rehearing entry at pages 36-37.

4 Ameritech incorporates by reference this assignment of error but provides no additional argument on it. Consequently, Ameritech's assignment of error on this issue will be adequately addressed by discussing the rehearing request of OTIA.

and adequately addressed, nor grounds sufficient for granting rehearing of the Commission's November 7, 1996 entry on rehearing. Therefore, rehearing on this issue as well as OTIA's requested clarification is denied.

The only modification made to the bps standard which could properly be subject to rehearing was the requirement that all local exchange carrier networks have the capability of transferring data at a rate of 14,400 bps by December 31, 1998. Regarding this modification, GTE has argued that, while a vast majority of its lines in Ohio are capable of meeting both the 9,600 and 14,400 bps data transmission standard, a limited number (approximately two percent) of its lines are incapable of meeting this standard. OTIA submits that one of its members, Ameritech, has estimated the need to upgrade as much as 20 percent of its loop facilities at a cost of over $200 million to meet this bps requirement.

As noted above, rehearing on this issue is denied. The telecommunications policy of the state of Ohio, as adopted by the Ohio General Assembly and set forth in Section 4927.02, Revised Code, encourages innovation and promotes diversity and options in the supply of public telecommunications services and equipment throughout the state. The Ohio General Assembly has also set aside almost half a billion dollars in order to bring advanced telecommunication and computer technology into Ohio public schools' classrooms through Ohio SchoolNet and Ohio SchoolNet Plus. Moreover, the Ohio SchoolNet Telecommunity initiative, working in conjunction with the foregoing programs, provides grants which allow the deployment of two-way fully interactive distance learning capabilities among Ohio's schools.

More recently, through adoption of Section 254 of the 1996 Act, Congress has specifically pinpointed schools, libraries, and health care providers for special treatment concerning access to advanced telecommunication services which we understand to include services supporting computer-based activities. Finally, we note the exponential growth in usage of the Internet, particularly on behalf of residential subscribers, over the past few years.

All of the foregoing reasons support, in our opinion, adoption of a minimum bps standard for passing bits of information over the public telecommunications network. The network modifications necessitated in order to comply with the intra-LATA dialing parity provisions of the 1996 Act will *de facto* make compliance with a 14,400 bps transmission rate feasible. We acknowledge that some companies (such as GTE) with older plants in some areas may have difficulties meeting the time frames associated with the bps rate set forth in the November 7, 1996 rehearing entry. However, those limited exceptional circumstances can be dealt with adequately through the waiver process. We caution those local exchange carriers (LECs) considering such a request that waivers will truly be the exception and granted only after a thorough investigation into the documentation supporting such a request.

(11) GTE also assigns as error the Commission's determination to base eligibility for high cost support (HCS) on a carrier's return on equity. Guideline XIII.E.1.h, which is the guideline being challenged by GTE, states that "(I)n determining HCS funding, the Commission will consider all relevant factors, including the carrier's return on equity." GTE would have this Commission award HCS funding based solely upon the difference between the cost of providing universal services minus the revenues received from the end users. GTE's rationale ignores the realities of the marketplace, tends to inflate the size of the HCS fund, and could provide a windfall to those companies unless the Commission also considers the overall financial condition of the serving companies. We believe that basing HCS funding on all relevant factors, which includes a carrier's return on equity, provides the appropriate balance between ensuring that carriers are adequately compensated for serving high cost areas while keeping the size of the HCS fund to a minimum. GTE's request for rehearing on this issue is denied.

(12) OTIA has sought clarification of the Commission's "fresh look" provisions in guideline VI.J.1-3. Specifically, OTIA maintains that "fresh look" should not apply to contracts for Centrex services nor where the termination liability does not exceed the revenue to be paid over the remaining term of the contract. In an effort to clarify the fresh look provision, the Commission's November 7, 1996 rehearing entry set forth additional parameters concerning the types of contracts eligible for a "fresh look". It is clear that clarification is still warranted. We intend that fresh look applies to all local, noncompetitive contracts, including Centrex contracts, which

fall within our parameters and regardless of what the termination liability provisions are. We further note that the clarifications which we have set forth are an attempt to give some general guidance. We recognize that there still may be issues which must be addressed with respect to fresh look and we will endeavor to set forth more specific parameters when we declare the first fresh look window.

(13) The OTIA also sought clarification that the time frame for implementing 1+ intraLATA dialing parity is November 7, 1997 and not June 12, 1997. The Commission agrees that clarification is warranted and, therefore, clarifies that the appropriate time frame for implementation of 1+ intraLATA dialing parity was intended to remain June 12, 1997 and not November 7, 1997. However, in light of the short time period between the issuance of this Entry on Rehearing and June 12, 1997, the Commission is resetting the 1+ intraLATA dialing parity implementation deadline to August 8, 1997. The guidelines have been amended to reflect the August 8, 1997 implementation deadline.[5]

The Commission believes clarification is warranted regarding the customer notification and 90-day no charge window time frame. In the Commission's first entry on rehearing, the guidelines at X.D. state that "LECs shall inform their current customers of the options to select presubscribed intraLATA toll carriers within 60 calendar days of implementation of intraLATA toll presubscription." The Commission clarifies that the "within 60 days of implementation" means no later than 60 days following implementation. The Commission further clarifies that initial requests of current customers for intraLATA presubscription will be provided free of charge for 90 days from the date of 1+ intraLATA toll dialing parity implementation or 90 days after customers notice was initially sent, whichever is later.

The Commission also clarifies that the customer notice, which must be submitted to the Commission 30 days prior to the date the notices will be sent to the customers, should include an attachment listing all carriers, known at that time, which will be on the LEC's presubscription choices list.

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[5] The Commission notes that this modification to the 1+ intraLATA dialing parity deadline does not affect Ameritech. Ameritech continues to be subject to the 1+ intraLATA dialing parity implementation requirement set forth in Guideline X.B.2.

(14) The remaining clarifications to Appendix A of the November 7, 1996 guidelines (namely, replacing the word "file" with "submit" in guideline V.E.1, modifying the second sentence of guideline VI.J.1 to clarify that the subsection refers to basic local exchange services, and amending the first sentence of subsection 3 of guideline XV.C.3) sought by OTIA are reasonable and have been made to the guidelines.

(15) Ameritech maintains on rehearing that the Commission erred by failing to eliminate the requirement that a primary toll carrier remain so when its secondary carrier implements 1+ intraLATA toll dialing. The Commission's guideline in question, guideline X.B, states that all ILECs shall implement 1+ intraLATA dialing parity to all its subscribers. In adopting this provision, the Commission understood that the current primary to secondary carrier (PEC/SEC) relationships where the primary carrier is, in effect, the toll carrier of last resort for the secondary carrier may in some cases be inappropriate in this changing telecommunications environment. However, the Commission had not intended to definitively eliminate all PEC/SEC relationships, but rather allow for flexibility as appropriate in the various markets. In the event a primary and/or secondary carrier wishes to dissolve a particular PEC/SEC relationship, we direct the carrier(s) to seek Commission approval, through an unclassified (UNC) filing, no later than 30 days prior to 1+ intraLATA presubscription implementation in the relevant territory.

We realize that, should the Commission approve the termination of a PEC/SEC relationship, there are a number of issues and 1+ intraLATA presubscription procedures that would be unique to the relevant market and would need to be addressed. We direct the companies to work with the Staff to resolve these implementation issues within the context of the carriers' 1+ intraLATA tariff approval (ATA) proceedings. We further direct all ILECs to file, in their 1+ intraLATA dialing parity ATA cases, a detailed description of their implementation plans involving existing customers who do not make a definitive PIC selection. SEC ILEC's filings should include a description of their implementation plans regarding existing customers who do not make a definitive PIC selection if the PEC/SEC relationship remains as is, and if the PEC/SEC relationship is dissolved.

To the extent that the Commission's clarification regarding the implementation of 1+ intraLATA dialing parity and the outcome of any UNC cases seeking to dissolve a particular PEC/SEC relationship does not eliminate these issues, we agree that these issues warrant further consideration. We also note that the Federal Communications Commission (FCC) has opened a docket on access charge reform (CC Docket 96-262) in order to comprehensively evaluate existing interstate access charge regulations to ensure that they are compatible with the pro-competitive goals of the 1996 Act. Through Case No. 83-464-TP-COI, we have generally authorized ILECs to mirror their interstate access charges on an intrastate basis. However, in light of the recommendations contained within the FCC's Notice of Proposed Rulemaking on access charges, we will need to further investigate our intrastate access charge policies including issues which are the subject of the ORP/SCO agreements. Therefore, any ORP/SCO-related issues that Ameritech wished to bring to the Commission's attention would more appropriately be addressed in a subsequent proceeding.

Of its own accord, the Commission has revised the language in section X.A. to better reflect the Commission's intent that the principal interest is in the provision of dialing parity to interconnecting toll carriers. The sentence, "NECs are required to provide exchange access and dialing parity to all toll providers, but they are not required to provide toll services themselves." has been deleted. The sentence implied, in the converse, that all ILECs are required to provide toll service. That was not the Commission's intent. Rather, the Commission's intent was to convey, whenever possible, in the new environment the provision of toll service should be left to the carriers' market-based business decisions.

(16) A copy of the revised guidelines is attached to this entry. Revisions consistent with the above discussion may be found on pages 37, 39, 44, 47, 58, 67, 68, and 69.

(17) Rehearing is denied with respect to any and all other issues raised in the applications for rehearing, to the extent those issues have not otherwise been fully addressed in this entry on rehearing. Thus, in all respects, except to the extent specifically modified or clarified in this entry on rehearing, the Commission's November 7, 1996 entry on rehearing in this

case shall remain unchanged, and in full force and effect as if incorporated by reference herein.

It is, therefore,

ORDERED, That, in accordance with the above findings, the applications for rehearing and requests for clarification of issues filed by OTIA and Ameritech are granted to the limited extent indicated in Findings (13), (14), (15), and (16). It is, further,

ORDERED, That, in all other respects, the applications for rehearing and requests for clarification of issues filed by OTIA, Ameritech, and GTE, are denied in their entirety, in accordance with the above findings. It is, further,

ORDERED, That, in accordance with the above findings, in all other respects, the Commission's November 7, 1996 entry on rehearing shall remain unchanged and in full force and effect, as if incorporated by reference herein. It is, further,

ORDERED, That our adoption of these guidelines does not constitute state action for purposes of the antitrust laws. It is not our intent to insulate any party from the provisions of state and federal law which prohibit the restraint of trade. It is, further,

ORDERED, That nothing in these guidelines shall be deemed to be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this entry and the revised guidelines be served upon OTIA, GTE, and Ameritech; their respective counsel; and upon all interested persons of record in this docket.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Richard M. Fanelly

Ronda Hartman Fergus

David W. Johnson

JRJ;geb

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Gary E. Vigorito
Secretary

LOCAL SERVICE GUIDELINES

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LOCAL SERVICE GUIDELINES

NOTE: As detailed in the Commission's Entry on Rehearing of November 7, 1996, in Case No. 95-845-TP-COI, certain sections of these guidelines, to the extent they are inconsistent with the FCC's rules, are stayed pending either a decision from the FCC on the Commission's reconsideration petition or a decision from the Eight Circuit Court on the direct appeal of the FCC's First 96-98 Order. In order to delineate those portions of the guidelines that are stayed, the affected text is italicized, emboldened, and underlined.

I. REFERENCE SECTION

A. As used within this document, these terms denote the following:

1. **Basic Local Exchange Services**

Means the end user and carrier access to and usage of telephone company-provided facilities that enable customers, over a local exchange telephone company network operated within a local service area, to originate and receive voice grade, data, or image communications and to access interexchange or other networks. Resellers and/or rebillers of basic local exchange service are local exchange carrier's since they provide basic local exchange services consistent with this definition.

2. **Class A**

Class A companies means those companies having annual revenues from regulated telecommunications operations of $100,000,000 or more.

3. **Class B**

Class B companies means those companies having annual revenues from regulated telecommunications operations of less than $100,000,000.

4. **Dialing Parity**

Means a condition in which an entity that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customers' designation between or among telecommunications service providers (including such local exchange carrier).

5. **Exchange**

Means a geographical service area established by an incumbent local exchange carrier and approved by the Commission, which usually embraces a city, town, or village and a designated surrounding or adjacent area. It typically encompasses one or more central offices, together with the associated plant used in furnishing telecommunications service to the general public. There are currently 748 exchanges in the state.

6. **Exchange Access**

Means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

7. **Facilities-Based Local Exchange Carrier**

Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation that owns, operates, manages, or controls plant or equipment through which it provides basic local exchange service to consumers on a common carrier basis.

8. **Incumbent Local Exchange Carrier (ILEC)**

Means, with respect to an area, the local exchange carrier that: (a) on the date of enactment of the Telecommunications Act of 1996 (1996 Act), provided basic local exchange service in such area; and (b) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to C.F.R. §69.601(b); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assignee of a member described in clause (i). Incumbent local exchange carriers will be referred to as ILECs throughout this document.

9. **InterLATA Service**

Means telecommunications between a point located in a local access and transport area and a point located outside such area.

10. Local Access and Transport Area (LATA)

As designated by the Modification of Final Judgement, United States v. Western Electric Co., (C.A. No. 82-1092), 552 F. Supp. 131 (1982), an area in which a local exchange carrier is permitted to provide service. It contains one or more local exchange areas.

11. **Local Exchange Carrier (LEC)**

Means any facilities-based and nonfacilities-based, ILECs and NECs which provide basic local exchange services to consumers on a common carrier basis. Such term does not include an entity insofar as such entity is engaged in the provision of a commercial mobile service under Section 47 U.S.C. 332(C), except to the extent that the FCC finds that such service should be included in the definition of such term.

12. **Network Element**

Means the facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

13. **New Entrant Carrier (NEC)**

Means a local exchange carrier that: (a) (i) on the date of enactment of the 1996 Act, did not provide basic local exchange service and (ii) was not deemed to be a member of the exchange carrier association pursuant to C.F.R. §69.601(B); or (b) is not a person or entity that, on or after such date of enactment, became a successor, assign, or affiliate of such a local exchange carrier described in (a) above.

14. **Nonfacilities-Based Local Exchange Carrier**

Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation that does not own, operate, manage, or control plant or equipment but that is in the business of reselling basic local exchange service to consumers on a common carrier basis.

15. Number Portability

Means the ability of users of telecommunications services to retain, at the same location or within the same wire center and exchange area, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

16. **Rural Local Exchange Carrier (RLEC)**

Means a local exchange carrier operating entity to the extent that such entity:

a. Provides common carrier service to any local exchange carrier study area that does not include either:

   i. Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

   ii. Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

b. Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

c. Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

d. Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the 1996 Act.

17. **Rural Carrier**

Means a local exchange carrier with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide.

18. **Telecommunications Carrier**

Shall have the same meaning as a telephone company as defined in Section 4905.03(A)(2), Revised Code.

19. Total Element Long Run Incremental Cost (TELRIC)

For TELRIC definition, see Section V.B.4. of these guidelines.

B. Acronyms

As used within this document, the following acronyms denote:

1996 ACT	The Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, et seq.
563	Case No. 89-563-TP-COI
564	Case No. 89-564-TP-COI
944	Case No. 84-944-TP-COI
1144	Case No. 86-1144-TP-COI
AAC	Application to Amend its Certificate
ABN	Application to Abandon Service
ACE	Application for a Certificate
AEC	Application to Establish, Revise, or Cancel a Contract
AIN	Advanced Intelligent Network
ANI	Automatic Number Identification
ARB	Application for Arbitration
ARMIS	Automated Reporting Management Information Systems
ATA	Application for Tariff Amendment
AOS	Alternative Operator Services
bps	Bits per Second
CABS	Carrier Access Billing System
CARE	Customer Account Record Entry
CCLC	Carrier Common Line Charge
CBG	Census Block Group
C.F.R.	Rules promulgated by the FCC contained in Title 47 of the Code of Federal Regulations
CMRS	Commercial Mobile Radio Service
COMMISSION	The Public Utilities Commission Of Ohio
COI	Commission Inquiry
CPNI	Customer Proprietary Network Information
CTS	Competitive Telecommunication Service Providers as defined in Case No. 89-563-TP-COI
DID	Direct Inward Dialing
EAS	Extended Area Service
FCC	Federal Communications Commission
FGD	Feature Group D
HCS	High Cost Support
ILEC	Incumbent Local Exchange Carrier
IN	Intelligent Network
IXC	Interexchange Carrier

LATA	Local Access and Transport Area
LEC	Local Exchange Carrier refers to both ILECs and NECs
LERG	Local Exchange Routing Guide
LOA	Letter of Agency
LRN	Location Routing Number
MOU	Minutes of Use
MPB	Meet Point Billing
MTS	Message Toll Service
MTSS	Minimum Telephone Service Standards as contained in Chapter 4901:1-5, Ohio Administrative Code, and applicable Commission decisions as may be amended or redefined.
NAG	Application for Approval of a Negotiated Agreement
NEC	New Entrant Carrier
OCC	The Office of the Consumers' Counsel
ORP/SCO	Originating Responsibility Plan/Secondary Carrier Option
PEC	Primary Exchange Carrier as defined in Case No. 83-464-TP-COI
PIC	Presubcribed Interexchange Carrier
RCF	Remote Call Forwarding
RFP	Request For Proposal
RIC	Residual Interconnection Charge
RLEC	Rural Local Exchange Carrier
ROE	Return On Equity
SEC	Secondary Exchange Carrier as defined in Case No. 83-464-TP-COI
SCA/TSA	Service Connection Assistance/Telephone Service Assistance
SLEC	Small Local Exchange Carrier Serving Under 15,000 Access Lines
TELRIC	Total Element Long Run Incremental Cost
TPM	Telecommunications Performance Measurement Database
USF	Universal Service Fund
USOA	Uniform System of Accounts

II. CERTIFICATION ISSUES

A. Jurisdiction

1. Scope

Each facilities-based and nonfacilities-based entity engaged in the business of providing basic local exchange service to, from, through, or in Ohio shall be considered a LEC subject to Commission jurisdiction.

2. Waivers

a. Nothing contained within these guidelines and procedures shall preclude the Commission from waiving any provision in this document for good cause shown or upon its own motion. Any LEC seeking a waiver(s), suspension(s) or modification(s) pursuant to Section II of these guidelines, shall specify the period of time for which it seeks such waiver(s), and a detailed justification.

b. **Incumbent Small LECs (SLECs)**

In this subsection, the Commission recognizes that an incumbent SLEC is both an RLEC subject to the automatic exemption from Section 251(c) of the 1996 Act until such time as the SLEC receives a bona fide request for interconnection and the Commission reviews such request, and a rural carrier which may request a suspension or modification of all or portions of Sections 251(b) and (c) of the 1996 Act by filing an application with the Commission.

i. Prior to January 1, 1998, SLEC's are exempted and suspended from only those portions of these guidelines which relate to Section 251(c) of the 1996 Act. SLECs are expected to use this period of exemption and suspension to prepare and plan for competition to enter their service area. The staff of the Commission will be made available, on an informal basis, to assist the SLECs in this endeavor.

ii. After January 1, 1998, if a SLEC receives a bona fide request for interconnection services or network elements and it seeks to continue its exemption, it may request an extension of its exemption by filing an application with the Commission within 10 business days after receiving the bona fide request. If a SLEC does not seek to continue its exemption, it shall follow the bona fide request negotiation procedures set forth in Section III.D. of these guidelines.

The requesting carrier shall submit such bona fide request to the SLEC, as well as the chief of the telecommunications division of the Commission, via facsimile, overnight mail, or hand delivery. Within 5 business days of receiving such request, the SLEC shall send a letter acknowledging the receipt of the bona fide request and the SLEC's response to such request to the requesting carrier and to the chief of the telecommunications division of the Commission. The Commission will review such bona fide request and the SLEC's response to it on an individual case basis within 120 calendar days of the Commission's receipt of the notice of such bona fide request from the requesting carrier.

iii. If a SLEC seeks a suspension or modification of any portion or portions of Section 251(b) of the 1996 Act as a rural carrier, it must file an application with the Commission.

iv. If a SLEC seeks a continuation of the suspension or modification set forth in Section II.A.b.i., above, to Section 251(c) of the 1996 Act as a rural carrier beyond January 1, 1998, it must file an application with the Commission by December 1, 1997. Such application must set forth with particularity the provision or provisions from which they seek suspension or modification. The Commission shall act within 180 calendar days after receiving such application. Pending such action, the Commission may suspend enforcement of the requirement or requirements to which the application applies with respect to the petitioning carrier. The Commission may also consider such request in the context of filings pursuant to Sections 4905.24, 4927.03, and/or 4927.04, Revised Code.

v. In determining whether a suspension or modification pursuant to Sections II.A.2.b.iii. and II.A.2.b.iv., above, are warranted, the Commission will consider the following and issue its determination within 180 calendar days of the filing of the application.

a. Is it necessary in order:

i. To avoid a significant adverse economic impact on users of telecommunications services generally;

ii. To avoid imposing a requirement that is unduly economically burdensome beyond the economic burdens typically associated with efficient competitive entry; or

iii. To avoid imposing a requirement that is technically infeasible.

b. Is it consistent with the public interest, convenience, and necessity.

c. How is the SLEC progressing in its preparations for the introduction of competition in its service area.

vi. Unless the Commission finds it otherwise appropriate, an SLEC that obtains a waiver from any of these guidelines will remain under the 564 regulatory framework. The automatic time frames included within these local competition guidelines shall not apply to its filings unless and until it no longer has a waiver from any of these guidelines, except as provided in Section VI.M. of these guidelines.

c. **RLEC Exemptions for ILECs serving over 15,000 Access Lines**

i. Until it receives a bona fide request for interconnection services or network elements, an RLEC is exempt only from those portions of these guidelines which are related to Section 251(c) of the 1996 Act.

ii. Notwithstanding Section II.A.2.c.i., above, each RLEC which seeks an exemption of a portion or portions of Section 251(c) of the 1996 Act must file a plan with the Commission, for the Commission's review and approval as to how it is preparing for the introduction of local competition in its service area. The plan must be filed within one year from the date the Commission adopts these guidelines or within 60 calendar days of the receipt of a bona fide request, whichever is earlier. This plan must include, at a minimum, the following:

a. How its plan will benefit the public interest;

b. What steps it intends to take to prepare for the competitive entry of other LECs in its serving area. This should be presented in the form of a plan which specifies milestones and a timeline;

c. A timetable and outline of information to be included in progress reports to be submitted to the Commission regarding preparations for competitive entry;

d. Any other information in support of its request, including but not limited to: economic burden; technical feasibility; and impact on universal service; and

e. All plans must be supported by adequate documentation of the items set forth in this Section.

Failure of an RLEC, which has received a bona fide request, to file its plan within 60 calendar days may result in denial of the request to continue the exemption.

iii. Unless the Commission finds it otherwise appropriate, an RLEC that obtains a waiver from any of these guidelines will remain under the regulatory framework (i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144) it was subject to prior to the Commission's adoption of these guidelines. The automatic time frames included within these local competition guidelines shall not apply to its filings unless and until it no longer has a waiver from any of these guidelines, except as provided in Section VI.M. of these guidelines.

d. RLECs Serving over 15,000 Access Lines Receiving Bona Fide Requests

i. If an RLEC receives a bona fide request for interconnection services or network elements and it seeks to continue its exemption, it may request an extension of its exemption by filing an application with the Commission within 10 business days after receiving the bona fide request. If an RLEC does not seek to continue its exemption, it shall follow the bona fide request procedures set forth in Section III.D. of these guidelines.

ii. A carrier making a bona fide request of an RLEC for interconnection services or network elements shall submit such bona fide request to the RLEC, as well as the chief of the telecommunications division of the Commission, via facsimile, overnight mail, or hand delivery. Within 5 business days of receiving such request, the RLEC shall send a letter acknowledging the receipt of the bona fide request and the RLEC's response to such request to the requesting carrier and the chief of the telecommunications division of the Commission.

iii. Upon the Commission's receipt of the notice of such bona fide request from the requesting carrier the Commission shall conduct its inquiry within 120 calendar days.

iv. If the Commission finds that the termination of the RLEC's exemption is not unduly economically burdensome beyond the economic burdens typically associated with efficient competitive entry, is technically feasible, and is consistent with universal service principles, the termination of the waiver will be ordered within 120 calendar days after the Commission receives notice of the request. The Commission will establish an implementation schedule in these instances.

v. In reaching its decision, the Commission will take into consideration the plan filed by the RLEC as required in Section II.A.2.c.ii., above, as well as the progress attained by the RLEC in reaching its milestones in a timely manner.

e. Rural Carrier Suspensions and Modifications for ILECs Serving Over 15,000 Access Lines

i. Each rural carrier, serving over 15,000 access lines in Ohio which is not an RLEC, which seeks a suspension or modification under Section 251 of the 1996 Act must submit a plan to the Commission for the Commission's review and approval, as to how it qualifies to be considered a rural carrier, and how it is preparing for the introduction of local competition in its service area. For rural carriers that are not also RLECs, the plan must be filed by December 9, 1996. For rural carriers that are also RLECs serving over 15,000 access lines, the plan must be filed by June 12, 1997, or 60 calendar days after the receipt of a bona fide request, whichever is earlier. Failure to adhere to the time frames noted herein may result in the denial of the request for suspension or modification.

This plan must include, at a minimum, the following:

a. How its plan will benefit the public interest;

b. What steps it intends to take to prepare for the competitive entry of other LECs in its serving area. This should be presented in the form of a plan which specifies milestones and a timeline;

c. A timetable and outline of information to be included in progress reports to be submitted to the Commission regarding preparations for competitive entry; and

d. Any other information in support of its plan, including, but not limited to: economic burden; technical feasibility; and impact on universal service.

A carrier making a bona fide request of a rural carrier for interconnection services or network elements shall submit such bona fide request to the rural carrier, as well as the chief of the telecommunications division of the Commission, via facsimile, overnight mail, or hand delivery. Within 5 business days of receiving such request, the rural carrier shall send a letter acknowledging the receipt of the bona fide request and the rural carrier's response to such request to the requesting carrier and the chief of the telecommunications division of the Commission. If the rural carrier seeks a modification or suspension as a rural carrier, it must file an application with the Commission within 10 business days after receipt of the bona fide request. If the rural carrier does not seek a modification or suspension as a rural carrier, it shall follow the bona fide request negotiation procedures set forth in Section III.D. of these guidelines.

ii. An application from a rural carrier for a suspension or modification under Section 251 of the 1996 Act must set forth with particularity the provision or provisions from which it seeks suspension or modification. The Commission shall act within 180 calendar days after receiving such application. Pending such action, the Commission may suspend enforcement of the requirement or requirements to which the application applies with respect to the petitioning carrier. The Commission may also consider such request in the context of filings pursuant to Sections 4905.24, 4927.03, and/or 4927.04, Revised Code.

iii. In considering an application from a rural carrier for any type of suspension or modification, the Commission will consider:

a. Is it necessary in order:

i. To avoid a significant adverse economic impact on users of telecommunications services generally;

ii. To avoid imposing a requirement that is unduly economically burdensome beyond the economic burdens typically associated with efficient competitive entry; or

iii. To avoid imposing a requirement that is technically infeasible.

b. Is it consistent with the public interest, convenience, and necessity.

In reaching its decision, the Commission will take into consideration the plan filed by the rural carrier as required in Section II.A.2.e.i., above, as well as the progress attained by the rural carrier in reaching its milestones in a timely manner. The Commission reserves the right to modify or reject any such request.

iv. Unless the Commission finds it otherwise appropriate, a rural carrier that obtains a suspension or modification will remain under the regulatory framework (i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144) it was subject to prior to the Commission's adoption of these guidelines. The automatic time frames included within these local competition guidelines shall not apply to its filings unless and until it no longer has a suspension or modification, except as provided in Section VI.M. of these guidelines.

f. **Waivers to Obtain Competitive Equilibrium**

A NEC may seek a waiver regarding tariffing requirements on the basis that an ILEC's service(s) has been detariffed. In making such a request, the NEC must demonstrate with specificity:

i. How its service compares to the ILEC service;

ii. How its serving area and local calling area compares to the ILEC's serving area and local calling area; and

iii. Any other measures of the competitive nature of the service for which it seeks detariffing.

3. **Rules and Regulations**

a. Except as indicated in these guidelines, requirements placed on the ILECs by the Ohio Administrative Code and the Ohio Revised Code will apply to the NECs unless modified through an appropriate regulatory proceeding. To the extent they do not conflict with the provisions set forth herein, Commission requirements and policies will apply to the operations of the NECs. Examples of such requirements and policies include, but are not limited to, MTSS, lifeline services (SCA/TSA), discounts for persons with communications disabilities, blocking of 976 services, disconnection of local service rules, 9-1-1 service, privacy and number disclosure requirements, and provisions involving customer-owned, coin-operated telephones. In addition, the requirements imposed on AOS providers in Case Nos. 88-560-TP-COI and 563 shall be applicable to NECs.

b. **Minimum Service Requirements**

The MTSS, as these currently exist and as may be modified by this Commission, apply to all LECs. LECs may seek waivers or modifications of a particular MTSS based upon their own unique circumstances. The Commission shall have the ultimate authority to rule on all waiver requests.

4. ILECs cannot establish NEC affiliates within their current serving areas in order to offer basic local exchange services. A separate ILEC-

affiliated NEC may be established to compete in other ILEC serving areas. These NEC affiliates are subject to the affiliate transaction guidelines embodied in Commission decisions regarding United Telephone Long Distance (Case No. 86-2173-TP-ACE), Ameritech Advanced Data Services, Inc. (Case No. 93-1081-TP-UNC), and in 563, as subsequently amended or supplemented, and any other requirements imposed by the Commission. NECs affiliated with ILECs must seek separate certification to provide basic local exchange services in other ILEC serving areas. The Commission will make a case-by-case determination as to whether that ILEC may have an affiliated NEC should the ILEC obtain a waiver, exemption, suspension, or modification of these guidelines pursuant to Section II.A.2.

B. Nature of Certification Process

1. Minimum Requirements

NECs which are affiliated with ILECs and are seeking authority to offer local exchange services, and other NECs, shall file with the Commission a completed Registration Form as set forth in Attachment A to these guidelines, along with an application for a certificate (ACE) addressing, at a minimum, the following items:

a. Certificate of good standing or certificate to operate as an out-of-state entity and, if applicable, fictitious name authorization;

b. List of officers and directors;

c. Full address and telephone number;

d. Proposed end user and carrier-to-carrier tariffs, if applicable, including a full description of proposed services and operations (proposed tariff may be illustrative), as well as all relevant terms and conditions, to be supplemented with actual tariffs following the establishment of interconnection terms and conditions but prior to the availability of such services and operations;

e. A list of the counties which the NEC intends to serve within 24 months of obtaining authorization;

f. Description of the serving area and local calling area, along with maps depicting the areas;

g. Verification of compliance with any applicable affiliate transaction requirements;

h. Documentation attesting to the applicant's financial viability including, at a minimum, a pro forma income statement and a balance sheet;

i. Verification that the applicant will maintain accounting records pursuant to Part 64 of the FCC's rules, the USOA, and any other rules or regulations promulgated by the FCC or this Commission;

j. Documentation attesting to the applicant's technical expertise relative to the proposed service offering(s);

k. Documentation indicating the applicant's corporate structure and ownership;

l. Information pertaining to any similar operations provided by the applicant in other states;

m. Affidavits from two officers certifying the validity of the above information, as well as its intent to fully comply with these guidelines; and

n. Any waivers sought by the applicant.

2. Additional Requirements

Nothing precludes the staff or the Commission from requiring additional information, nor does the promulgation of these guidelines limit the Commission's ability to modify these filing requirements in the future.

3. Accounting Standards

Accounting records are required to be maintained in accordance with the USOA for local telephone operations by all LECS. Unless the Commission requires a NEC to use Class A USOA accounts, the NEC may utilize Class B USOA accounts.

4. Certification Process

NEC certification applications shall follow a streamlined regulatory process as follows:

a. A NEC's certification application shall be docketed with the Commission and subject to an automatic 60-day approval procedure.

b. Interested entities who can show good cause why such application should not be granted must file with the Commission a written statement detailing the reasons, as well as a motion to intervene, within 30 calendar days after the application is docketed. The applicant shall respond to any motion to intervene with 10 calendar days after the filing of the motion.

c. Absent full or partial suspension, the application shall become effective 61 calendar days after filing.

5. **Conditions of Approval**

It is the applicant's responsibility to satisfy the Commission that the requirements of Section 4905.24, Revised Code, have been met. Section 4905.24, Revised Code, conditions the approval of multiple entities providing service upon a finding by the Commission that such operations are proper and necessary for the public convenience. Such determination shall include a review of the applicant's financial, managerial, and technical ability to provide the proposed service.

6. **Hearing**

In addition to these minimum guidelines, a hearing may be ordered.

C. **Serving Area**

1. **Definition**

Serving area is defined as the geographic area in which a provider of local services provides originating service to any customer upon request.

2. **Self-Definition**

NECs will be permitted to self-define the area in which they will serve customers.

3. Expansion of NEC Serving Area

A NEC seeking to expand its serving area beyond the counties in which it was previously authorized must file with the Commission a completed Registration Form, as set forth in Attachment A to these guidelines, along with an application to amend its certificate (AAC). Such an application must include a list of the new county(ies) it will be conducting operations in, a detailed description of the proposed new serving area and supporting documentation indicating that the applicant is technically, financially, and managerially able to conduct operations on an expanded basis.

NEC applications seeking to expand an authorized service area shall follow a streamlined regulatory process as follows:

a. Such filing shall be docketed with the Commission and subject to an automatic 30-day approval procedure.

b. Interested entities who can show good cause why such application should not be granted must file with the Commission a written statement detailing the reasons, as well as a motion to intervene, within 15 calendar days after the application is docketed. The applicant shall respond to any motion to intervene within 7 calendar days after the filing of the motion.

c. Absent full or partial suspension, the application shall become effective 31 calendar days after filing.

4. Each NEC shall, within 24 months of obtaining authorization to serve a county, offer service within the entire serving area depicted on the maps on file with the Commission.

D. Local Calling Area

1. Definition

Local calling area is the geographic area in which an end user may originate and terminate a call without incurring a toll charge.

2. Local Calling Areas

NECs may establish their own local calling areas. NECs may change their local calling areas, once established, by filing an updated map with the Commission in the carrier's TRF docket which accurately depicts the revised local calling area.

E. Maps

LECs must maintain up-to-date maps in their TRF dockets which clearly delineate both their serving areas and local calling areas. If necessary, staff will work with the LECs, on an individual basis, to ensure the description of the local calling and serving areas are appropriate to meet the Commission's needs.

F. Abandonment Proceedings

No LEC may abandon all of its facilities or the services provided thereby absent Commission approval. Applications seeking permission to abandon facilities or services will be governed by Sections 4905.20 and 4905.21, Revised Code. A LEC seeking to abandon facilities or services must file with the Commission a completed Registration Form, as set forth in Attachment A to these guidelines, along with an application to abandon (ABN). Guidelines regarding the withdrawal of individual services are set forth in Section VI.E. of these guidelines.

III. INTERCONNECTION

The term interconnection as used in these guidelines refers to the facilities and equipment physically linking two networks for the mutual exchange of traffic.

A. Interconnection Obligation

1. Each ***telecommunications carrier*** has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

2. Each ***LEC*** shall make available interconnection to other LECs upon receipt of a bona fide request for interconnection, unless a waiver of this requirement is ordered by the Commission.

3. All ***telecommunications carriers*** shall have the duty to negotiate in good faith the terms and conditions of the interconnection agreements.

B. Interconnection Standards

1. Each *LEC* shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the LEC's network, for the transmission and routing of telephone exchange traffic, exchange access traffic, or both. Also, a telecommunications carrier requesting interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an ILEC's network is not entitled to receive interconnection pursuant to Section III of these guidelines or Section 251 of the 1996 Act.

2. Each *LEC* shall provide interconnection to requesting telecommunications carriers at any technically feasible point within the carrier's network, with quality at least equal to that provided by that LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection pursuant to C.F.R. §51.305. Any carrier requesting interconnection to the existing network may do so via Feature Group D (FGD) type interconnection or via a mutually agreed upon interconnection arrangement. Interconnecting carriers may use one-way trunks or two-way trunks to interconnect for traffic transport and termination if it is technically feasible. Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to: a) physical collocation and virtual collocation at the premises of the LEC; and b) meet point interconnection arrangements pursuant to C.F.R. §51.321 and 51.323. If a meet point arrangement is requested from the LEC for the purpose of exchanging traffic with the LEC, each carrier is required to bear a reasonable portion of the forward-looking economic costs of the arrangement, pursuant to Section V.B.4. of these guidelines. However, if the meet point arrangement is requested from the LEC to gain access to unbundled network elements, the requesting LEC shall bear all of the forward-looking economic costs of the meet point arrangement.

3. Technically feasible points of interconnection within the LEC's network shall include at a minimum:

   a. The line-side of a local switch;

   b. The trunk-side of a local switch;

   c. The trunk interconnection points for a tandem switch;

   d. Central office cross-connect points;

e. Out of band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and

f. The points of access to unbundled network elements as described in Section VIII of these guidelines and C.F.R. §51.319.

4. If collocation is the requested method of interconnection, the *LEC* shall provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at its premises. The *LEC* shall provide virtual collocation if, upon demonstration by that LEC, the Commission determines that physical collocation is not practical for technical reasons, or because of space limitations. Such demonstration shall include, but not be limited to, the provision of detailed floor plans or diagrams of such premises. The Commission determination shall be performed on a case-by-case basis. Similarly, virtual collocation shall be provided by *LECs* if requested by the interconnecting carrier regardless of floor space availability. Collocation, physical and virtual, shall be provided pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory pursuant to C.F.R. §51.323.

5. Interconnection rates, terms, and conditions shall be established through negotiation between LECs upon receipt of a bona fide request for interconnection or through arbitration. Such arrangements shall be reviewed and approved by the Commission pursuant to Section III.D. of these guidelines and Case No. 96-463-TP-UNC. In addition, interconnection rates, terms, and conditions may be established through tariffs approved by the Commission. The Commission, at its discretion, may require the ILEC to file tariffs establishing interconnection rates, terms, and conditions.

6. ILEC interconnection rates established under Section III.D.3. or Section III.E. of these guidelines, and Commission approved tariffs shall be developed pursuant to Section V.B. of these guidelines. A NEC may mirror the interconnection rates of the ILEC with which it is interconnecting, or establish its own interconnection rates pursuant to Section V.B. of these guidelines.

C. Bona Fide Request For Interconnection

A bona fide request for interconnection shall be in writing and shall detail the specifics of the request. A bona fide request for interconnection submitted by any telecommunications carrier, pursuant to Section 251 of the 1996 Act, shall include, at a minimum, the following, as applicable:

1. The technical description of the requested meet point(s) or, in the alternative, the requested point(s) of collocation (e.g., the end office, tandem, etc.);

2. For each collocation point: a forecast of DS-1 and DS-3 cross connects required during the term of the agreement; the requested interface format (electrical vs. optical); the type of collocation (physical or virtual) requested; and, if physical collocation is requested, the amount of partitioned space required, as well as DC power and environmental conditioning requirements;

3. For each meet point, a detailed technical description of the requested interface equipment must be provided;

4. The requested reciprocal compensation arrangement for transport and termination of local traffic;

5. A technical description of any required unbundled network elements;

6. Any requested access to the poles, ducts, conduits, and rights-of-way owned or controlled by the providing carrier;

7. Any requested white pages directory listings for the customer of the requesting carrier's telephone exchange service;

8. Any requested access to 9-1-1, E-9-1-1, directory assistance, operator call completion service, and any required dialing parity capability;

9. Any requested telephone numbers for the assignment to the requesting LEC's local exchange service customers;

10. The requested method(s) of interim number portability capability, until long-term number portability is available;

11. An itemized list of the required telecommunications services to be offered for resale by the providing carrier, and required operational support systems associated with the resale of these telecommunications services;

12. If transit traffic functionality is required, the requested method(s) of providing that functionality at each requested point of interconnection pursuant to Section IV of these guidelines;

13. The requested completion date; and

14. A list including names, phone numbers, and areas of responsibility of the requesting carrier's contact persons for the negotiation process.

An application fee may be charged by the providing carrier to recover no more than the reasonable cash outlays expended in the course of fulfilling the bona fide request. The amount of the application fee shall be subject to the Commission's review and approval, and shall be assessed only after the Commission has approved an interconnection arrangement or the requesting carrier has decided to no longer pursue the arrangement. Disputes concerning the amount of the fee will be resolved by the Commission through the arbitration process.

D. Process for Negotiation and Approval of Interconnection Agreements (See also the Commission's Guidelines in Case No. 96-463-TP-UNC)

1. Negotiations Procedures

a. Any bona fide request shall be submitted via facsimile, overnight mail, or hand-delivery to the appropriate personnel or division within the LEC's organization in charge of negotiating interconnection arrangements between carriers. Within 5 business days of receiving such request, the providing carrier shall send a letter acknowledging the receipt of the bona fide request and setting the time for the first negotiation meeting within 10 business days from the date the providing carrier received the request. In that letter, the providing carrier shall provide a list of names, phone numbers, and areas of responsibility of contact persons for the negotiation process, and a list of any additional information necessary to process such a request. Within 10 business days of receiving all necessary information, the providing carrier shall inform the requesting carrier, in writing, of any requested interconnection or network element that is not technically feasible to provide, with a detailed explanation of such finding.

b. Both the providing and requesting carriers shall notify the Commission of any bona fide request pursuant to the Commission guidelines in Case No. 96-463-TP-UNC.

c. As soon as feasible, but in no event later than 115 calendar days from the receipt of an initial bona fide request, the providing carrier shall provide, in writing, the requesting carrier with a comprehensive quote including, at a minimum: the description of each interconnection and network element provided; rates to be charged for each item; its estimated cash outlays for processing the bona fide request pursuant to Section III.C. of these guidelines; and the installation schedule for each component provided.

d. As soon as feasible, no later than 20 calendar days from the receipt of the quote from the providing carrier for an initial bona fide request, the requesting carrier shall respond in writing by accepting or rejecting the quote.

e. For subsequent substantially similar bona fide requests for interconnection, the providing carrier shall provide, in writing, the requesting carrier with a comprehensive quote as set forth in Section III.D.1.c., above, within 10 business days of receipt. The requesting carrier shall respond, in writing, by accepting or rejecting the quote within 5 business days.

2. Agreements Arrived at Through Negotiations

a. Upon receiving a bona fide request for interconnection pursuant to Section III.C. of these guidelines, a *LEC* shall negotiate in good faith and may enter into a binding agreement with the requesting carrier.

b. At any point in time during the negotiation, any party to the negotiation may ask the Commission to participate in the negotiation and to mediate any differences arising during the course of the negotiation, pursuant to the Commission guidelines in Case No. 96-463-TP-UNC.

c. If an agreement is reached, it shall include a detailed list of the itemized charges for interconnection and each service or network element included in the agreement, including all separate agreements involving such services or network elements. The agreement shall also include a detailed implementation schedule of the items included in the agreement.

d. The agreement, including any interconnection agreement negotiated before the date of enactment of the 1996 Act (e.g. EAS agreements) shall be filed with the Commission. Any interconnection agreement negotiated between Class A carriers before the date of enactment of the 1996 Act, shall be jointly filed with the Commission no later than June 30, 1997. The application of the negotiated agreement (NAG) shall be filed along with a completed Registration Form, as set forth in Attachment A to these guidelines.

e. The Commission shall review an agreement arrived at through negotiation and shall approve the agreement if it finds that:

  1. The agreement (or any portion thereof) does not discriminate against a telecommunications carrier not a party to the agreement; and

  2. The implementation of the agreement (or any portion thereof) is consistent with the public interest, convenience, and necessity.

f. The Commission shall approve or reject the agreement pursuant to the Commission guidelines in Case No. 96-463-TP-UNC.

g. Nondiscrimination Provision

A LEC shall make available any interconnection, service, or network element provided under an agreement approved pursuant to this section and to Section 252 of the 1996 Act to which it is a party, to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

3. **Arrangements Arrived at Through Arbitration**

a. During the period from the 135th to the 160th day (inclusive) after the date in which an ILEC receives a bona fide request for interconnection pursuant to Section III.C. of these guidelines, any party to the negotiation may petition the Commission to arbitrate any open issues by filing an application (ARB) along with a completed Registration Form, as set forth in Attachment A to these guidelines.

b. The Commission will review arrangements adopted through arbitration pursuant to the Commission guidelines in Case No. 96-463-TP-UNC.

c. Nondiscrimination Provision

A LEC shall make available any interconnection service, or network element provided under an arbitrated arrangement approved pursuant to this section to which it is a party, to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the arbitrated arrangement.

E. Statement of Generally Available Terms

1. Ameritech Ohio may prepare and file with the Commission a statement of the terms and conditions that it generally offers to other carriers in the state of Ohio to comply with the guidelines established by this Commission in Sections III, IV, V, VIII, IX, X, XII, XIV, XV and XVI of these guidelines. Such filing shall be made in a (UNC) case.

2. The Commission will review such a statement within 60 days after the date of the filing and allow the statement to take effect on the 61st day unless Ameritech Ohio agrees to an extension of the review period or unless the Commission disapproves the statement. The Commission may continue to review the statement after the 60-day period.

3. The submission or approval of a statement under this section shall not relieve Ameritech Ohio of its duty to negotiate in good faith the terms and conditions of an agreement pursuant to this section.

IV. COMPENSATION FOR THE TRANSPORT AND TERMINATION OF TELECOMMUNICATIONS TRAFFIC

A. Compensation Principles

1. Cellular Carriers

Interconnection and compensation arrangements between LECs and cellular carriers are subject to FCC and Commission rules and guidelines as they exist and as they may be modified.

2. Reciprocal Compensation

All LECs shall have the duty to establish reciprocal compensation arrangements for the transport and termination of local telecommunications traffic. Such duty shall also apply to traffic exchanged between ILECs that serve adjacent service areas.

3. **Eligibility**

LECs shall be entitled to compensation for the use of network facilities they own or obtain by leasing from another underlying facilities-based LEC (i.e., through purchasing unbundled network elements) to provide transport and terminate traffic originated on the network facilities of other telecommunications carriers. Nonfacilities-based LECs are not eligible for the transport and termination of telecommunications traffic compensation.

B. Traffic Measurement

All ILECs and NECs exchanging local and toll traffic shall measure MOUs for compensation purposes if technically and economically feasible. However, carriers that are unable to measure traffic terminating on their network may use a percentage of local use factor in order to bill the originating carrier. All carriers shall be required to maintain records of the originating call details, which will be subject to periodic audits for validation of traffic jurisdiction. The Commission, at its discretion in an arbitration proceeding, may require the interconnecting carriers to use separate dedicated trunks groups for local, intraLATA toll, and interLATA toll traffic transport.

C. Local and Toll Traffic Determination

As NECs establish operations within individual ILEC service areas, the perimeter of ILEC local calling area, as revised to reflect EAS, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end, shall be treated as a local call. The Commission shall specify the date upon which a NEC is deemed operational in an ILEC local calling area in effectuating this guideline. Nothing in these guidelines would preclude the Commission from deciding on a case-by-case basis that an ILEC's local calling area should be expanded, thereby expanding the definition in this section for what should be treated as a local call for traffic termination compensation purposes.

D. Compensation for Transport and Termination of Local Telecommunications Traffic

1. Rates, terms, and conditions for the transport and termination of *local traffic* shall be established through interconnection agreements arrived at either through negotiation, or through arbitration. In addition, rates, terms, and conditions for the transport and termination of local traffic may be established through tariffs approved by the Commission. The Commission, at its discretion, may order the filing of tariffs establishing the rates, terms, and conditions for the transport and termination of local traffic. An ILEC's rates for transport and termination of local traffic shall be established, at the Commission's discretion, on the basis of:

   a. The forward-looking economic costs of such offerings, using a cost study pursuant to Section V.B.4. of these guidelines;

   b. *Interim rates* in an arbitration proceeding, as provided in Section V.B.3. of these guidelines; or

   c. A bill and keep arrangement, as provided in Section IV.D.3. of these guidelines.

2. Symmetrical reciprocal compensation

   a. Rates for transport and termination of local traffic shall be symmetrical unless the non-ILEC carrier (or the smaller of two ILECs) proves to the Commission, on the basis of a forward-looking economic cost study pursuant to Section V.B.4. of these guidelines, that its forward-looking costs for a network efficiently configured and operated by such carrier, exceed the costs incurred by the ILEC (or the larger ILEC), and that justifies a higher rate.

   b. If both parties to the compensation arrangement are ILECs, or neither party is an ILEC, symmetrical rates for transport and termination shall be based on the larger carrier's forward-looking costs.

3. Bill and Keep

   An interconnection agreement arrived at either through voluntary negotiations or arbitration may employ bill and keep as a method of compensation for the transport and termination of local traffic. Nothing in these guidelines precludes the Commission from presuming that the amount of local telecommunication traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption. Thus, the Commission may impose bill and keep arrangements for one year, unless further extended by the Commission, in an arbitration proceeding with the presumption that the amount of local telecommunications traffic exchanged between parties is roughly balanced, and expected to remain so, unless a party demonstrates to the Commission's satisfaction that traffic will be out of balance or a showing has been made by the non-ILEC party (or the smaller of the two carriers) to the Commission pursuant to Section IV.D.2.a. of these guidelines. The one-year period for a bill and keep arrangement will commence upon completion of the first commercial call. The Commission, at its discretion, may adopt specific thresholds for determining when traffic is roughly balanced, and include provisions for compensation obligations if traffic becomes significantly out of balance based on a showing that the traffic flows are inconsistent with the thresholds adopted by the Commission.

4. Rate Structure

   a. Rates for transport and termination of local traffic shall be structured consistent with the manner that carriers incur those costs pursuant to Section V.B.2. of these guidelines.

   b. LECs shall offer flat-rate compensation to other carriers purchasing dedicated facilities for the transport of local traffic.

   c. The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the portion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportion may be measured during peak periods.

   d. LECs shall offer flat-rated compensation rates for transport and termination of local traffic to other LECs requesting such compensation method.

5. Where a switch of a non-ILEC serves a geographic area comparable to the area served by the ILEC's tandem switch, the appropriate rate for the non-ILEC is the ILEC's tandem interconnection rate.

E. Transit Traffic Compensation

Transit traffic is the traffic which originates with one carrier's end user, terminates at a second carrier's end user and is transmitted using an intermediate third carrier's network.

1. The intermediate LEC carrying traffic originating and terminating on other carriers' networks shall be compensated for the use of its network facilities to complete the call.

2. The intermediate carrier may provide transit traffic functionality either by:

   a. Carrying the call over its public switched network, in which case the intermediate carrier shall be compensated at its tariffed exchange access rates, under the same terms and conditions applicable to other ILECs for the provision of a similar functionality (i.e., excluding CCLC, RIC, information surcharge, and local switching charge); or

   b. Providing direct connection, if technically feasible, between the originating and terminating carriers if they are both collocated in the intermediate carrier's premises provided that the collocated equipment is also used for interconnection with the intermediate carrier or for access to such intermediate carrier's unbundled network elements. The requesting carrier shall provide a detailed proposal of how the actual connection is to be established, the required equipment to be provided by the intermediate carrier for that purpose, and the requested compensation method. The intermediate carrier shall be compensated for all services, functionalities, and facilities it provides pursuant to Sections III, IV, and V of these guidelines.

This section shall not be construed to preclude LECs from negotiating other transit traffic interconnection and compensation arrangements.

F. **Interexchange Carrier's Access Revenue Distribution**

1. This guideline shall apply to a LEC only if RCF is used by that LEC as an interim method of providing telephone number portability and shall not apply once the long-term number portability solution is implemented.

2. The LEC providing RCF functionality collects the IXC terminating exchange access revenue in the process of forwarding the IXC's call

to an end user of a second carrier. Such LEC shall distribute the collected relevant revenue to compensate the second carrier for revenue lost due to the use of RCF as follows:

a. The approximation of "terminating IXC access MOUs over ported numbers" to which the revenue distribution would apply, shall be determined by applying the ratio of terminating IXC access MOUs / total (local and toll terminating MOUs), to the actual measured total terminating number portability MOUs. The LEC may use ARMIS report data, if available, or other data sources that both carriers mutually agree to.

b. The rate adjustment amount, over which the "terminating IXC access MOUs over ported numbers" would apply, shall be calculated as follows:

Rate adjustment =	Total IXC exchange access rate charged by the collecting carrier pursuant to its tariffs
minus	Meet point billing for the collecting carrier
minus	Local reciprocal compensation rate of the second carrier.

G. Transport and Termination of Toll Traffic

1. Current prevailing ILEC's intrastate exchange access tariffs, including all rates, terms, and conditions as they may be modified, shall be used by ILECs for compensation for transport and termination of toll traffic originated by other telecommunications carriers and terminated on that ILEC's network.

2. NECs shall also tariff the rates, terms, and conditions for compensation for the transport and termination of toll traffic. A NEC may mirror rates, on a rate element basis, of the ILEC providing service in the NEC's service area, for the transport and termination of toll traffic, unless the NEC chooses to establish its own rates for the transport and termination of toll traffic.

3. Telecommunications carriers purchasing unbundled network elements to provide interexchange services or exchange access services are not required to pay intrastate exchange access charges. However, an ILEC may assess upon telecommunications carriers

that purchase unbundled local switching elements for intrastate toll minutes of use traversing such unbundled local switching elements, the intrastate CCLC, a charge equal to 75% of the intrastate RIC, and any explicit intrastate universal service mechanism based on access charges, only until the earliest of the following, and not thereafter:

a. June 30, 1997;

b. The effective date of a Commission decision that an ILEC may not assess such charges; or

c. For Ameritech Ohio, the date on which Ameritech Ohio is authorized to offer in-region interLATA service in Ohio pursuant to Section 271 of the 1996 Act.

H. Billing Arrangements

1. Originating Responsibility Plan/Secondary Carrier Option (ORP/SCO)

a. ILECs shall continue to compensate each other for the transport and termination of each other's traffic pursuant to ORP/SCO, as modified in these guidelines, unless otherwise ordered by the Commission.

b. NECs are not permitted to participate in ORP/SCO arrangements as SECs.

c. When a PEC carries a call which is originated over another PEC's network and terminates on a SEC network behind that intermediate PEC, the originating PEC shall compensate the intermediate PEC carrying the call for the use of the portion of the intermediate PEC's network used to complete the call at the intermediate PEC's terminating exchange access rates (excluding CCLC, RIC, information surcharge, and local switching charge), plus the portion of the terminating SEC's network used to complete the call at the terminating SEC's exchange access rates, consistent with Section IV.E.1. of these guidelines.

d. The existing compensation agreements between ILECs under the ORP/SCO plan shall be amended to refer to the tariffed PEC's and SEC's exchange access rates in effect in their intrastate access tariffs rather than the exchange access rates effective the date the PECs entered into the agreements.

e. The existing ORP/SCO arrangements not in compliance with these guidelines shall be revised to incorporate the above revisions and submitted to the Commission for approval.

2. **Meet Point Billing**

a. MPB arrangements shall be used in billing for compensation for jointly provisioned switched access service to an IXC by more than one LEC, similar to MPB arrangements currently used by the ILECs.

b. MPB arrangements may be used by LECs for compensation of other types of traffic exchanged between them.

c. Under MPB compensation arrangements, the meet point can be any technically feasible point of interconnection pursuant to Section III of these guidelines.

V. PRICING STANDARDS

A. Resale Pricing

1. ILEC's retail telecommunications services available for resale to any telecommunications carrier shall be priced on a wholesale basis. Wholesale prices shall be determined on the basis of the retail rates charged to subscribers for the telecommunications service under consideration, excluding the portions thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the ILEC.

2. The Commission, at its discretion, may establish the wholesale rates utilizing either;

a. Interim wholesale rates that are based on the best information available to the Commission, about the ILEC avoided costs, as defined in Section V.A.4. of these guidelines. In this case, the Commission shall establish a single discount percentage rate that shall be used to establish interim wholesale rates for each telecommunications service. Such interim rates may be subject to a true-up pursuant to Section V.A.3. of these guidelines; or

b. Rates that are equal to the ILEC's existing retail rates for the telecommunications service, less avoided retail costs, determined pursuant to Section V.A.4. of these guidelines through the Commission's review and approval of the ILEC's avoided cost study.

3. The *interim* wholesale rates shall cease to be in effect once the Commission determines wholesale rates based on an avoided costs study, pursuant to Section V.A.4. of these guidelines, submitted by the ILEC and approved by the Commission. If the interim wholesale rates are different from the rates established by the Commission pursuant to Section V.A.4. of these guidelines, the ILEC shall make adjustments to past wholesale rates which allow the resellers of that ILEC's telecommunications services to be charged the level of the wholesale rates they would have been charged had the interim wholesale rates equaled the rates later established by the Commission pursuant to Section V.A.4. of these guidelines.

4. Avoided retail costs shall be those costs that reasonably can be avoided when an ILEC provides a telecommunications service for resale at wholesale rates to a requesting telecommunications carrier.

   a. For the ILECs that are designated as Class A companies pursuant to C.F.R. §32.11, except as provided in Section V.A.4.d. of these guidelines, the avoided retail costs shall:

      1. Include, as direct costs, the costs recorded in USOA Accounts 6611 (product management), 6612 (sales), 6613 (product advertising), 6621 (call completion services), 6622 (number services), and 6623 (customer services);

      2. Include, as indirect costs, a portion of the costs recorded in USOA Accounts 6121-6124 (general support expenses), 6711, 6712, 6721-6728 (corporate operations expenses), and 5301 (telecommunications uncollectibles) in proportion to the avoided direct expenses; and

      3. Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (6110-6116 and 6210-6565).

   b. Costs included in Accounts 6611-6613 and 6621-6623 described in Section V.A.4.a.1. of these guidelines, may be included in wholesale rates only to the extent that the ILEC proves to the Commission that specific costs in these accounts will be incurred and are not avoidable with respect to the services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services.

c. Costs included in Accounts 6110-6116 and 6210-6565 described in Section V.A.4.a.3. of these guidelines, may be treated as avoided retail costs, and excluded from the retail rates, only to the extent that a party proves to the Commission that specific costs in these accounts can reasonably be avoided when an ILEC provides a telecommunications service for resale to a requesting carrier.

d. For the ILECs that are designated as Class B companies under C.F.R. §32.11, and that record information in summary accounts instead of specific USOA account, the entire relevant summary accounts may be used in lieu of specific USOA accounts listed in Section V.A.4.a., b., and c. of these guidelines.

5. An ILEC may set wholesale rates that are non-uniform upon demonstration to the Commission that those rates are set on the basis of an avoided cost study, determined pursuant to Section V.A.4. of these guidelines, that includes a demonstration, to the Commission's satisfaction, of the percentage of avoided costs that is attributable to each service or group of services.

6. An ILEC may set a different wholesale discount for volume discount retail offerings upon demonstration, to the Commission's satisfaction, that its avoided costs differ when selling in large volume, and provided that such discounts are not otherwise anticompetitive.

7. Promotional prices offered by an ILEC for a period greater than 90 days to the same class of customers within a 12-month period must be offered for resale at wholesale rates. The 12-month period begins on the first day the promotional price is offered.

8. When an ILEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the ILEC shall continue to assess the intrastate access charges provided in its intrastate tariffs upon IXCs that use the ILEC's facilities to provide intrastate telecommunications services to the IXC's subscribers.

B. Pricing of Elements

1. General Principles

a. These standards apply to pricing of interconnection, unbundled network elements, methods of obtaining interconnection and access to unbundled network elements (including physical and virtual collocation), and reciprocal compensation for the transport and termination of local traffic. All of these provisions shall be referred to as "elements" for the purpose of this Section V.B.

b. An ILEC's rates for each element it offers shall comply with the rate structure standards as described in Section V.B.2. of these guidelines.

c. The Commission, at its discretion, shall set the ILEC's rates for each element it offers either;

   1. Utilizing interim rates that are based on the best information available to the Commission about the ILEC's forward-looking economic costs. Such interim rates shall be subject to a true-up pursuant to Section V.B.1.d. of these guidelines; or

   2. Pursuant to the forward-looking economic cost-based pricing methodology described in Section V.B.4. of these guidelines.

d. The interim rate(s) for an element(s) shall cease to be in effect once the Commission determines rates based on forward-looking economic costs, pursuant to Section V.B.4. of these guidelines, submitted by the ILEC and approved by the Commission. If the interim rate for an element is different from the rate established by the Commission pursuant to Section V.B.4. of these guidelines, the LECs shall make adjustments to the past rate charged for that element which allow each carrier to be charged at a rate level it would have been charged had the interim element rate equaled the rate later established by the commission pursuant to Section V.B.4. of these guidelines.

e. Subsidies deemed necessary for the provision of the state universal service shall be identified and recovered separately through the state universal service mechanism.

f. Any ILEC offering of a volume discount, term discount, or geographically deaveraged price of an element, shall be made available on a nondiscriminatory basis to all LECs who meet the discount or the deaveraging criteria.

g. For each element provided by an ILEC to requesting telecommunications carriers, the ILEC shall prove, to the Commission's satisfaction, that the price of the element does not exceed the forward-looking economic cost per unit of providing that element.

h. The rate that an ILEC assesses for elements shall not vary on the basis of the class of customer served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

2. **Rate Structure**

The following rate structure standards shall apply to rates set by the Commission in arbitration proceedings pursuant to Section III.D.3. of these guidelines, in the Commission review of Ameritech Ohio's statement of generally available terms pursuant to Section III.E. of these guidelines, or in the Commission review of tariffs filed by an ILEC to offer any of the elements described in Section V.B.1.a. above. LECs are not precluded from negotiating alternative rates or rate structures.

a. **General Rate Structure Standards**

The following rate structure standards shall apply regardless of whether the price of an element is set pursuant to a forward-looking cost study or the interim rate approach.

1. Element rates shall be structured consistent with the manner in which the costs of providing that element are incurred, except as required by Section D.4.d. of these guidelines.

2. The costs of dedicated facilities shall be recovered through flat-rated charges.

3. The costs of shared facilities shall be recovered in a manner that efficiently apportions among users. Costs of shared facilities may be recovered either through usage sensitive charges or capacity-based flat-rated charges.

4. Recurring costs shall be recovered through recurring charges, unless an ILEC can prove to the Commission's satisfaction that such recurring costs are de minimus when the costs of administrating the recurring charges would be

excessive in the relation to the amount of the recurring costs.

5. An ILEC may recover the forward-looking nonrecurring economic costs through recurring charges allocated among requesting telecommunications carriers and spread over a reasonable period of time. The reasonableness of such costs recovery mechanism shall be evaluated by the Commission on a case-by-case basis.

6. An ILEC may establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences. To establish geographically-deaveraged rates, the ILEC may use its existing density-related zone plans established pursuant to C.F.R. §69.123, other cost-related zone plans established pursuant to state law, or another cost-related zone plan that creates a minimum of three cost-related zones approved by the Commission.

7. An ILEC may not impose class-of-service deaveraging on rates for elements provided to other telecommunications providers.

b. **Rate Structure for Specific Rate Elements**

The following element-specific rate structure standards shall apply in addition to the standards set forth in Section V.B.2.a. of these guidelines.

1. Local loop costs shall be recovered through flat-rated charges.

2. Local switching costs shall be recovered through a combination of a flat-rated charge for line ports, and one or more flat-rated or per-minute usage charges for the switching matrix (including the functionalities used to provide vertical features) and for trunk ports.

3. Dedicated transmission link costs shall be recovered through flat-rated charges, except for the purpose of establishing a reciprocal compensation rate for providing transmission facilities dedicated to the transmission of traffic between two carriers' networks, which is provided pursuant to Section IV.D.54.C. of these guidelines.

4. The costs for shared transmission facilities between tandem switches and end offices may be recovered through usage sensitive charges, capacity-based, flat-rated charges, or in another manner consistent with the manner the ILEC incurs those costs.

5. Tandem switching costs may be recovered through usage-sensitive charges, capacity-based, flat-rated charges, or in another manner consistent with the manner the ILEC incurs those costs.

6. Signaling and call-related database service costs shall be recovered through usage-sensitive charges, based on either the number of queries or the number of messages, with the exception of the dedicated circuits known as signaling links, the cost of which shall be recovered through flat-rated charges.

7. Collocation costs shall be recovered consistent with the rate structure policies established in the FCC "expanded interconnection" proceeding, CC Docket No. 91-141.

3. **Interim rates for forward-looking economic costs**

a. Interim rates may be used by the Commission in setting prices in arbitrating disputed issues pursuant to Section III.D.3. of these guidelines, in the Commission's review of Ameritech Ohio's statement of generally available terms pursuant to Section III.E. of these guidelines, or in the Commission review of tariffs filed by an ILEC to offer any element.

b. Interim rates or bill and keep shall be set by the Commission when it determines that it does not have sufficient time to review cost information provided by an ILEC or when it appears that there may be significant concerns with the cost studies from our cursory review.

4. **Forward-Looking Economic Costs**

a. The forward-looking economic cost-based price of an element, as described in this section of the guidelines, shall be set at a level that allows the providing carrier to recover the sum of the total element long-run incremental cost (TELRIC) of the element, and a reasonable allocation of the forward-looking joint and common costs.

b. Total Element Long-Run Incremental Cost

1. Study Period:

The TELRIC of an element is the forward-looking cost over the long-run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated while holding all other products' volumes constant. The Commission will consider a cost study period of five years to be reasonable. An ILEC shall have the burden of proof, to the Commission's satisfaction, that such study period would not be reasonable for a specific element.

2. Technology:

The TELRIC of an element shall be measured based on the use of the forward-looking telecommunications technology currently available whose costs can be reasonably estimated by the ILEC, given the existing location of the ILEC's wire centers.

3. Cost of Capital:

The TELRIC of an element shall be calculated using the forward-looking cost of capital (debt and equity), which includes a reasonable level of profit. The currently Commission-authorized rate of return shall be a starting point for the TELRIC calculation. The ILEC shall have the burden of proof, to the Commission's satisfaction, that the business risks that the ILEC faces in providing such elements would justify the proposed risk-adjusted cost of capital. The risk-adjusted cost of capital for an ILEC shall be uniform for all elements and in all locations.

4. Depreciation:

The TELRIC of an element shall be calculated using the economic depreciation rates that reflect the forward-looking lives of the equipment in a specific location and the economic value of an asset.

5. Federal, State, and Local Income Taxes:

   a. Federal, state, and local income tax expenses shall be determined based on the price floor.

   b. Since federal, state, and local taxes are applicable, recognition is given to the "tax-on-tax" situation that results from the deductibility of state and local tax when federal taxes are paid.

6. Inflation:

   TELRIC studies shall reflect costs that are expected to be incurred during the study period. Such costs shall be projected to their anticipated level over the study period by using an appropriate index of future cost, such as supplier estimates of price changes, indices developed from labor contracts, or other relevant indices.

7. Investment Development:

   a. Material Investment

      i. The development of the material component of investment shall begin with the current vendor price(s) for the hardware and software resources required to provide the service, projected over the study period as described above.

      ii. Other components of material investment shall include inventory, supply expenses, and sales taxes.

      iii. The sales tax component of investment shall be calculated by applying a sales tax factor if applicable. The factor shall reflect taxes imposed by state and local taxing bodies on material purchases. It shall be applied to the material and inventory components.

      iv. The supply component shall include the expense incurred by the LEC for storage, inventory, and delivery of material.

b. Labor Investment

There are two major components of labor investment, vendor-related and LEC-related.

i. Vendor labor-related investment shall include billed installation and engineering.

ii. The LEC's labor-related investment may be developed based on account averages or from estimates of product-specific plant engineering and installation hours.

iii. Total labor costs shall be computed by multiplying the account average or product specific work times the appropriate labor rate.

iv. Hourly labor rates include the operational wages, benefits, paid absence, and, if applicable, tools and miscellaneous expenses.

8. Fill Factors:

The investment developed above shall be adjusted to reflect reasonably accurate "fill factors". Fill factors are the proportion of a facility that will be filled with network usage. The ILEC shall have the burden to justify the reasonableness of the fill factors used in its TELRIC studies.

9. Maintenance:

Maintenance costs are incurred in order to keep equipment resources in usable condition.

a. Included in this classification are: direct supervision; engineering associated with maintenance work; labor and material costs incurred in the up keep of plant; rearrangements and changes of plant; training of maintenance forces; testing of equipment and facilities; tool expenses; and miscellaneous expenses.

b. The specific maintenance cost estimates associated with the element in question or investment-related annual maintenance factors may be applied to arrive at an annual maintenance cost.

c. The factor shall be specific to the investment and expense accounts associated with the element and be developed from the most current data reasonably available to the LEC.

10. Investment *Allocation*:

    TELRIC studies shall reflect relevant allocations of regulated investments, as determined by the FCC or the Commission.

11. The forward-looking economic cost per unit of an element shall equal the forward-looking economic cost of the element, divided by a reasonable projection of the sum of the total number of units of that element that the ILEC is likely to provide to requesting telecommunications carriers and the total number of units of that element that the ILEC itself is likely to use in offering its own services, during the study period.

12. In the determination of the total number of units:

    a. If the ILEC offers an element on a flat-rate basis, the number of units shall be defined by the ILEC as the discrete number of elements that the ILEC uses or provides (e.g. number of loops or number of ports); and

    b. If the ILEC offers an element on a usage-sensitive basis, the number of units shall be defined by the ILEC as the unit of measurement of the usage (e.g. number of MOUs or database queries).

13. The TELRIC of an element shall reflect any cost-based volume discount, term discount, and/or geographic-deaveraging the ILEC plans to offer.

C. Forward-Looking Joint and Common Costs

1. Forward-looking common costs are economic costs efficiently incurred by the ILEC in providing a group of elements or services (which may include all elements or services provided by the ILEC) that cannot be attributed directly to an individual element or service.

2. Forward-looking joint costs are those forward-looking costs which are common to only a subset of the elements or services provided by the ILEC. Forward-looking common costs are those costs which are incurred by the ILEC's operations as a whole, that are common to all elements and services.

3. Reasonable allocation of forward-looking joint and common costs:

   i. Forward-looking joint costs which are common to only a subset of the elements or services provided by the ILEC, shall be allocated to that subset, and should then be allocated among the individual elements or services in that subset, based upon measures of utilization, including such measures as: number of circuits, MOUs, and bandwidth. The Commission shall evaluate the reasonableness of the joint cost allocation methodology on a case-by-case basis.

   ii. Forward-looking common costs shall be allocated among elements and services in a reasonable manner. The ILEC may allocate forward-looking common costs using a fixed allocator of 10% markup over the sum of the TELRIC and the allocated forward-looking joint cost allocated to such element. In the event that an ILEC believes that such allocator (10%) does not allow it to reasonably recover its forward-looking common costs, the ILEC shall have the burden of proof.

C. Number Portability Pricing

1. Interim Number Portability Pricing

Prices for interim number portability utilizing RCF or DID shall be set at a level that takes account of the relative inferior quality of the service provided, its interim nature, and its necessity for the development of a competitive market for local exchange services. LECs shall not charge any nonrecurring charges to recover service orders, installation, and similar upfront expenses associated with the provision of interim number portability utilizing any of the above methods.

2. Long-term Number Portability Pricing

The costs associated with the establishment of long-term number portability shall be borne by all telecommunications carriers on a competitively neutral basis.

D. Imputation Standards

1. Application

An ILEC shall charge all customers which purchase its network elements the same price for the network element that it imputes to itself in determining the cost of all services it offers that require that network element as an input. For ILECs, the imputation requirements shall apply if:

a. The service under review is offered by at least one other provider (the ILEC's competitor) in the relevant market or geographic area;

b. The comparable service offered by such a competitor relies upon an essential input (or a non-competitive service) provided by that ILEC in the relevant market; and

c. The ILEC offering the service in the relevant market or geographic area uses the same essential input (or non-competitive service) used by the competitor to provide its comparable service.

In the application of the imputation test to competitive telecommunications services, an "essential input" shall mean a facility, functionality, or service offered by an ILEC for which an equivalent alternative or functional substitute, including self-provisioning by the competitor in a considerable segment of the relevant market or geographic area, is not available from any other provider within the relevant market or geographic area in which that facility, functionality, or service is offered at comparable rates, terms, and conditions.

Notwithstanding the other requirements of this section, price changes for basic local exchange service may only be considered in the context of applications pursuant to Section 4909.18 or 4927.04, Revised Code. Rates for basic local exchange service in effect as of the date of the adoption of these guidelines are not ipso facto required to pass an imputation test.

2. Methodology

The price of the telecommunications service subject to the imputation requirement shall be equal to or greater than the sum of the following:

a. The tariffed rate(s) for the essential input(s) (or non-competitive service(s)) as it is actually used by the carrier in its service offering, as such rate(s) would be charged by that carrier to any purchaser of that essential input within that market; and

b. The long run service incremental cost(s) of all other components of the carrier's service offering.

The imputation test may incorporate cost savings that result from the bundled provision of services. The ILEC has the burden of proof of such cost savings.

3. **Imputation Test Required**

ILECs shall submit an imputation test, for the Commission staff's review and the Commission's approval, if:

a. Tariffs are filed by the ILEC to introduce a new service subject to imputation requirements;

b. Tariffs are filed by the carrier to reduce rates for a service subject to imputation requirements; or

c. Tariffs are filed by the carrier to increase rates for an essential input which is utilized in providing a competitive service subject to the imputation requirements as described above.

4. **Imputation Filing**

The ILEC shall file, as an attachment to its tariff filing, information regarding the ILEC's method of complying with the imputation standards, including but not limited to, its definition of "relevant market or geographic area", and the definition of "the essential input or non-competitive service" relevant to the service in its application.

E. Required Workpapers

1. When a LEC submits a cost study to the Commission staff, it must simultaneously submit a complete set of supporting workpapers and source documents.

2. The workpapers must clearly and logically present all data used in developing the estimate and provide a narrative explanation of all formulas or algorithms applied to these data. These workpapers must allow others to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions.

3. The workpapers must clearly set forth all significant assumptions and identify all source documents used in preparing the cost estimate, including the technology being used in providing the element.

4. The workpapers must be organized so that a person unfamiliar with the study will be able to work from the initial investment, expense, and demand data to the final cost estimate. Every number used in developing the study must be clearly identified in the workpapers as to what it represents. Further, the source should be clearly identifiable and readily available, if not included with the workpapers.

5. Any input expressed as a "dollars per minute," "dollars per foot," "dollars per loop," "dollars per port," and the like must be traceable back to the original source documents containing the number of dollars, minutes, feet, loops, ports, and the like from which these figures were calculated.

6. To the extent practicable, all data and workpapers must be provided in machine readable form on diskettes using standard spreadsheet or database software formats such as Lotus 1-2-3 or Excel. Each diskette must contain a "read me" or similar file that defines the contents of each file on the diskette and contains an explanation of the definitions, formulas, equations, and data provided on the diskette. The diskette shall contain all information that the ILEC uses to modify or run "what if" scenarios.

VI. TARIFFING REQUIREMENTS

A. Structure

All LECs shall maintain end user tariffs. In addition, LECs providing service through their own facilities shall maintain a carrier-to-carrier tariff in those service areas. The carrier-to-carrier tariff shall include services, features, and functionalities for purchase by any certified carrier, subject to conditions set forth in Section VI.D.1., below. LECs providing both end user and carrier-to-carrier tariffs may maintain them as separate sections of a unified tariff.

B. NEC Affiliation with CTS Providers

CTS providers affiliated with NECs can retain 563 regulation of their competitive services provided pursuant to 563, if the NEC and CTS providers are separate affiliates and comply with the affiliate transaction guidelines in 563, Case No. 86-2173-TP-ACE, and Case No. 93-1081-TP-UNC, as subsequently amended or supplemented in orders of the Commission. Otherwise, all NEC services will be regulated according to the procedures set forth in these guidelines.

C. End User Tariffing Guidelines

1. New Services

a. The NEC shall provide an application for a new service offering in its end user tariff, along with a cover letter which states that this is a 30-day prefiling pursuant to these guidelines, to the Commission's telecommunications division and OCC 30 calendar days prior to filing the application with the Commission. Such prefiled application must include the following:

1. A copy of the superseded tariff sheet(s) and price list(s), if applicable, marked as Exhibit A.

2. A copy of the revised tariff sheet(s) and price list(s), marked as Exhibit B.

3. A description and rationale of the proposed tariff changes, including a complete description of the services proposed or affected, marked as Exhibit C.

4. A copy of the customer education and information material for new residential services must also be provided to the Commission's Consumer Services Department and the OCC concurrent with the pre-filing.

b. Subsequent to the 30-day prefiling time frame, the NEC may file an application to provide the new service offering in its end user tariff with the Commission via an application for tariff amendment (ATA), along with a completed Registration Form, as set forth in Attachment A to these guidelines. The application shall become effective on the day of filing, unless suspended. Such filing does not preclude the ability of the Commission to impose a full or partial suspension.

c. However, should the staff notify the NEC prior to the expiration of the 30-day prefiling time frame that the application requires further investigation, the applicant may file the application in an ATA which will be subject to a 30-day automatic approval time frame, and shall become effective 31 calendar days after filing, unless suspended.

d. ILECs' tariff filings shall be processed based on each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, an ILEC may apply for tariff filing parity as set forth in Section VI.M. of these guidelines.

2. **End User Rates**

a. NECs may charge end users rates based upon the marketplace and are not required to document their end user rates by means of developing and submitting TELRIC studies. However, NECs are expected to charge rates which are above their incremental cost of service. The Commission reserves the right to request cost or other information should it wish to audit a NEC's rates. Moreover, Section 4905.33, Revised Code, applies to NEC pricing practices.

b. ILECs' end user rates will be subject to each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144.

3. Pricing Flexibility for End User Services

a. NECs shall establish their minimum and maximum price ranges for services, and there shall be no limits to the number of rate changes permitted within the approved range, during a given period of time. NECs making changes in rates within the minimum and maximum price ranges shall file an amended price list (See Section VI.F., below) and it shall be effective on the day of filing.

b. The Commission reserves the right to apply specific pricing limitations which may have been or may be imposed on LEC services, to the NECs' offerings. For example, the Commission pricing guidelines set forth in 563 which place limits on the surcharges and MTS rates offered in conjunction with AOS shall be applied to NECs offering such services.

c. ILECs' pricing flexibility is subject to each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144.

D. Carrier-to-Carrier Tariffing Guidelines

1. Availability of Carrier Services

A carrier must be certified to buy out of the carrier-to-carrier tariff of a LEC.

2. Initial Carrier-to-Carrier Services Tariffs for ILECs

a. An ILEC shall file a tariff for resale services with the Commission that consists of retail services priced at wholesale rates available for purchase by other certified carriers. (See Sections V and IX of these guidelines). Such initial applications will not be subject to an automatic approval process.

b. A LEC may prepare and file with the Commission a tariff, for carrier services other than resale, containing the terms and conditions for carrier-to-carrier services, features, and functionalities that such company generally offers in the state. In addition to the tariff, any negotiated terms and conditions between carriers, approved by the Commission, must be available on a nondiscriminatory basis to any certified carrier. (See Sections III and IV of these guidelines). Initial carrier services tariffs, other than resale, filed by ILECs will not be subject to an automatic approval process.

c. A LEC providing both resale and carrier-to-carrier services may place both into one tariff so long as they are contained in clearly delineated separate sections of that tariff.

3. Initial Carrier-to-Carrier Services Tariffs for NECs

a. A facilities-based NEC shall file a tariff for resale services with the Commission that does not contain unreasonable, discriminatory, or anti-competitive conditions or limitations on the resale of its telecommunications services. The initial facilities-based NEC carrier-to-carrier resale tariff filed with a certification application is subject to a 60-day automatic approval process pursuant to Section II of these guidelines. Such filing does not preclude the ability of the Commission to impose a full or partial suspension.

b. Initial carrier services tariffs other than resale filed by NEC with a certification application will be subject to a 60-day automatic approval process pursuant to Section II of these guidelines. Such filing does not preclude the ability of the Commission to impose a full or partial suspension.

4. New Services for Carrier-to-Carrier Tariffs after the Initial Tariff Filing

   a. Each NEC shall provide the application for a new service offering in its carrier-to-carrier tariff, along with a cover letter which states that this is a 30-day prefiling pursuant to these guidelines, to the Commission's telecommunications division 30 calendar days prior to filing the application with the Commission. Such prefiled application must include the following:

      1. A copy of the superseded tariff sheet(s), if applicable, and price list(s), marked as Exhibit A.

      2. A copy of the revised tariff sheet(s) and price list(s), marked as Exhibit B.

      3. A description and rationale of the proposed tariff changes, including a complete description of the services proposed or affected, marked as Exhibit C.

   b. Subsequent to the 30-day prefiling time frames, the NEC may file with the Commission an application to provide the new service offering in its carrier-to-carrier tariff via an ATA, along with a completed Registration Form, as set forth in Attachment A to these guidelines. The application shall become effective on the day of filing, unless suspended. Such filing does not preclude the ability of the Commission to impose a full or partial suspension.

   c. However, should the staff notify the NEC prior to the expiration of the 30-day prefiling time frame that the application requires further investigation, the applicant may file the application in an ATA which will be subject to a 30-day automatic approval time frame, and shall become effective 31 calendar days after filing, unless suspended.

   d. ILECs' carrier-to-carrier tariff filings after the initial tariff filing, shall be processed based on each ILEC's currently applicable framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, an ILEC may apply for tariff filing parity as set forth in Section VI.M. of these guidelines.

E. **Change in Terms and Conditions, Change in Carrier's Name, and Withdrawal of Service for End User and Carrier-to-Carrier Tariffs (for *Abandonment of Service,* See Section II.F. of these guidelines)**

1. In order to change the terms and conditions of an existing service, change the carrier's name, or to withdraw an existing service, the NEC must docket an ATA with the Commission along with a completed Registration Form, as set forth in Attachment A to these guidelines. Such filing must include:

   a. A copy of the superseded tariff sheet(s) and price list(s), marked as Exhibit A.

   b. A copy of the revised tariff sheet(s) and price list(s), marked as Exhibit B.

   c. A description and rationale of the proposed tariff changes, including a complete description of the services proposed or affected, marked as Exhibit C.

2. Upon the filing by the NEC of an application to change the terms and conditions of an existing service, change the carrier's name, or to withdraw an existing service, the application will be subject to a 30-day automatic approval procedure and shall become effective 31 calendar days after filing, unless suspended. Such filing does not preclude the ability of the Commission to impose a full or partial suspension. Interested persons may file comments on the calendar application within 14 calendar days from the filing of the application.

3. In applications for withdrawal of a service, change in carrier's name, price increases within an approved range of rates, and change in terms and conditions of an existing service, the NEC must provide documentation that prior actual customer notice was given to the affected customers via bill insert, bill message, or direct mail. For price increases within an approved range of rates, however, prior customer notice may be given through a one-time publication in the non-legal section of the newspaper published in and of general circulation in the counties in which affected customers are located or other notice deemed suitable by the Commission. If the NEC chooses to provide prior notice via newspaper publication for price

increases within an approved range, such notice must be followed up immediately by actual notice through bill insert, bill message, or direct mail in the next practicable billing cycle.

4. In applications for withdrawal of service, a NEC must indicate one of the following:

   a. The NEC currently has no customers for the service proposed to be withdrawn; or

   b. If the NEC has existing customers of the service proposed to be withdrawn and has not grandfathered the provisioning of the service to current customers, the NEC must demonstrate good cause for withdrawal of the service from these customers.

5. Applications by ILECs to change terms and conditions, change the carrier's name, or withdraw a service shall be processed based on each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, an ILEC may apply for tariff filing parity as set forth in Section VI.M. of these guidelines.

F. Price List Changes for End User and Carrier Resale Tariffs

1. NECs' price list changes within an approved range of rates will be filed in the NECs' TRF dockets and shall be effective on the day of filing.

2. Where end user customers and/or resellers are affected by any price list increase by a NEC within an approved range of rates for dialtone/local access MTS, directory assistance, and operator services, a notice, i.e., bill insert, bill message, direct mail, or one-time publication in the non-legal section of the newspaper published in and of general circulation in each county affected by the price increase, will be provided to the Commission's Consumer Services Department and such customers prior to the effective date of such increase.

3. If a NEC increases a rate outside of an approved range, a filing must be made pursuant to Section 4909.18, 4909.19, 4927.03, and/or 4927.04, Ohio Revised Code.

4. ILECs' price list filings shall be processed based on each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, an ILEC may apply for tariff filing parity as set forth in Section VI.M. of these guidelines.

G. Promotions - End User and Carrier Resale Tariffs

1. Terms and conditions of all promotions must be identified in price lists and filed in the NEC's TRF docket. Promotional offerings shall be effective on the day of filing. The only limitation upon NEC promotions shall be that the waiver of any charges other than a nonrecurring charge shall be limited to 90 calendar days on a per customer basis.

2. ILECs' promotional offerings shall be processed based on each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, an ILEC may apply for tariff filing parity as set forth in Section VI.M. of these guidelines

H. Deaveraging

Requests for geographical market-based deaveraging by customer type or class for both NECs and ILECs will be considered by the Commission only where the carrier can demonstrate that the request is consistent with the public interest, is a necessary and appropriate response to differences in prevailing market prices, and will not serve to discourage entry or lessen competitive forces. In establishing the procedures for its consideration of such request, the Commission shall act pursuant to the appropriate statutory provisions.

I. Contractual Arrangements

1. End User Contracts

LECs may enter into contractual arrangements with end users for services, but such services and products must also be included in the carriers' end user tariffs. The contractual arrangements may include additional terms and conditions so long as the terms and conditions are not inconsistent with the tariffed provisions. ILECs will submit cost studies for all contracts in accordance with their currently applicable regulations. i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. The Commission may grant an exception to the tariffing of all products or services in the case of unique arrangements or special assemblages. All contractual arrangements pertaining to end user products and/or services must be filed and approved by the Commission and the terms shall be made available to all similarly situated customers on a nondiscriminatory basis.

2. Process for Approval of End User Contracts

a. NEC end user contracts will be effective upon the day of signing.

b. NECs must docket their end user contract applications with the Commission within 10 calendar days of signing. Such applications shall be filed in an application to establish, revise, or cancel a contract case (AEC), along with a completed Registration Form, as set forth in Attachment A to these guidelines. The application will be subject to a 30-day automatic approval procedure and, absent full or partial suspension of the filing, it shall become effective 31 calendar days after filing, unless suspended. Such filing does not preclude the ability of the Commission to impose a full or partial suspension.

c. ILECs' end user contract application filings shall be processed based on each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, an ILEC may apply for tariff filing parity as set forth in Section VI.M. of these guidelines.

d. If a LEC requests proprietary treatment of information pertinent to its contract application, the application will proceed in accordance with the appropriate automatic approval procedure. However, the case will remain open until the Commission determines the appropriateness of the motion for a protective order.

3. **Process for Approval of Carrier-to-Carrier Initial Contracts and Amendments**

a. LEC initial carrier-to-carrier contract filings will be processed according to the procedures set forth in Section III.D of these guidelines, and in Case No. 96-463-TP-UNC.

b. For those LECs which have approved contracts for carrier-to-carrier services and such contracts contain provisions which allow them to amend such contracts during their duration, the LECs may utilize the following procedures to amend their existing contracts:

1 The LECs' amended contracts will be effective upon day of signing.

2. The LECs' must docket amendments to the initial negotiated agreements with the Commission within 10 calendar days of signing. Such applications shall be filed in an AEC case, along with a completed Registration Form, as set forth in Attachment A to these guidelines. The application shall be subject to a 30-day automatic approval procedure and shall become effective 31 calendar days after filing, unless suspended. Such filing does not preclude the ability of the Commission to impose a full or partial suspension.

J. Fresh Look Provision

1. ILEC customers with long-term contracts for local exchange services which were not, at the time they were entered into, subject to effective competition as determined by the Commission shall be given an opportunity to take a "fresh look" to determine if they wish to avail themselves of a competitive alternative. This provision applies to portions of contracts involving basic local exchange service or to entire contracts where local termination liability is not severable from non-local services. This opportunity will be limited to customers with such ILEC arrangements for remaining terms in excess of two years from the date the Commission verifies as the date on which the first interconnection arrangement is operational in the ILEC's service territory. Upon inquiry by such customer, the ILEC must inform the customer of his/her opportunities pursuant to this section.

2. The opportunity to end such a long-term arrangement will exist on a market-by-market basis for a period of 180 calendar days from the date the first interconnection arrangement is operational in that market served by that ILEC. Each NEC shall notify the Commission as to the date when the first interconnection arrangement is operational in a given market by filing notice of such operation in its certification case and serving a copy of such notice on the chief of the telecommunications division within 5 calendar days of such operation. The Commission shall verify the date which the 180-day period begins for purposes of this section and shall establish an appropriate procedure for customer notification prior to such date. The Commission shall resolve any disputes regarding opportunities to end long-term arrangements pursuant to this section.

3. If a party chooses to terminate such a long-term arrangement within this period, the termination charge will be limited. Notwithstanding any termination charges provided in the applicable ILEC tariffs, the ILEC may not charge more than the difference between: (a) the amount the customer has already paid; and (b) any additional charges that the customer would have paid for service if the customer had taken a shorter term offering that would have been available for the term actually used. This termination procedure will allow customers with long-term arrangements to select among competitive providers while ensuring that the ILEC obtains the compensation appropriate for the term commensurate with the length of time the service was actually taken by the customer.

K. Termination Liability

Except as detailed in these guidelines and relevant Commission orders concerning interconnection arrangements, the Commission approval of contracts pursuant to these procedures does not constitute a determination of the reasonableness of termination liability provisions.

L. **Proprietary Information**

All contracts and applications are to be filed on the public record. If a LEC finds it necessary to request protective treatment for any portion of a contract or application, it must request such protection in accordance with Chapter 4901-1, Ohio Administrative Code.

M. **Tariff Filing Parity**

1. As stated above, all ILEC new service, price list, promotion, change in terms and conditions, withdrawal of service, and contract applications will be processed according to the time frames set forth in the ILECs' currently applicable regulations i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, once a NEC is operational in an ILEC's serving area the ILEC may file an application requesting to take advantage of the expedited approval processes and pricing flexibility features afforded the NECs territory-wide for tariff filing procedures flexibility as set forth above in Sections VI.C.1., D.4., E.1-4, F.1., G.1., and H. In determining whether such a request should be granted, the Commission will consider the extent of competition in the ILEC's territory and the impact on the development of a competitive market in an ILEC's territory.

   a. In order to receive such flexible treatment of tariff filing procedures, the ILEC must docket a UNC case with the Commission. Such filing must include, at a minimum;

      i. A revised cover page for the ILEC's existing tariff which indicates that the ILEC will be granted filing flexibility pursuant to the approval of the UNC case; and

ii. An exhibit requesting flexible treatment pursuant to these guidelines, with a detailed explanation of how the ILEC meets the criteria in Section VI.M.1., of these guidelines for flexible tariff filing procedures.

iii. Copies of the application should be served on all certified NECs and in the ILEC's serving area. The Commission will set a period of time for the filing of written comments concerning the application and reserves the right to schedule a hearing if necessary. The proceeding on the request will be expedited. The Commission may modify or reject the request based on the geographic scope or degree of competition in the ILEC's serving area.

b. Upon Commission approval of such application, the ILEC will file all future applications described in Section VI.M., above, pursuant to the procedures set forth in Sections VI.C.1., D.4., E.1-4, F.1., G.1., and H. of these guidelines.

VII. FILING PROCEDURES AND REGISTRATION FORM

A. Registration Form (Attachment A)

1. A Registration Form provided by the Commission staff (initial form shown in Attachment A to these guidelines) must be utilized in all applications filed pursuant to these guidelines with the Commission. (NOTE: This form may change from time to time without further Commission entry. Staff will maintain a current, updated copy to provide to applicants, and will file a copy of any updated form within this docket.) The Registration Form is to be utilized by an applicant for purposes including, but not limited to:

   a. Receiving initial certification to provide local exchange service in Ohio;

   b. Changing any element of a NEC's operations;

   c. Changing any element within a NEC's tariff, including textual revisions and price adjustments; and

   d. Filing interconnection arrangements arrived at through either negotiation or arbitration for Commission approval.

2. The Registration Form must accompany all applications filed by NECs on or after the effective date of these guidelines.

3. ILECs may not utilize this form when filing applications. Rather, ILECs should utilize the appropriate form based on each ILEC's currently applicable regulatory framework, i.e., ILECs who seek approval and who are granted approval by the Commission for an alternative regulation plan and ILECs who currently have alternative regulation plans will be regulated under their Commission approved plans, small ILECs will continue to be regulated under 564, and an ILEC under traditional regulation will be regulated as such with its competitive services regulated under 944 and 1144. However, an ILEC must use this form for any application filed after the effective date of these guidelines, if it has been granted tariff filing parity pursuant to Section VI.M. of these guidelines, or if the ILEC is filing an ARB or NAG case pursuant to the guidelines established in Case No. 96-463-TP-UNC.

4. For any application which is filed pursuant to an automatic time frame established in these guidelines, the automatic time frame will not begin to run until the appropriate completed Registration Form is filed.

B. Tariffs

1. LECs shall keep tariffs on file with the Commission. A tariff shall be filed with the Commission on white paper which is 8.5" x 11" paper printed on one side only. The only exception is price lists, which, at the LEC's option, may be printed on colored paper. Handwritten copies are not acceptable except for denoting the appropriate case number. All tariffs must include both the appropriate issued (the date the tariff was filed with the Commission) and effective (the date the service(s) will be offered) dates. These tariffs shall include, at a minimum, the following elements:

   a. A title page;

   b. A description of all services offered, including all terms and conditions associated with the provision of each service;

   c. A description of the actual serving and local calling areas (any change to a LEC's serving area and local calling area shall be processed in accordance with Sections II.C.3. and II.D.2. of these guidelines, respectively);

d. A complete price list, including every rate and charge relative to the provision of each service, as well as discounted rates for the benefit of persons with communication disabilities; and

e. Each final tariff sheet must exhibit the Commission authority by designating the case number in which the tariff was approved, the automatic date of effectiveness or Commission order date, the effective date of the tariff sheet, the name of the LEC, and the name of an officer of the LEC. This information should be included in a header, a footer, or a combination thereof. The LEC's TRF case number is not to appear on final tariff sheets.

2. A LEC will no longer be required to include in its tariff on file at the Commission specific language either previously or prospectively deemed mandatory by the Commission. Under these guidelines, such service requirement language shall be contained in the Service Requirements Form which will be available from the staff and is shown in its initial form as Attachment B to these guidelines. The Service Requirements Form must be attached to the Registration Form. Accordingly, any provider seeking to offer local service in Ohio will be required to commit to the applicable service requirements contained in the Service Requirements Form. (NOTE: The Service Requirements Form, as set forth in Attachment B to these guidelines, may change from time to time pursuant to Commission directive. Staff will maintain a current, updated copy to provide to applicants, and will file a copy of any updated revisions to the Service Requirements Form within this docket.)

C. TRF Docket

1. TRF dockets are designated for the filing of final tariffs and are maintained by the Commission for each utility company, including those filed by LECs.

2. A TRF docket number will be assigned by the Docketing Division when a NEC seeks to obtain initial certification.

3. For applications in which new tariff pages are involved, such tariff page(s) must be filed in final form in the appropriate application purpose code, as well as in the TRF docket for that LEC. For applications subject to 0-day approval, such final tariff pages must be filed at the same time as the application. For nonautomatic applications and those applications subject to an automatic approval process (other than the 0-day automatic approval process), final tariff

pages must be filed within 10 calendar days after the approval date. The effective date on the tariffs shall be a date no sooner than the date the final tariffs are filed with the Commission.

D. Time Frames

1. Certain filings pursuant to these guidelines will be handled through an automatic process. For those filings specified in the guidelines as subject to an automatic time frame and with the exception of 0-day filings, an automatic time frame will begin on the day after a filing is made with the Commission's Docketing Division. Furthermore, under an automatic process, if the Commission does not take action before the expiration of the filing's applicable time frame, the filing shall become effective as early as the following day.

2. The time frames in these guidelines requires same day delivery or facsimile of all pleadings and papers upon all parties. Rule 4901-1-07, Ohio Administrative Code, does not apply tot he service of pleadings and papers pursuant to these guidelines.

E. Suspensions

1. Nothing contained within these guidelines shall in any way preclude the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner from imposing a suspension of any process herein.

2. A full suspension occurs when the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner, upon its own motion, suspends the automatic timeclock and precludes an application from taking effect. A full suspension may also be imposed after the automatic time frame has run, if an ex post facto determination is made that a service previously automatically authorized may not be in the public interest. If the suspension involves a service previously automatically authorized, the LEC may be required to discontinue providing the service subsequent to the suspension.

3. Under partial suspension, which can be invoked by the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner, the service in question is permitted to take effect under the proposed terms and conditions subject to continued review. The LEC is put on notice that such terms and conditions may be modified subsequent to its further review. A partial suspension may also be imposed after the automatic time frame has run if an ex post facto determination is made that a service previously automatically

authorized may not be in the public interest. If the suspension involves a service previously automatically authorized, the partial suspension may require the LEC to refrain from obtaining new customers subsequent to the suspension.

4. The Commission, Legal Director, Deputy Legal Director, or Attorney Examiner may fully or partially suspend an application for either a definite or indefinite period of time. If the suspension is for a definite period of time, such time frame shall be determined on a case-by-base basis and shall be set forth in the entry suspending the application. If the suspension is for an indefinite period of time, the Legal Director, Deputy Legal Director, or Attorney Examiner may remove the suspension imposed upon the application and reinstate a new automatic time frame for approval of the application. The appropriate new automatic time frame shall be determined on a case-by-case basis.

VIII. UNBUNDLING

A. Principle

Each ILEC and interconnecting facilities-based NEC shall unbundle its respective local network elements at any technically feasible points, upon bona fide request of a certified ***facilities-based*** LEC.

B. Minimum Requirements

Unbundling of networks shall include, at a minimum, local loops, network interface devices, local and tandem switching, interoffice transmission facilities, signaling and call-related databases, operations support systems functions, and operator and directory assistance facilities. The Commission may prescribe additional elements at a later date C.F.R. §51.319.

C. Reciprocal Unbundling

The requirement to fulfill all bona fide requests for the purchase of unbundled network elements by other ***certified facilities-based*** LECs applies equally to both ILECs and NECs.

D. General Unbundling Requirements

1. Unbundled network elements rates, terms, and conditions shall be established through negotiation between LECs upon receipt of a bona

fide request for interconnection or through arbitration, pursuant to Section III.C. of these guidelines.

2. Unbundled network element rates, terms, and conditions may be established through arrangements or tariffs approved by the Commission. The Commission, at its discretion, may order the filing of tariffs establishing unbundled network elements rates, terms, and conditions. (See Section III, Interconnection, for filing requirements associated with bona fide requests.)

3. Once an unbundled network element has been made available to an interconnecting carrier on a contractual basis, the providing carrier shall make that unbundled network element available for all similar requests for purchase pursuant to Section III of these guidelines.

4. The offering of unbundled network elements cannot replace the offering of currently bundled package offerings.

E. Rate Requirements

Unbundled network elements shall be priced at cost-based rates pursuant to the pricing standards in Section V.B. of these guidelines.

IX. RESALE

A. Principle

1. Each LEC shall maintain an end user tariff and make all of its tariffed services available for resale.

2. Each LEC which provides local service through its own facilities or in combination with its own facilities, shall maintain a carrier-to-carrier tariff including its resale service offerings and, with the exception of services not available for resale pursuant to Section IX.C. of these guidelines, shall make such service offerings available for resale to any other LEC.

B. Conditions for Local Service Resale

1. All services that are tariffed in LEC end user tariffs shall be made available for purchase by any entity at a retail rate approved by the Commission.

2. ILECs shall offer for resale at wholesale rates (pursuant to Section V.A. of these guidelines) any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers.

3. All services that are tariffed in a NEC's carrier-to-carrier tariff for the purpose of resale shall be made available for purchase by any LEC and shall not contain unreasonable, discriminatory, or anti-competitive conditions or limitations.

4. NEC services offered at a discount or in a promotion shall be made available for resale at rates approved by the Commission pursuant to the standards set forth in Section IX.B.3. of these guidelines.

5. ILEC services offered at a promotional discount or in another type of promotion for a period of 90 calendar days or less do not have to be made available for resale pursuant to Section V.A. of these guidelines. ILEC services offered to the same class of customers for the same service(s) at a promotional discount or in other types of promotions for a period of greater than 90 calendar days within a 12 month period shall be made available for resale at a wholesale rate approved by the Commission pursuant to the pricing standards set forth in Section V.A. of these guidelines.

6. Each LEC which maintains a carrier-to-carrier tariff shall be required to provide nondiscriminatory, automated operational support systems by no later than January 1, 1997. Such systems shall enable other LECs reselling its retail telecommunications services to order service, installation, repair, and number assignment; monitor network status; and bill for local service. Such support systems shall include, but not be limited to:

   a. Pre-service ordering functionalities for processing customer service orders;

   b. Provisioning requirements to ensure electronic transmission of data to the LEC providing telecommunications services for resale, as well as order and service completion confirmation;

   c. Repair and maintenance requirements; and

   d. Customer Account Record Entry (CARE) requirements.

7. To assure proper and high quality provisioning of local service resale, each LEC which maintains a carrier-to-carrier tariff shall

provide administrative functional requirements that include, but are not limited to:

a. Provisioning reports comparing that LEC's service to LECs purchasing telecommunications services for resale with the service it provides to itself in its own operation; and

b. Branding of services by the LEC providing such services for resale.

C. Restrictions on Resale

1. Each LEC shall make its services available for resale, but may, subject to Commission approval, place reasonable restrictions on the resale of residential services to business customers. While a LEC may file an application with the Commission requesting other reasonable resale restrictions, such an application must be narrowly focused.

2. Those LECs purchasing lifeline services for resale may only resell those services to qualifying lifeline customers.

X. DIALING PARITY/1+ INTRALATA PRESUBSCRIPTION

A. Principle

ILECs and NECs shall be required to provide dialing parity, on both an intra and interLATA basis, to all interconnecting toll carriers subject to the conditions set forth below. NECs shall not become secondary carriers under ORP/SCO.

B. Time Frame

1. ILECs that are not legally constrained from offering interLATA services shall have implemented 1+ dialing parity on an intraLATA basis for all their subscribers by August 8, 1997.

2. Ameritech Ohio shall have implemented 1+ dialing parity on an intraLATA basis for all its subscribers at such time that it receives approval of the federal competitive checklist for Bell Operating Companies pursuant to Part III, Section 271(c)(2)(B) of the 1996 Act, or by February 9, 1999, whichever occurs sooner.

3. NECs shall implement 1+ dialing parity on an intraLATA basis upon their initial offering of certified local exchange service.

C. Presubscribed Interexchange Carrier (PIC) Methodology

1. Definitions

a. 1-PIC

Subscribers would select either their LEC or their interLATA carrier to carry all intraLATA ~~and interLATA~~ toll traffic.

b. **Full 2-PIC**

Subscribers would select an IXC for interLATA calls and have the ability to select either their interLATA carrier, LEC, or an alternative intraLATA toll provider to carry their intraLATA toll traffic.

c. **Modified 2-PIC**

Subscribers would select an IXC for interLATA calls and select either the same IXC or their existing LEC to carry their intraLATA toll traffic.

d. **Smart or Multi-PIC**

Subscribers would be able to select multiple carriers for various subdivisions of their interLATA and intraLATA toll calls.

2. **Implementation**

In the absence of readily available and economically feasible Smart or Multi-PIC technology, 1+ dialing parity on an intraLATA basis shall be implemented on a Full 2-PIC methodology.

D. **Balloting**

Balloting shall not be used. LECs shall inform their current customers of the options to select presubscribed intraLATA toll carriers no later than 60 calendar days following implementation of intraLATA toll presubscription.

Such notices must be submitted by the LEC to the Commission's Consumer Services Department for approval at least 30 calendar days prior to sending them to its customers. Toll carriers may provide such information to customers regarding the availability of 1+ dialing parity as they deem appropriate, except that nothing herein shall authorize any otherwise unauthorized or unlawful use of the LEC's name, marks, logo, trademarks, or tradenames by the toll carriers.

E. Presubscription Procedures

1. Current subscribers CHOOSING A CARRIER

Initial requests of current subscribers for an intraLATA carrier change will be provided free of charge from the date of 1+ intraLATA dialing parity implementation until 90 days after the date of 1+ intraLATA toll dialing parity implementation or 90 days after customer notice was initially sent, whichever is later. A LEC service order charge of $5.00 for the first line, and $1.50 for each additional line, shall be applied to any subsequent request to change intraLATA interexchange service providers.

2. Current subscribers who do not choose a carrier

The Commission will determine in each LEC's case containing intraLATA toll dialing parity implementation procedures the appropriate procedure to be utilized by a carrier in situations where a current customer does not choose a carrier.

3. New subscribers placing an order

New subscribers will be asked to select an interLATA and intraLATA toll carrier at the time they place an order with the LEC. The LEC will process the customer's order for both intra and interLATA service. The selected carriers will confirm their respective customers' verbal selections by third-party verification or return written confirmation notices. All new subscribers' initial requests for either intra or interLATA interexchange service shall be provided free of charge.

4. NEW subscribers who do not choose a carrier

If a subscriber is unable to make a selection at the time he/she places an order establishing local exchange service, the LEC will read a random listing of all available intraLATA carriers to aid in the selection. If a selection is still not possible, the LEC will inform the subscriber that he/she will be given 90 calendar days in which to inform the LEC of an intraLATA toll carrier selection. During the 90-day period and until the subscriber informs his/her LEC of a choice for intraLATA toll carrier, the customer will not have a presubscribed intraLATA toll carrier, but rather will be required to dial a carrier access code to route his/her intraLATA toll to the carrier of his/her choice. Subscribers who inform their LEC of their intraLATA toll carrier selection within the 90-day period will not be assessed a service order charge for their initial request. A LEC service order charge of $5.00 for the first line, and $1.50 for each additional line, shall apply to all subsequent requests to change intraLATA interexchange service providers.

F. *Recovery of Costs of Implementation of IntraLATA Dialing Parity*

The incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne by providers of telephone exchange service and telephone toll service. Costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service. Recovery of these costs shall not include recovery of costs incurred for PIC changes during the initial 90-day no-charge period.

XI. NONDISCRIMINATION BETWEEN COMPETITORS

A. *Service Requests*

LECs which have achieved interconnection shall report in writing to the chief of the compliance division of the Consumer Services Department and the chief of the telecommunications division of the Utilities Department, within five business days, any denial of subsequent bona fide carrier service request by the interconnecting LEC (e.g., expansion of facilities or maintenance). Denied requests, and requests for service not fulfilled within 30 calendar days, must be documented and justified (in its report to the Commission) by the carrier from whom such services are requested. Such denials will be reviewed pursuant to a complaint process or other Commission-ordered dispute resolution process.

Interconnecting LECs shall report to the chief of the compliance division of the Consumer Services Department and the chief of the telecommunications division of the Utilities Department, any subsequent request for service (e.g., expansion of facilities or maintenance) that remains unfulfilled, or partially unfulfilled, in excess of 30 calendar days.

B. Telecommunications Performance Measurement Database (TPM)

All LECs shall be required to file, with the Commission, annual TPM data submissions.

C. Access to Customer Proprietary Network Information (CPNI)

1. A telecommunications carrier that receives or obtains CPNI from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose and shall not use such information for its own marketing efforts.

2. No LEC shall access or use the CPNI of an interconnecting LEC for the purpose of marketing its services to the interconnecting LEC's customers.

3. No LEC shall access the CPNI of a carrier reselling its services, without the permission of the reseller, for the purposes of marketing services to the reseller's customers.

4. No LEC shall solicit a competitive carrier's end user customer where the competitive interconnecting carrier is in the process of waiting for the LEC to provide facilities necessary to serve that same end user customer.

5. A LEC may only make CPNI available to another carrier after having obtained prior written authorization for the provision of such information to such carrier from the subscriber.

D. **Installation and Maintenance**

A LEC must provide the same installation, maintenance, and repair intervals to other LECs that it provides itself for its own service provisioning.

XII. RIGHT-OF-WAY

A. Authorization

1. LECs are subject to all constitutional and statutory rights and responsibilities placed upon public utilities for use of public right-of-way.

2. Private right-of-way for all public utilities, including LECs, is subject to negotiated agreements with the private property owner, exclusive of eminent domain considerations.

3. The Commission finds that there is a rebuttable presumption that any arrangements whereby telecommunications carriers are

provided exclusive use of private building riser space, conduit, and/or closet space is anti-competitive and unlawful. This being the case, the Commission reserves the right, should it be brought to our attention, to require any or all such future arrangements between public utilities and private landowners to be submitted to us for our review and approval, under Section 4905.31, Revised Code, prior to taking effect.

B. **Rates, Terms, and Conditions**

1. Rates, terms, and conditions for nondiscriminatory access to poles, ducts, conduits, and right-of-way shall be established through interconnection arrangements or tariffs pursuant to Section III of these guidelines.

2. Access to poles, ducts, conduits, and right-of-way shall be on a first-come, first-serve basis. A utility providing telecommunications or video services may not reserve excess capacity for its own future needs when allocating pole, duct, or conduit space to competitors. Electric utilities are subject to C.F.R. §51.

3. When a utility plans for modification of its facilities, a written notification of such modification must be provided to parties holding attachments on such facilities at least 60 calendar days prior to the commencement of the physical modification itself. If the modification involves an emergency situation, the notice must be given as soon as reasonably practicable.

4. The Commission has jurisdiction over the prices charged for pole attachments. Such prices for pole attachments shall be set at a rate that does not exceed the maximum amount permitted by the prevailing FCC formula.

5. The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the

modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

6. Prices for ducts, conduit space, and access to right-of-way shall be set at a level that allows the providing carrier to recover its TELRIC, as described in Section V.B.4. of these guidelines, of providing ducts, conduit space, and access to right-of-way and a reasonable allocation of the forward-looking joint and common costs incurred by the providing carrier and satisfy the requirements of Section 224 of the 1996 Act. The allocation of the forward-looking joint and common costs shall be according to the allocation method described in Section V.B.4. of these guidelines.

C. Coordination

LECs shall coordinate their right-of-way construction activity with the affected municipalities and landowners. Nothing in this section is intended to abridge the legal rights and obligations of municipalities and landowners.

D. Disputes

1. Public utilities shall comply with Section 4905.51, Revised Code.

2. Disputes concerning the compensation or conditions of use or joint use of equipment may be brought to the Commission for resolution pursuant to Section 4905.51, Revised Code.

XIII. UNIVERSAL SERVICE

A. Definitions

1. Universal service establishes a minimum level of essential basic telecommunication services to be made available at just, reasonable, and affordable rates to all who desire such services. Universal service applies to all telecommunications carriers for the benefit of all residents in Ohio.

   Universal service includes the following services:

   a. Residential single party, voice-grade access line;

b. Touch-tone dialing;

c. Access to telecommunications relay service;

d. Access to operators and directory assistance;

e. Access to emergency services (9-1-1/E-9-1-1) (where available);

f. Availability of flat-rate service;

g. Access to all available long distance carriers;

h. A white pages listing, plus a directory;

i. Blocking for Caller ID, Auto Callback, 900, 976, 976-like services, and toll restriction blocking; and,

j. The capability of transferring data at a rate of 9600 bps by June 12, 1997 and 14,400 bps by December 31, 1998.

The list of services that comprise universal service will be periodically reviewed by the Commission and updated as telecommunications and information technologies and services advance and as societal needs dictate.

2. Universal Service Funding (USF) assistance has two separate and distinct components:

   a. **High Cost Support (HCS)** is intended to ensure the provision of universal service to residential customers at just, reasonable, and affordable rates in geographic areas with high cost characteristics, (e.g., low population density, long loop lengths per household, or terrain features which cause plant installation to be expensive).

   b. **Low Income Assistance** is intended to provide income-eligible residential customers who participate in designated federal or state low-income programs, with discounts for certain basic local services to assist participants in obtaining and maintaining access to the network.

3. **High Cost Support Eligible Area** is defined as a geographic area (i.e., approved by the Commission) within which the established HCS benchmark cost for the number of households in that area exceeds

the ILEC's total intrastate residential revenues within that same geographic area.

4. **Income Eligible Residential Customers** shall be determined by their participation in federal and state low-income programs (e.g., Home Energy Assistance Program, Ohio Energy Credits Program, Supplemental Security Income, Medicaid, Aid for Families with Dependent Children). The Commission will periodically review the status of the programs used to determine income eligibility.

B. Universal Service Fund (USF) Contributions

1. All telecommunications carriers (i.e., facilities-based LECs, nonfacilities-based LECs, and CTS providers) shall pay into the intrastate Universal Service Fund (USF) pool via a USF charge, including those entities providing telecommunications services who pay into the interstate USF, but are exempted from registering with the Commission.

2. The USF support level will be based on each carrier's total intrastate revenues, including revenues received from subsidiaries (e.g., yellow pages revenues).

3. The USF percentage assessed to each carrier will be based on a statewide aggregation of required subsidies for all USF eligible services in the state. This percentage will be calculated and revised at least annually, as determined by the Commission and the fund administrator.

4. In determining the percentage to be assessed to each carrier, the Commission may also consider the extent to which a carrier is providing service in a nondiscriminatory manner within its service territory. In making such a determination, the Commission will consider the self-defined serving area of the carrier, the carrier's percentage of business vs. residential customers, and the extent to which the carrier serves low income customers. LECs not serving an appropriate proportion of residential and business customers will be required to contribute more to the USF than those LECs which do so.

5. The fund administrator will calculate at least annually, not to exceed quarterly, each carrier's obligation to the fund and will invoice each carrier accordingly. Payments on behalf of carriers to the fund shall be made at least annually, but not to exceed quarterly, as deemed appropriate by the Commission and the fund administrator.

C. High Cost Support Program

1. ILECs will retain the carrier of last resort obligation until such time as the Commission determines the carrier of last resort via a bidding process or other mechanism. During that interim period, any certified, facilities-based, LEC serving residential customers within a HCS eligible area may withdraw from the fund an amount no greater than the maximum subsidy established according to the methodology in Section E.1. below.

2. No sooner than one year after the enactment of these guidelines, the Commission will evaluate whether to implement a bidding process or some other mechanism for the carrier of last resort obligation as a requirement for ongoing eligibility for high cost support funding.

3. Any carrier accepting HCS monies must offer the services supported by universal service support and must advertise the availability of such services.

D. **Low-Income Support Program**

1. Effective immediately, all certified LECs that have not been otherwise exempted by this Commission shall participate in the Telephone Service Assistance and Service Connection Assistance Programs. Notwithstanding legislation that would establish otherwise, all LECS shall continue to provide the benefits of the TSA and SCA programs pursuant to the existing state and federal funding methodologies.

2. As of January 1, 1998, and LEC offering the following package of low income assistance to income eligible residential customers as defined in Section XIII.A.4., above, will be eligible for any incentives established in XIII.D.3., below, in addition to dollar for dollar recovery from the universal service fund according to the methodology in Section XIII.E., below.

   a. A waiver of deposits required to obtain new service;

   b. A waiver of the service connection charge for establishing local service, if it is more that $5.00;

   c. A monthly discount off of the basic local access line charge at an amount equal to the subscriber line charge;

   d. A monthly waiver of the federal subscriber line charge;

e. A waiver of the charges for touch-tone service;

f. Discounted rates for call control features, i.e., toll restriction and blocking for 900 and 976 calls; and

g. A waiver of the charges for 9-1-1 and E-9-1-1.

The Commission may periodically re-evaluate and modify the package of services in this paragraph.

3. To encourage LECs to actively promote the package of low-income support programs described in Section XIII.A.4., such carriers will receive a partial offset against their contribution to the USF for each $1.00 of subsidy received from the USF for provision of these low-income programs. The Commission will determine the appropriate amount of offset by June 12, 1998.

4. The Commission may consider prior commitments made by LECs in alternative regulation proceedings in determining the extent of eligibility for USF funding under Section XIII.D.2. and D.3. of these guidelines.

E. **Support Withdrawal Criteria**

1. **High Cost Support Withdrawal**

Until such time as the Commission establishes a carrier of last resort via a bidding process or other mechanism, any facilities-based LEC is eligible for HCS funding according to the following methodology:

a. The calculation of the HCS subsidy will be done on the basis of existing ILEC wire center boundaries and will be designated a HCS study area.

Any ILEC or facilities-based NEC may petition the Commission to adopt an alternative HCS study area based on the specific characteristics of its service territory or its specific business operating practices. The petitioning LEC will have the burden of proof in demonstrating that its alternative proposed HCS study area boundaries will permit a more efficient comparison of benchmark costs and revenues.

b. The benchmark costs will be calculated using the Census Block Group (CBG) benchmark costs from the "Benchmark Cost Model" as filed with the FCC in CC Docket No. 80-286. The

Commission may also adopt any subsequent revisions to this model. The CBG costs will be aggregated to the HCS study area level by taking an average of CBG costs within that area weighted by the number of households in each of those CBGs. This weighted average cost will be the per household benchmark cost within the HCS study area. The benchmark costs will include an allowance for common costs.

c. Any ILEC or facilities-based NEC may petition the Commission to adopt alternative benchmark costs based on company-specific analysis. The petitioning LEC will have the burden of proof in demonstrating that its alternative proposed benchmark costs more accurately reflect its true TELRIC costs within a given HCS study area.

d. In each HCS study area, an ILEC, which provides service in that HCS study area, in whole or in part through its own facilities, will receive funding equal to the difference between total intrastate residential revenues from telecommunications services and total benchmark costs in that study area. Total intrastate residential revenues from telecommunications services include all revenues from intrastate retail residential services (including vertical services and any yellow pages revenues received from an affiliate, and any revenues from an affiliate that relate to the provision of intrastate telecommunications services), as well as wholesale payments by resellers for resale of residential services in that study area. Total benchmark costs are the calculated benchmark cost per household times the total number of households in the study area, less any avoided costs calculated according to Section V.A. of these guidelines.

e. A facilities-based NEC serving a HCS study area, which provides service in that HCS study area, in whole or in part through its own facilities, will receive HCS funding equal to the difference between total residential revenues from telecommunications services and total benchmark costs in that study area. Total intrastate residential revenues include all revenues from intrastate retail services, as well as wholesale payments by resellers in that study area. Total benchmark costs are the calculated benchmark cost per household times the total number of households being served in that study area.

f. Disbursements from the fund will be calculated based on 12 months of historical information on the number of households served, benchmark costs, and total residential revenues within each HCS fund eligible area. The amount of subsidy received may also be adjusted to account for any subsidies received from other federal or state programs, including any federal universal service fund that may be adopted by the FCC.

g. Unless the Commission finds it otherwise appropriate because the involved carrier is subject to competition, ILECs are eligible for HCS funding according to the above methodology only if such carriers are not exempt under Section II.A.2. of these guidelines.

h. In determining HCS funding, the Commission will consider all relevant factors, including the carrier's return on equity.

2. **Low-Income Support Withdrawal**

The calculation of the low-income subsidy will be the amount accrued by any LEC for discounting or waiving rates for services delineated under the low-income support program. The calculation of the amount of subsidy required for touch tone service, will be based on the actual incremental cost of providing that service. The calculation will be based only on program costs that are not recoverable through any other available subsidies or tax credits.

F. **Universal Service Fund Administration**

1. The USF shall be managed by a neutral, third-party administrator, which will be selected by the Commission through a request for proposal (RFP) process and will be subject to the Commission's oversight.

2. The ongoing necessity of an intrastate USF will be reviewed periodically by the Commission and the fund administrator.

XIV. NUMBER PORTABILITY

A. Principle

End users should have the ability to retain the same telephone number as they change from one service provider to another as long as they remain in the same location, or when moving within the same wire center and exchange area.

B. Definitions

Number portability refers to the ability of end users to retain their telephone numbers when they change their service, service provider, and/or their location.

1. **Service Number Portability**

Service number portability is the ability of end users to retain the same telephone number as they change from one type of service to another (e.g., POTS to ISDN).

2. **Location Number Portability**

Location number portability is the ability of end users to retain the same telephone number as they move from one NXX location to another.

3. **Service Provider Number Portability**

Service provider number portability is the ability of end users to retain the same telephone number as they change from one LEC to another, without changing service locations.

4. **Location Routing Number**

Location Routing Number (LRN) refers to an industry-developed call model to support permanent service provider number portability. LRN is a database system which does not rely on an absolute need to transport ported calls through the ILEC's network. Unlike RCF and DID, LRN should allow for enhanced calling services which rely on number identification (e.g., Caller ID, Call Trace, and blocking).

C. **Commission Requirements**

1. A facilities-based LEC not offering LRN service provider number portability shall provide interim service provider number portability on an RCF or DID basis.

2. All facilities-based LECs shall provide LRN service provider number portability in accordance with the guidelines established below, and a time frame and manner to be established by the Commission in response to a open state-wide workshop.

3. The Commission shall schedule a state-wide LRN number portability workshop within 120 days of the issuance of these guidelines. The workshop will seek to establish the time frame and manner of the implementation of LRN number portability in the state of Ohio.

D. Ohio Permanent Service Provider Number Portability Guidelines

1. Impact on End Users

a. Call redirection must be transparent to end users.

b. Dialing party must have an indication of a call's toll status.

c. There shall be no loss of functionality, quality of service, or access to services. Access to 9-1-1, E-9-1-1, information, and other services shall remain available.

2. Impact on Local Service Provider

a. The Ohio permanent number portability solution must be compatible with Intelligent Network (IN) and Advanced Intelligent Network (AIN) software, must support essential services, and must allow for tandem interconnection.

b. Current transmission quality, call set-up/delay, reliability, and other applicable standards must continue to be met.

c. The Ohio permanent number portability solution must not require transport through the ILEC's network for call completion.

d. Non-number portability capable networks must be able to interconnect.

e. Any operator must be able to perform a busy line verification of a ported number line, and must be able to handle collect calls, third-party billing, and Call Trace.

3. Miscellaneous Requirements

a. The Ohio permanent number portability solution shall efficiently use telephone numbers and must not accelerate the depletion of numbering resources.

b. The Ohio permanent number portability solution should be of an open network architecture, free of licensing fees.

c. The Ohio permanent number portability solution must be expandable to location portability capability.

XV. DIRECTORY LISTINGS

A. Requirements of Minimum Telephone Service Standards

LECs shall be required to adhere to the Minimum Telephone Service Standards (MTSS) regarding the provisioning of directories and directory assistance.

1. A LEC shall provide each of its subscribers, free of charge, a single, comprehensive, printed directory for all telephone numbers with the exception of non-published or non-list phone numbers within the LEC's local calling area (As detailed by the MTSS).

2. Directory assistance listing and intercept service shall be provided in accordance with the Commission's MTSS.

B. Provisioning

LECs may purchase the provisioning of published directories and directory assistance from other providers. Regardless of whether the ILEC provides published directories and directory assistance itself or purchases such provisioning from another entity, the LEC will be considered the provider of the directory and directory assistance as it pertains to adherence to the MTSS.

C. Competitive Listings

1. Upon a bona fide request, a LEC shall include in its standard published directory listing and directory assistance listing a listing of, at least, the requesting LEC's customers within the geographic region served by the requested LEC's current directory.

2. Upon a bona fide request, a LEC shall provide a listing of, at least, all of its customers within the requesting LEC's service area.

3. Prices for such provision of directory listings and directory assistance listings shall be set at a level that allows the requested LEC to recover the TELRIC of providing such services and a reasonable contribution

to the joint and common costs incurred. The allocation of joint and common costs shall be in accordance with the method described in Section V.B.4.c. of these guidelines.

D. Updates to Listings

1. All requests for printed listings of competitor's customers will be implemented at the next regularly scheduled update of the directory provider's printed directory (as detailed by the MTSS).

2. All requests for directory assistance listings and updates of competitor's customers will be implemented as requests are received in a manner and time commensurate with the directory provider's treatment of its own new subscribers and as required under the MTSS.

XVI. INTERCONNECTION TECHNICAL STANDARDS

A. Disclosure Requirements

Where one LEC seeks interconnection to another's network, both parties shall be required to disclose to each other any and all technical requirements necessary to ensure compatibility between networks and integrity of service in their respective service areas.

B. Costs of Network Modifications

To the extent a LEC's technical requirements involve any addition to or modification of existing standard interconnection arrangements, the costs of such additions and/or modifications to be compatible with such a non-standard interface shall be negotiated between the interconnecting parties. In the event of a dispute between such parties, the Commission will establish whatever process it deems appropriate to resolve the dispute.

C. Facilities

Each LEC is individually responsible to provide those network functionalities within its service territory that are necessary for routing, transporting, and billing traffic to and from other certified LEC's networks.

D. Minimum Compliance

Upon interconnection with another's network, LECs must, at a minimum, comport with current Commission MTSS requirements, as well as any existing state and industry technical standards necessary to facilitate the seamless and transparent transmission of a call between companies.

E. **Availability of Technical Standards**

A LEC must make available to other LECs technical interfaces that are at least equal in quality to that which it provides itself, or any subsidiary or affiliate. Furthermore, any technical interfaces provided to an interconnecting LEC must also be made available under the same terms and conditions to other LECs making substantially similar requests.

F. **Notice of Changes in Technical Requirements**

If a LEC intends to alter its technical requirements in a manner that will affect its existing or anticipated interconnection arrangements in any way, the LEC must provide notice of its intentions to all interconnecting parties, the Commission, and all other interested parties. Such notice must be served by the LEC no less than six months prior to implementation of the respective technical changes, and must include at a minimum: (1) the date the changes are to occur; (2) the location(s) at which the changes are to occur; and (3) a description of the changes, in sufficient detail to enable the affected interconnecting parties to adequately respond.

G. **Service Quality Compatibility**

Each LEC is individually responsible for the quality of service it provides. Where requested, however, and to the extent technically feasible, LECs may implement joint network management controls to further overall service integrity. Where such monitoring is not technically feasible on the part of the NEC, the ILEC, if technically feasible, will perform these functions on the NEC's behalf, subject to time and materials charges, as mutually agreed upon.

H. **Federal Requirements**

Each LEC is solely responsible for participation in and compliance with any federally mandated technical standard requirements.

I. Support Functions

LECs are not responsible for providing services to each other's end users; however, where one LEC's limitation or lack of facilities dictates, the competing parties must establish arrangements to ensure that support functions (e.g., 9-1-1, operator services, directory assistance, telecommunications relay service, etc.) are available to the customers of both LECs.

XVII. CONSUMER SAFEGUARDS

The following provisions apply to all LECs, including switchless rebillers, resellers, and other local telecommunications carriers operating in the state of Ohio.

A. Customer Education

LECs are responsible for providing their customers with informational, promotional, and educational materials explaining the carrier services, rates, and customers' options. Such materials must also be submitted to the Commission's Consumer Services Department and OCC. These materials include, but are not limited to, the notices required by Section VI. of these guidelines. In those situations where a notice requirement has been or will be placed on LECs by the Commission, such notice requirement takes precedence over this section. These materials shall be written in such a way that allow customers to make comparisons between comparable services. Such information should include basic information such as:

1. An explanation of the nature of the service, its application, and any restrictions or limitations;

2. If services are bundled, an identification and explanation of individual service components and associated prices;

3. An identification and explanation of any one-time, nonrecurring charge(s);

4. An identification and explanation of recurring charge(s) (i.e., usage, access, etc.); and

5. An identification of any special attributes of this service.

The Commission may require, review, or request modification of customer notices, billing information, or other customer education materials. Copies of all informational and educational materials for residential services shall be provided to OCC at the same time such materials are provided to the Commission.

B. **Marketing Practices**

1. No LEC shall commit an unfair, deceptive, or unconscionable act or practice in connection with a consumer transaction. Such an unfair, deceptive, or unconscionable act or practice by a LEC violates these guidelines whether it occurs before, during, or after the transaction.

2. Engaging in any of these unfair, deceptive, or unconscionable acts or practices constitutes unjust, unreasonable, and inadequate service under Section 4905.26, Revised Code.

3. No LEC shall make any offer for services in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer any material exclusions, reservations, limitations, modifications, or conditions. Disclosure shall be easily legible to anyone reading the advertising or promotional literature and shall be sufficiently specific so as to leave no reasonable probability that the terms of the offer might be misunderstood.

4. Offers made through radio or television advertising must be preceded or immediately followed by a conspicuously clear and oral statement of any specific exclusions, reservations, limitations, modifications, or conditions.

5. All LECs are prohibited from the practice of advertising or offering goods or services as "free" when in fact the cost of the "free" offer is passed on to the consumer by raising the tariffed price of the goods or services that must be purchased in connection with the "free" offer.

6. Subscriber enrollment shall only occur upon the customer affirmatively selecting (positive enrollment) the pertinent service(s). Negative enrollment by the LECs shall not be permitted unless otherwise ordered by the Commission.

7. It shall be the duty of the LEC to preserve the privacy of customer proprietary information and transactions to acquire local exchange service and protect such information and transactions from commercial abuse.

   In addition to the guidelines on CPNI set forth in Section XI.C. of these guidelines, a LEC or any LEC affiliate shall not, without the prior affirmative, written consent of the customer, provide to any telecommunications equipment manufacturer or telecommunications provider CPNI for use with or in connection with the manufacturing of telecommunications equipment or the provision of local exchange, interLATA, information, enhanced, or video services that are disseminated by means of such LEC's or any of its affiliates' facilities.

8. All LECs shall comply with all existing and future Commission orders relating to customer notice/education requirements (e.g., inside wire). Failure to comply with such requirements violates the MTSS, Rule 4901:1-5-23 (A), Ohio Administrative Code, which requires that "each local exchange company shall provide the information and assistance necessary to enable an applicant or subscriber to obtain the most economical local exchange company-provided services conforming to his or her stated needs." Further, the Commission may seek appropriate remedies under Sections 4905.54 and 4905.57, Revised Code.

9. If, upon complaint of a customer or upon its own motion, the Commission finds that the practices of any LEC with respect to the marketing of its services or products are unjust or unreasonable, the Commission may require the practices of such LEC to be discontinued and/or may prescribe the practices to be observed by such LEC in its marketing of regulated services.

10. The Commission's Consumer Services Department shall oversee LEC marketing practices by:

    a. Monitoring complaints received by the Public Interest Center regarding LEC marketing activities;

    b. Reviewing sales scripts and marketing manuals utilized by LEC sales and customer service personnel when deemed necessary to monitor marketing practices;

    c. Reviewing LEC advertising and promotional literature when deemed necessary to monitor marketing practices;

d. Monitoring live telephone sales presentations by customer service representatives when deemed necessary to monitor marketing practices;

e. Recommending needed procedure modifications; and

f. Providing regular updates to the Commission regarding the Consumer Services Department's findings.

C. **Local Service Carrier Subscription/Slamming**

1. No subscriber's LEC may be changed unless and until the change has first been confirmed in accordance with one of the following procedures:

   a. A subscriber's LEC may be changed when the LEC has obtained the subscriber's written authorization on a letter of agency (LOA) that explains what occurs when a subscriber's LEC is changed.

      i. The LOA shall be a separate document and its sole purpose is to authorize a LEC to initiate a primary LEC change. If the subscriber will incur a charge as a result of changing LECs, the LOA must contain a notification to the subscriber that a charge will be assessed to him/her as a result of the charge. The LOA must be signed and dated by the subscriber to the telephone line(s) requesting the carrier change.

      ii. The LOA shall not be combined or utilized in conjunction with promotions (e.g., sweepstakes) of any kind. The LOA may be combined with checks that contain only the required LOA language described below and the necessary information to make the check a negotiable instrument. The LOA check shall not contain any promotional language or material. The LOA check shall contain, in easily readable, bold face type on the front of the check, a notice that the consumer is authorizing a primary LEC change by signing the check. The LOA language shall also be placed near the signature line on the back of the check.

      iii. At a minimum, the LOA must be printed with a type of sufficient readable size and type to be clearly legible and must contain clear and unambiguous language that confirms:

a. The subscriber's billing name and address and each telephone number to be covered by the LEC change order;

b. The decision to change the LEC from the current LEC to the prospective LEC;

c. That the subscriber designates the LEC to act as the subscriber's agent for the LEC change;

d. That the subscriber understands that only one carrier may be designated as the primary LEC for any one telephone number. Any carrier designated as the primary LEC must be the carrier directly setting the rates for the subscriber; and

e. That the subscriber understands that any change in LECs may involve a charge for such change.

iv. LOAs shall not suggest or require that a subscriber take some action in order to retain the subscriber's current LEC.

b. A subscriber's LEC may be changed once the new LEC has obtained the subscriber's electronic authorization, placed from the telephone number(s) for which the service is to be changed, that confirms the information described in Section XVII.C.1.a. of these guidelines to confirm the authorization. LECs electing to confirm changes electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism, that records the required information (including questions and responses) regarding the change of providers, including automatically recording the originating Automatic Number Identification (ANI); or

c. A subscriber's LEC may be changed by way of an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative obtaining the subscriber's oral authorization to submit the change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number).

2. Requests for a change of LEC may take place immediately upon request. However, within three business days of the subscriber's request for a change of LEC, the new LEC utilizing enrollment options in Section XVII.C.1.b. or c., above, must send each new subscriber an information package by first class mail containing at least the following information concerning the requested change:

    a. The information is being sent to confirm a telemarketing order placed by the subscriber within the previous week;

    b. The name of the subscriber's current LEC;

    c. The name of the new LEC;

    d. A description of any terms, conditions, and/or charges that will be incurred;

    e. The name of the person ordering the change;

    f. The name, address, and telephone number of both the subscriber and the soliciting LEC;

    g. An LOA and postpaid envelope (the LOA should contain the information outlined in Section XVII.C.1.a., above, and should be returned to the soliciting LEC to be kept on file to confirm the subscriber's selection); and

    h. The address and telephone number of the Commission's Consumer Services Department for consumer complaints.

3. The verification procedures described above are not intended to substitute for written authorization from subscribers as evidence in a LEC change dispute. LECs must obtain LOAs for use in resolving disputes regarding all changes in subscriber service. Any LEC that violates the verification procedures described above and collects charges for the provision of local service from a subscriber shall rerate the subscriber's calls and be liable to the LEC previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation. Additionally, the subscriber may file a complaint under Section 4905.26, Revised Code, and the Commission may seek additional penalties and remedies against the

offending LEC under Sections 4905.54 and 4905.57, Revised Code, and any other applicable statute.

D. **End User Complaints**

An end user may contact the Commission's Consumer Services Department to lodge an informal complaint against a LEC. A formal complaint filed by an end user against a LEC will be considered by the Commission pursuant to Section 4905.26, Revised Code.

XVIII. REGULATORY OVERSIGHT

A. **Principle**

The Commission has an obligation to ensure that the regulatory framework for competing LEC is and remains consistent with the policy of the state as set forth in Section 4927.02, Revised Code.

B. **Monitoring of Competitive Market for Local Exchange Services**

1. The Commission shall monitor the implementation of the regulatory requirements prescribed to effectuate competition in the provision of local exchange services, as well as the impact of such requirements upon the local services market and the customers.

2. The Commission reserves the right to impose alternative requirements upon LECs in the event it determines modifications to the adopted guidelines are necessary or advisable to ensure an effective, competitive marketplace or as required by public interest considerations.

3. No later than three years after the adoption of these guidelines, the Commission shall review, on an ILEC-specific or industry-wide basis, the continuing appropriateness of the guidelines adopted herein in view of the number and size of alternative providers of local exchange services in the respective ILEC's service area, the extent to which services are available from alternative providers in the relevant market, the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions, and other indicators of market power, e.g., market share, growth of market share, ease of entry, and the affiliation of providers of services. The procedures to be followed in implementing any company-specific changes resulting from such review shall be determined with respect to the

applicable form of regulation under which the company is operating at the time.

4. Should an ILEC desire to be relieved of certain duties and responsibilities established by these guidelines prior to the Commission's review pursuant to Section XVIII.B.3., above, it may request such relief in an alternative regulation proceeding pursuant to Section 4927.04, Revised Code, or in a proceeding filed pursuant to Section 4927.03, Revised Code.

C. Resolution of Disputes Among Carriers

1. Under its authority pursuant to Section 4905.26, Revised Code, the Commission will consider carrier-to-carrier complaints. In carrier to-carrier complaints concerning issues other than implementation of interconnection arrangements, the Commission will issue a procedural entry in these cases within 30 calendar days of the filing of the complaint, and will endeavor to conclude the case within 180 calendar days.

2. A carrier-to-carrier complaint involving implementation of interconnection arrangements filed pursuant to Section 4905.26, Revised Code, shall be subject to the following streamlined complaint procedure:

   a. A copy of the complaint shall be served upon the respondent, the chief of the telecommunications division of the Utilities Department, and the chief of the telecommunications section of the Legal Department on the same day it is filed with the Commission. Service in this instance equates to actual delivery.

   b. Discovery may commence upon the filing of the complaint and responses to discovery must be provided to the requesting party within two business days.

   c. An answer and any other responsive pleading to the complaint shall be filed and served at the same time upon the complainant, the chief of the telecommunications division of the Utilities Department, and the chief of the telecommunications section of the Legal Department within 5 calendar days of the date on which the complaint was filed.

   d. A prehearing conference shall be held within 10 calendar days of the date on which the complaint was filed; and

e. A determination as to reasonable grounds and, if appropriate, an order directing legal notice of a hearing shall be issued within 15 calendar days of the date on which the complaint was filed.

F. The hearing shall commence within 40 calendar days of the date on which the complaint was filed.

g. The Commission will endeavor to issue its decision in the complaint case within 90 calendar days of the date on which the complaint was filed.

h. In any given case, if the Commission perceives that there is a threat to competition and the public interest, the Commission may seek appropriate injunctive relief.

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Approval of Fresh Look Notification	))	Case No. 97-717-TP-UNC
In the Matter of the Application of NEXTLINK Ohio, L.L.C. for a Certificate of Public Convenience and Necessity to Provide Switched Local Exchange Services in the State of Ohio.	)))))	Case No. 96-1036-TP-ACE
In the Matter of the Application of Brooks Fiber Communications of Ohio, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Telecommunications Services in Certain Specified Areas in Ohio.	))))))	Case No. 96-349-TP-ACE

FINDING AND ORDER

The Commission finds:

(1) In a Finding and Order (the 845 Order) issued June 12, 1996, in Case No. 95-845-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, the Commission established a new regulatory framework for the provision of local exchange competition within Ohio.[1] Among other items, this new regulatory framework included a provision designed to afford local exchange carrier customers' with long-term contractual arrangements a limited opportunity to decide if they desired to avail themselves of a competitive alternative local service provider. This limited opportunity has been labeled fresh look.

Subsequent to the issuance of the 845 Order, the Commission has had two opportunities to further consider and modify these fresh look requirements. The most recent requirements concerning fresh look are contained in Appendix A attached to the February 20, 1997, Entry on Rehearing.[2] Fresh look is

1 The 845 Order and attached guidelines were subsequently modified and clarified by entries on rehearing issued November 7, 1996, and February 20, 1997.

2 The requirements set forth in Appendix A have been labeled local competition guidelines by the Commission. As such, when referring to the provisions contained in Appendix A throughout this Finding and Order we will refer to these provisions as "Guidelines".

EXHIBIT

"E"

triggered when the first interconnection arrangement is operational in a given market. New entrant carriers (NECs) are obligated to file notice of its operational interconnection arrangement in its certification proceeding as well as serve notice upon the chief of the Commission's telecommunication division. The Guidelines further reflect that the Commission will verify the date on which the fresh look period commences.

(2) In conformance with the requirements of Guideline VI.J.2, NEXTLINK Ohio, L.L.C. (NEXTLINK), Brooks Fiber Communications of Ohio, Inc. (Brooks Fiber), and ICG Telecom Group Inc. (ICG) notified the Commission by letters dated May 1, May 9, and June 23, 1997, respectively, that their interconnection arrangements were operational. NEXTLINK appended to its letter a list of issues on which the company sought clarification prior to initiating the fresh look window.

(3) In an effort to gather all interested persons' comments and provide carriers with an opportunity to express additional questions and concerns which might not have surfaced during deliberations of the local service Guidelines, the Commission sponsored a public meeting at the offices of the Commission on May 14, 1997. At that meeting, a procedure was established whereby interested persons could comment on the issues propounded by NEXTLINK and other related matters discussed during the meeting. Initial comments were due May 22, 1997, and reply comments were due May 28, 1997.

(4) Initial and reply comments were timely submitted by NEXTLINK, Time Warner Communications of Ohio, L.P. (Time Warner), OCOM Corporation (OCOM), Telecommunications Resellers Association (TRA), AT&T Communications of Ohio, Inc. (AT&T), and Ameritech Ohio (Ameritech). Initial comments were timely submitted by ICG, Communications Buying Group, Inc. (CBG) and ALLTEL Ohio Inc. and Western Reserve Telephone Company (collectively ALLTEL). Reply comments only, were timely submitted by GTE North Incorporated (GTE).

MCI Telecommunications Corporation (MCI) and Brooks Fiber timely submitted initial comments. Both companies, however, filed reply comments one day after the May 28, 1997, deadline requesting that the comments be accepted as timely filed because it was not possible to submit reply comments on the due date due to the press of other business. In addition, fresh look comments were filed by Voice-Tel, Eastland Telecommunications Consulting, Inc., and the city of Columbus on June 24, June 30, and July 1, 1997. Because no commenting party is prejudiced thereby, the late-filed comments submitted by MCI, Brooks Fiber, Voice-Tel, Eastland Telecommunications Consulting, Inc. (Eastland), and the city of Columbus (Columbus) are accepted as timely filed.

(5) Before proceeding with a discussion of the comments filed in response to the May 14, 1997 meeting, the Commission deems it appropriate to highlight the provisions of fresh look as set forth in Guideline VI.J and to reflect on the rationale for adoption of this provision. Fresh look is an opportunity for certain end user customers who have long-term contracts entered into in a monopoly environment to avail themselves of competitive alternatives once a new entrant provider is operational in their market. To be eligible for fresh look, the end user customer must have more than two years remaining on their contract when the Commission verifies that the first interconnection arrangement is operational in the relevant market. Specifically, fresh look applies to portions of contracts involving local exchange services which were not subject to effective competition at the time the contract was entered into (including Centrex services) or to entire contracts where local termination liability can not be severed from non-local services.

The Commission will verify the time frame for opting out of contracts subject to this Guideline. This window of opportunity will last 180 days. In addition, the Commission will determine how customers are to be notified of this fresh look opportunity. If an end user customer decides to terminate the remaining years of an existing contract, the involved carrier has a right to charge for the termination of that contract. Termination liability has been limited, however, to the difference between the amount the customer has already paid versus the amount the customer would have paid had the customer taken the contract for the shorter term actually used.

Our primary motivation in adopting fresh look has been and continues to be our desire to spur the development of a competitive market in Ohio. Fresh look is intended to provide an incentive for new entrants to invest in a market which would otherwise be very difficult to enter given that the incumbent local telephone company holds 100 percent of the market share, and, in light of the fact that many of the most lucrative customers are locked into long-term, contracts. Fresh look is also intended to give end user customers the opportunity to take advantage of competitive alternatives at the very inception of competition. Bringing competitive benefits to end user customers serves as the cornerstone for recent federal legislation[3] as well as certain legislative initiatives adopted by the Ohio General Assembly and related administrative policy determinations made by this Commission. Our fresh look initiatives have always attempted to weigh the positions expressed by the new entrant carriers seeking to enter Ohio's local exchange markets against the interests of the incumbent local exchange carriers (ILECs) who have, for the most part, served our citizens well. Even in this balancing, however, we continue to consider what we believe provides the most benefits to Ohioians. With this rationale in mind, we proceed to address the issues raised by the parties in the initial and reply comments.

(6) All of the questions/issues raised by interested persons concerning fresh look will be addressed in Finding (6). For clarity purposes, the questions as posed will appear in bolded text followed by the parties comments and then our conclusions on each question prior to moving onto the next issue.

a. When is an interconnection arrangement operational?

Time Warner, CBG, MCI, Brooks Fiber, Columbus, and AT&T maintain that, to ensure that consumers have reasonably available choices, the Commission must verify that systems are in place for all competitors to have the opportunity to offer services at parity with the ILEC. This means, according to these commenters, that the Commission must verify that parity exists for the ordering, operation, billing, and maintenance of the services to be offered by the NECs. AT&T and CBG note that effective competition can not take place without operation support systems (OSS) operating effectively which is not the case today. MCI, Voice-Tel, and Eastland contend that the minimum threshold for determining if a NEC is operational should be the availability of permanent number portability (LNP) in such market. However, even

[3] Applicable federal legislation includes the Telecommunications Act of 1996 which substantially modified existing telecommunications law embodied in the 1934 Communications Act.

with the implementation of LNP, MCI recommends that the Commission still verify that the interconnection agreements are fully operational.

Ameritech argues that "operational" means when the interconnection arrangement is in place and the NEC is marketing local exchange services. Ameritech maintains that by focusing on OSS, the NECs are attempting to unreasonably extend the triggering of fresh look to afford them more time to prepare their businesses to compete against the ILECs. In any event, Ameritech argues that NECs today are using Ameritech's OSS to provide local exchange services to end user customers.

In adopting the concept of an "operational" interconnection arrangement, we envisioned a straight-forward, easily identifiable standard to be applied. In our view, those criteria which signal that an operational interconnection arrangement is in place in a given market are: 1) certification as a provider of basic local exchange services; 2) an approved final tariff on file with the Commission; 3) an executed, approved interconnection arrangement or the ability to purchase out of another local exchange carriers' tariff for the purpose of providing basic local exchange services; and 4) completion by the new entrant of its first commercial call. Fresh look is not triggered in a market until all of the criteria listed above have taken place.

It is also obvious, based upon the comments submitted on this issue, that the industry is not clear on our rationale for adopting a fresh look notice procedure. Declaring a fresh look opportunity for customers subject to certain long term contractual arrangements does not mean, in our view, that full competition exists for local exchange services. Rather, fresh look is another necessary step the Commission is taking to move toward development of a full and effective competitive local market by affording customers an opportunity to reconsider long term contracts entered into with incumbent providers when the prospect of alternative choices for local service did not exist. In other words, a fresh look declaration does not translate, in our view, into a determination that a fully competitive market is in place.

Further, we wish to make clear that the fact that a carrier is operational for purposes of qualifying for a fresh look window does not necessarily mean that Ameritech has met the conditions set forth in Section 271(c)(2)(B) of the 1996 Act (otherwise referred to as the competitive checklist). We view fresh look and the competitive checklist as two independent determinations with two entirely different purposes. Support for our view that fresh look and the competitive checklist are separate issues can be found in a recent FCC decision on a SBC Communications, Inc. petition seeking relief from the prohibition on Bell Operating Company (BOC) offering in-region, interLATA telecommunications services.[4] In that decision the FCC found that

> Section 271(c)(1) and the competitive checklist in Section 271(c)(2)(B) establish independent requirements that must be satisfied by a BOC applicant. Thus, the fact that a BOC has received a request for (an) access and interconnection agreement that, if implemented, will satisfy Section 271(c)(2)(A), does not mean that the interconnection agreement, when implemented, will necessarily satisfy the competitive checklist.

In other words, just as the FCC views interconnection agreements and the competitive checklist as two independent determinations, we, likewise, view fresh look and the competitive checklist as having two entirely different purposes.

b. When does the 180 day (fresh look) period begin?

ALLTEL, GTE, and Ameritech claim that the NECs clearly have a duty to notify the Commission within five calendar days once their interconnection agreement is operational. Failure to notify the Commission should not toll the start of the 180 day window ALLTEL maintains. Citing to numerous instances in which NECs have approved interconnection agreements and have failed to notify the Commission of this fact, Ameritech recommends that the Commission order NECs to publicly file a report in their certification cases indicating when and where they began to actively market local exchange services, information concerning NEC contracts, and

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4 *In the Matter of the Application by SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, adopted June 25, 1997, and released June 26, 1997.

information concerning the activation of interconnection arrangements. Further, Ameritech contends that in those markets, such as Cleveland, where the NECs have failed to comply with the Commission's directives, the fresh look period should be considered to have commenced when a NEC that has an approved interconnection agreement began actively marketing local service. According to Ameritech, this means that fresh look has expired in Cleveland.

AT&T, CBG, OCOM, and Brooks Fiber maintain that before the Commission can initiate the 180 day fresh look opportunity, the Commission must verify that the incumbent local exchange carriers (ILECs) have in place fully operational mechanisms so that NEC ordering, operations, billings, and maintenance is offered to NECs at parity with how the ILEC treats itself. MCI contends that fresh look should not be triggered in any market where there is only a single NEC or small group of NECs offering only a limited range of services. ICG claims that fresh look should start on a metropolitan statistical area (MSA) in each major market as quickly as possible. In those major markets for which a notification has been received, the start date should occur no later than July 1, 1997. Responding to Ameritech's comments, NEXTLINK notes that adopting Ameritech's approach is obviously prejudicial to those NECs, such as NEXTLINK, that have fully complied with the Commission's requirements to initiate fresh look. More important, NEXTLINK avers, is that the customers who are supposed to benefit from fresh look would be harmed by adoption of Ameritech's approach; particularly those in Cleveland who had no realistic opportunity to benefit from fresh look due to the confusion over these outstanding issues.

Guideline VI.J.2 is clear and unambiguous. The fresh look opportunity exists for 180 days from the date the first interconnection arrangement is operational in a given market. NECs are responsible for notifying the Commission as of the date when the first interconnection arrangement is operational by filing notice in its certification case and serving a copy on the chief of the telecommunications division within five calendar days after commencement of operations. The Commission shall verify the date on which the 180 day time frame commences.

To date, letters have been received from NEXTLINK (Cleveland and Columbus), Brooks Fiber (Toledo), and ICG

(Akron, Cleveland, Columbus, and Dayton) seeking to open the fresh look window.[5] Ameritech has also presented some evidence that other NECs have been marketing service to customers in Ohio. Arguably, the fresh look window should have already begun in some of these markets. However, due to the apparent confusion which exists among the ILECs as well as the NECs concerning fresh look, we find that it is reasonable to initiate the fresh look opportunity as further clarified herein. In fact, as NEXTLINK notes, it would not be fair to customers to deprive them of a fresh look opportunity in light of the confusion which has surrounded fresh look to date.

NEXTLINK, ICG, Time Warner, and Brooks Fiber as well as any other operational NECs are directed to file notice in the form adopted in a companion entry today in 845 identifying those markets in which they are currently seeking to obtain customers (as defined in a. above) within five calendar days of this Finding and Order. Pursuant to the requirements found in the 845 Guidelines, the Commission by separate entry shall verify the date on which the 180 day fresh look opportunity commences. Should a NEC fail to comply with this directive, we will, aside from other appropriate legal remedies, consider starting the window on the first day of operations, even if that means a shortened fresh look window.

Rather than have fresh look letters docketed solely in a NEC's certification case which would involve us tracking several dockets, we believe a simplier method would be to have these fresh look letters deposited in one docket. Therefore, we have caused Case No. 97-717-TP-UNC to be opened which shall serve as a repository for all fresh look letters.

In making this determination, we specifically reject Ameritech's suggestion that the fresh look window has already commenced or in fact closed in any Ohio market. Adoption of Ameritech's recommendation would not benefit customers in those markets, which is our primary concern. However, we are very concerned with Ameritech's allegations that NECs have been offering local exchange services to end user customers (primarily business customers) without notifying the Commission and without triggering the fresh look window. As noted above, NECs have argued in support

5 By letter docketed on July 8, 1997, Time Warner informed the Commission that it was operational pursuant to the 845 Guidelines on July 2, 1997.

of their position that they have not considered their interconnection arrangements operational because, they allege, they do not receive service at parity with how the ILECs' treat their own customers. As discussed previously, we reject these arguments as inconsistent with the purpose behind granting a fresh look.

c. **Should contracts which have been entered into by ILECs after a NEC becomes operational be subject to a fresh look?**

Ameritech maintains any contracts entered into by an ILEC in an area where a NEC has an operational interconnection arrangement and has been actively marketing should not be subject to a fresh look (i.e., Cleveland and Columbus).

Fresh look is intended to afford customers an opportunity to avail themselves of competitive alternatives once the Commission verifies that a NEC has an operational interconnection arrangement. As noted in response to the previous question, we will be declaring a fresh look opportunity, very soon, in certain telephone markets throughout Ohio. Therefore, to the extent we have not heretofore verified that a competitive alternative exists in any Ohio market, all ILEC contracts in existence today that meet the defined criteria are eligible for a fresh look. We note that the ILEC, including Ameritech, will be reimbursed, through termination liability, as if the customer had originally contracted for service for a shorter time frame.

d. **Does the 180 day window extend to time which customers sign contracts for service or time when service is actually installed?**

NEXTLINK, Brooks Fiber, and Time Warner posit that the 180 day window should include the time within which customers sign contracts for services with a NEC. AT&T believes that this issue has already been addressed by the Guidelines and that the 180 days is the period the customer has to sign service with another local service provider. Time Warner contends that installation should occur within a reasonable period of time (three months) after signing a contract. ALLTEL and GTE, on the other hand, aver that service should be installed during the fresh look time frame because customers could be harmed if a NEC is unable to provision service for months after expiration of the 180 day time frame.

Upon reflection on the comments received on this issue, we clarify that contracts between customers and NECs must only be signed during the 180 day fresh look window. We do not believe it is necessary for service to be installed during the fresh look window. In so deciding, we reject the positions of ALLTEL and GTE that a NECs' service has to be installed during the fresh look window. Customers should be able to take the full allotment of time to investigate and decide whether to terminate an existing contractual arrangement and enter into an arrangement with a competing carrier. We do not foresee ALLTEL's concerns coming to fruition though because NECs, as the new players in the local market, have every incentive to deliver service to their customers in the manner promised. To do otherwise could doom the NEC to failure. In any event, it is ultimately the customers responsibility to work with the ILEC and the NEC to insure that the customer continues to receive service coverage during this transition.

e. **Does the fresh look window apply to only incumbent provider contracts and not long term contracts signed by customers with new entrant carriers?**

NEXTLINK, CBG, and ALLTEL contend that fresh look only applies to ILEC contracts. Time Warner suggests that there may be two fresh look windows. The first would only apply to ILEC contracts but the second could apply once a competitive market is established or in the event the NEC is reclassified as an ILEC pursuant to the 1996 Act. Brooks Fiber and ICG, on the other hand, maintain that, to the extent a NEC is merely reselling an incumbent providers services, it continues to be an ILEC arrangement and should be subject to a fresh look requirement.

As set forth in Guideline VI.J.1, fresh look applies to long term customer contracts with ILECs. In reaching this determination, we envisioned that fresh look would be a one-time event triggered by the operations of the first new entrant provider in a given local exchange market. We do not anticipate that fresh look for a given market will be declared by this Commission more than once. We will address below the issue of NEC resellers.

f. If a long-term contract has an automatic renewal feature for one or more of the services contained in the long-term contract, is the two-year period (remaining on the contract) measured for only the initial portion of the contract, or for any of the renewal period(s) as well?

NEXTLINK, Brooks Fiber, and Time Warner suggest that automatic renewal options be included with the original term of the agreement for determining time left on a customer contract. Brooks Fiber would also include periods renewable at the option of the customer in order to calculate time remaining on a contract for fresh look. ALLTEL and Ameritech assert that only the period which the customer is legally bound by the contract and any termination liability provisions is the appropriate time frame to consider. If the customer can elect to not exercise a renewal option (or other customer option periods which permit the customer to terminate the agreement without termination liability), then that renewal period should not be considered for purposes of calculating the remaining term. Further, optional renewal periods allow the customer to freely leave a contractual relationship and any obligations before the renewal period begins and should not, therefore, be included according to Ameritech.

For purposes of calculating the remaining term of a contract, we clarify that it is only the remaining term of a contract to which the customer is legally obligated that should apply. In other words, renewals that are optional by the customer and automatic renewals will not be included for purposes of determining the remaining term of a contract subject to fresh look provided that, in exercising the option *not* to renew a contract, the customer is not subject to termination liability.

g. Is it possible for the 180 day window to be delayed until the Commission has addressed these outstanding issues?

Brooks Fiber, NEXTLINK, Columbus, and Time Warner maintain that the fresh look opportunity should not begin until the Commission clarifies the issues which are the subject of these comments. Time Warner, ICG, and NEXTLINK further explain that they do not wish to delay the implementation of fresh look needlessly, however, given the importance of these matters, a couple of months delay to work out these issues is acceptable. ALLTEL and Ameritech reiterate that the fresh look opportunity begins from the date the first interconnection arrangement is operational in a particular market.

With this Finding and Order we have clarified concerns surrounding fresh look and have set up a procedure to initiate the 180 day time clock. Contrary to the arguments of ALLTEL and Ameritech, however, we point out that the Commission verifies when an interconnection arrangement is operational and starts the fresh look time frame. Fresh look does not commence merely upon notice that an interconnection arrangement is operational.

h. How will the public be informed about the fresh look window in an unbiased and neutral manner?

NEXTLINK, AT&T, ICG, MCI, and Time Warner agree that it would be beneficial for the Commission to sponsor some official notification concerning fresh look prior to opening the 180 day time frame. Various notification proposals were submitted. NEXTLINK, AT&T, and ICG agreed with the concept of a Commission-sponsored brochure that would be available to customers explaining fresh look. NEXTLINK expanded on the concept by suggesting that the brochure include information on the ILECs' obligations under fresh look and the effective and termination dates for the fresh look window. MCI favors a written notice that the NECs may duplicate and distribute. Time Warner and NEXTLINK support the concept of putting fresh look information on the Commission's Internet website. MCI further recommends that the Commission establish a toll free fresh look hotline or automatic faxback center to answer fresh look inquiries and that the Commission produce general media announcements. Time Warner supports Commission notification to the involved chambers of commerce.

Brooks Fiber, AT&T, and Time Warner suggest some level of ILEC involvement in notifying customers of the availability of fresh look. Brooks Fiber and AT&T recommend that the ILECs inform customers of their fresh look opportunities by newspaper publication submitted to the Commission for prior approval. Brooks Fiber would also afford NECs an opportunity to comment on the newspaper notice. Time Warner proposes that ILECs be required to provide bill inserts to customers as well.

Ameritech maintains that the Commission has already determined the ILECs' obligations on the issue of fresh look. Citing to Guideline VI.J.1, Ameritech asserts that the ILECs obligations to discuss fresh look opportunities are solely triggered upon customer inquiry. This approach, according to Ameritech, properly places responsibility for customer notice on the NECs marketing efforts. Moreover, any general notice produced by the Commission would be unproductive, Ameritech claims, because NECs operating in a specific market may not be interested in certain business customer segments. Consequently, any expenses associated with customer notification should be borne by the NECs as they will be the beneficiaries of such notice Ameritech asserts. As a final matter on this issue, Ameritech contends that NECs, in all marketing efforts, should be required to disclose to their potential customers that termination liability will apply. GTE and ALLTEL concur with Ameritech's arguments.

The Commission has substantial interest in seeing that competition develops to the maximum extent possible so that customers may benefit therefrom. To that end we commit to use our regular notification mechanisms to advise customers when a fresh look opportunity has been declared for their market. Specifically, the Commission anticipates issuing press releases to media outlets and chambers of commerce in the affected area, posting information concerning fresh look on our Internet website, and creating a neutral, informational letter designed to educate customers which can be duplicated and circulated by NECs as an attachment to their marketing materials to advise customers of their fresh look opportunities.[6] Further, all these forms of notification will advise the viewer that for more information the customer may contact a

6 A copy of the informational letter is appended to this Finding and Order as Attachment 1.

special toll-free Commission-sponsored infoline. As a final matter, we commit to make these educational materials available concurrent with a Commission declaration of the fresh look window.

At this time, we reject the recommendations that ILECs have an affirmative obligation to educate customers on an ongoing basis regarding their fresh look opportunities. Nevertheless, we find that the ILECs should give a one-time fresh look notice to all its contract customers throughout Ohio the first time fresh look is declared in any one of the ILECs' exchanges. This one-time notice should be accomplished by bill insert using the format set forth in Attachment 2 of this Finding and Order. We also find that NECs should be primarily responsible for marketing their services to end user customers through whatever legal means they deem appropriate. We concur with Ameritech, however, that any such marketing should advise consumers that in order to be released from a long term contractual arrangement, termination liability may apply.

i. **How will the Commission determine which contracts are legitimately subject to the fresh look window in order to ensure that customers are not affected by disputes?**

Are there any situations in which Centrex services would not be subject to the fresh look provision?

Does fresh look apply to contracts for intraLATA toll?

ALLTEL argues that the criteria for determining whether a contract is subject to fresh look is already incorporated in Guideline VI.J.1. ALLTEL further asserts that Centrex services are competitive and thus, not subject to fresh look. However, should the Commission deem Centrex services as eligible for fresh look, this opportunity should only be available to the extent that the combined services, if any, are not severable from local service. Ameritech maintains that this determination will have to be made on a ILEC-by-ILEC, market-by-market basis. Fresh look should not, however, apply to intraLATA toll, since the Commission has found these service subject to competition since 1985[7], high capacity services (DS1, DS3), since these are classified as fully competitive Cell 4 services since 1995, nor to contracts entered into pursuant to Section 4905.34, Revised Code. In fact, citing to a recent Ohio Supreme Court case[8], Ameritech maintains that the Commission has no legal authority to declare contracts entered into pursuant to Section 4905.34, Revised Code, subject to fresh look.

Time Warner and ICG recommend that the ILEC be directed to create a list of those contracts subject to fresh look for Commission staff review. Criteria suggested by Time Warner for determining if a contract should be subject to fresh look includes contracts producing gross revenues of $25,000 or more per month or contracts with customers which are Fortune 500 companies or customers of Centrex. ICG and AT&T assert that any disputes concerning whether a contract is subject to fresh look should be resolved on an expedited basis. AT&T would require each ILEC to designate a single point of contact on fresh look issues. Further, according to AT&T, there should be a requirement placed on the disputing party (whether it is the ILEC or the NEC) to give the customer written notice of the issue it disputes. Brooks Fiber and AT&T likewise suggest that the time spent resolving the dispute should be added to the 180 day period during which to exercise the fresh look option. Columbus maintains that all ILEC services should be subject to fresh look in order to benefit the largest number of customers.

We believe that our local competition Guidelines sufficiently outline the factors that determine whether a customer contract is subject to this fresh look opportunity to avoid most disputes. We are reluctant, however, to attempt to list the types of services subject to fresh look because, as noted in our November 7, 1996, rehearing entry in 845, this could change on an ILEC-by-ILEC, market-by-market basis. In fact, in that rehearing entry, we found that the "fresh look provision

7 Case No. 84-944-TP-COI, Opinion and Order, April 9, 1985.

8 *Ohio Edison Co. v. Pub. Util. Comm.*, 78 Ohio St.3d 466 (1997).

applies to portions of contracts involving local services or to entire contracts where local termination liability is not severable from non-local services." We further modified this determination by stating "this fresh look provision need only apply to those contracts involving local services which were not, at the time they were entered into, subject to effective competition." We do not believe it is warranted for the ILECs to create a list of potential customers subject to fresh look. In every circumstance where there is a dispute concerning whether a particular contract or service should be subject to fresh look, we will endeavor to resolve such an issue in an expeditious fashion. At this time, however, we do not believe it is necessary to set up a process for automatically extending the fresh look window just because a dispute is pending. Rather, we reserve the right to consider extending the fresh look opportunity when faced with an actual controversy.

j. **Will termination liability be determined on a case-by-case basis?**

How is termination liability determined and by whom?

How will NECs be able to project termination liability where the ILEC has combined detariffed competitive services with basic local exchange services particularly when long term arrangements are filed on a proprietary basis?

NEXTLINK and CBG claim that termination liability must be determined on a case-by-case basis but that, because many contracts have become standardized, a determination of a liability should be easily determined over time. Nevertheless, NEXTLINK observes that the burden should always remain on the ILEC to prove the legitimacy of its proposed termination liability calculation. CBG also asserts that if termination liability can not be directly related to the recovery of the ILECs' costs to provide the service there is no basis for customer liability particularly in the last two years of a long term contract when all costs have been recovered. CBG further avers that the 1996 Act prohibited preferential treatment afforded ILECs concerning the filing of contracts on a proprietary basis and permitting ILECs to sell telecommunications service from documents only submitted to the Commission's staff.

MCI asserts that, since these contracts were entered into before the existence of true competition, the Commission should presume that the termination liability for a majority of contracts is zero. Should the ILEC dispute this presumption, MCI recommends that the NEC be provided an opportunity to review representative contracts or other redacted information and the Commission should resolve all disputes on an expedited basis. MCI also suggests that once the amount of the contract termination liability has been appopriately established, the customer should be given the option to pay such charges up front or over the remaining period of the ILEC contract had the contract not been terminated.

ICG argues that the information necessary for the customer to determine its termination liability will not be readily available. To rectify this situation, ICG suggests that ILECs be required to establish a toll free hotline number to address individual customer inquiries. ICG also maintains that fresh look must nullify any confidentiality afforded ILEC contracts if to do so will preclude the customer from participating in the fresh look opportunity. Columbus asserts that consumers need information regarding termination liability in a timely manner in order to take advantage of this fresh look opportunity.

AT&T and Brooks Fiber agree that the Commission should establish an easy-to-apply formula so that the customer can determine the applicable termination liability. In order to do so, however, AT&T and Brooks Fiber maintain that the Commission must establish some benchmark such as the best or lowest contract price the ILEC offers in the market for similar services so that the customer can determine the applicable termination liability essential to the exercise of their option. AT&T further avers that, in order for the NECs to verify that the ILEC has correctly calculated the customer's termination liability, ILEC contracts filed under seal must be made public. In case of disputes, Brooks Fiber recommends that the involved ILEC and NEC submit their calculations, workpapers, and rationales to the Commission who should determine the applicable termination liability.

Time Warner suggests that the Commission require the ILECs, upon customer request, to unbundle the services covered in a long term contract. A response to the customers inquiry should be provided within three business days of the request according to Time Warner. The burden of demonstrating termination liability and proving reasonable mitigation efforts must be placed on the ILEC. Time Warner recommends that termination liability be determined by a neutral third party such as a Commission staff person. Time Warner avers that, after awhile, a pattern will emerge much like the Commission's arbitration award process which is how the company envisions this process proceeding in the future. Provisions for mutually agreed upon termination liability should be encouraged to streamline the process in those cases where the parties can reach agreement. Additionally, the ILECs should be required to engage in good faith negotiations.

ALLTEL agrees that termination liability should be determined on a case-by-case basis. Guideline VI.J.3 establishes the absolute limits on a customers termination liability, however, to the extent the termination charge set forth in the applicable contract is lower than the liability cap, ALLTEL maintains the contract termination provision prevails.

Ameritech and GTE submit that termination liability, if any, should be calculated by the ILEC, with Commission staff serving as a neutral third party. Ameritech points out the calculation of potential termination liability is not a unique event which only takes place during a fresh look period. In any event, Ameritech argues that although portions of customer contracts are filed on a proprietary basis with the Commission, that does not, in the company's mind, affect the ability of customers to project any potential termination liability. According to Ameritech, the customer, as a party to the contract, will always have available all of the information necessary to calculate termination liability. Further, the company maintains that the contracts with which it is familiar rarely prohibits the customer from disclosing contract information to other competitors. Thus, Ameritech argues, customers can elect to share contract terms with the NECs at any time.

Given all the various fresh look combinations available in customer contracts, we find that, as a matter of course, termination liability in fresh look contracts will have to be determined on a case-by-case basis. Further, we addressed in the 845 Order and the subsequent rehearing entries our rationale for determining whether or not ILECs should be reimbursed for having a long term contractual arrangement terminated with a customer and, providing such termination occurred, what the customers liability to the ILEC should be following notice of termination being provided to the incumbent. We reject outright MCI's suggestion that the termination liability involved in ending a long term contractual arrangement should be presumed to be zero. Rather in our local service Guidelines, we adopted a formula whereby all parties can easily identify the termination liability.[9]

We also reject MCI's suggestion that, at the customer's option, termination liability be paid back over the remaining period of the ILEC contract had the contract not been terminated. Termination liability should be one of the primary factors a customer takes into account when deciding whether to terminate a long term arrangement. Termination liability should not be punitive but, on the other hand, terminating a long term business arrangement should not be done in a cavalier fashion either. We believe that the parties can, on their own, enter into reasonable arrangements for the remittance of the involved termination liability without our guidance. We will, however, not hesitate to reestablish our authority in this area should events warrant our participation.

Contrary to the concerns raised by some commenting parties, we expect that the telecommunications services offered by the ILECs, which will be the subject of most if not all of the long

9 That formula reflects that ILECs may charge no more than the difference between the amount the customer has already paid and any additional charges that the customer would have paid for service if the customer had taken a shorter term offering that would have been available for the term actually used.

term arrangements, will also be tariffed offerings. Thus, it should not be overly difficult to estimate the maximum termination liability that would apply in ending a long term arrangement.

We agree that the ILEC, as the party having all the information available to calculate the termination liability, should ultimately be responsible for calculating termination liability upon customer request. The customer's request, which may be in oral or written form, must be responded to by the involved ILEC within three business days of receipt. Further, the ILEC bears the burden of justifying the termination liability charges should disputes arise as to the amount of the customers' liability. The Commission's staff will oversee the termination liability process and will serve to mediate disputes between the ILEC and its customer.

As a final matter on the issue of termination liability, we reject the recommendation that all ILEC customer contracts on file with the Commission should be opened up to public scrutiny. Adopting this approach would lead to disclosure of information that the customer, for whatever reason, may want to keep confidential. Rather, we believe that a more reasonable option is the one suggested by Ameritech. That is, the customer has the option to disclose contract terms with NECs should the customer so choose. Ameritech maintains that the long term contractual arrangements with which it is familiar rarely prohibits the customer from disclosing contract information with other competitors. We believe that any prohibition on the customer sharing contract information with a NEC for the purposes of deciding whether to take advantage of a fresh look opportunity should be prohibited.

k. **How does a NEC proceed with an ILEC in terminating the contract once we have a customer who has decided to switch to a NEC?**

Are there guidelines with respect to response time and protocols for the ILEC to follow in working with a NEC to prevent the possibility of stalling the termination of the old contract and inception of the new contract beyond the 180 day window?

NEXTLINK, Brooks Fiber, MCI, OCOM, and AT&T maintain that the Commission should set forth specific parameters regarding expected timelines, cooperation, and process issues which all affected parties are required to follow. To alleviate customer confusion, AT&T and Time Warner recommend that ILECs be required to identify a single point of contact regarding fresh look issues. Time Warner and Brooks Fiber suggest that the Commission establish a procedure whereby the customer establishes an agency relationship with the NEC through executing a letter of agency (LOA). Brooks Fiber adds that once the ILEC is notified by the NEC that the customer desires to terminate the long term arrangement, the ILEC should be prohibited from contacting the customer until after cut-over to the NEC has occurred.

Time Warner and OCOM recognize that the carrier-to-carrier complaint process is an option, however, to be effective, Time Warner submits that these complaints must be processed on an expedited basis. Brooks Fiber and MCI suggest that, upon demonstration that the ILEC has unreasonably interfered with the process, the 180 day fresh look window must be extended. Time Warner further avers that termination of a contract by LOA should be completed within three business days of receipt.

ALLTEL submits that the NEC can not terminate the contract since the parties to the existing contract are the customer and the ILEC. Therefore, according to ALLTEL, it is the responsibility of the customer to notify the ILEC of the intention to terminate the contract pursuant to fresh look. ALLTEL also points out that the local service Guidelines already address dispute resolution. Ameritech maintains that the procedures and response times involved in the ILEC terminating service and provisioning service to the NEC should be the procedures and timelines negotiated by the parties as part of their negotiated/arbitrated agreements. The issue of disconnecting and reconnecting customers is not unique to fresh look according to Ameritech.

However, for termination liability questions, Ameritech submits that each ILEC should be responsible for establishing a process for receiving and processing termination liability questions. That process should include specific customer information requirements and standard response intervals. Ameritech proposes using a specific fax number for customer inquiries concerning termination liability followed-up by written inquiry confirmations and responses. This process offers a single point of contact and allows questions to be handled in a standard manner with written records from which the Commission can audit Ameritech's responsiveness. Disputes that arise under this process should resolved expeditiously through the existing Commission complaint process and by notice to the Commission staff.

We view this issue as involving two distinct relationships which must be addressed. First, there is the relationship that exists between the customer and the ILEC. We view the responsibility for terminating this relationship as resting primarily with the customer wishing to take advantage of a fresh look. The customer may, however, enter into an agency relationship with a NEC should the customer so desire. The Commission has already established in 845 Guideline XVII.C.1 three acceptable methods by which a customer may change their local exchange provider.[10] Customers desiring to take advantage of a fresh look opportunity may establish an agency relationship and may change carriers through any of the methods set forth in Guideline XVII.C. In addition, should the customer so choose, the customer may still elect to contact the ILEC on their own.

The second relationship is the one that exists between the ILEC and the NEC. For purposes of this relationship, we believe that the procedures and timelines negotiated or arbitrated between the parties pursuant to the Telecommunications Act of 1996 should govern the disconnection and reconnection of customers. On this issue, we agree with Ameritech that there is little difference between disconnecting and

10 Those three methods are: 1) pursuant to written authorization on an LOA; 2) electronic authorization; and 3) an appropriately qualified independent third party.

reconnecting customers pursuant to fresh look and disconnecting and reconnecting customers outside of fresh look.

We agree that the ILECs should identify a single point of contact within their organizations to which all fresh look inquiries should be addressed and this information should be filed and kept current in Case No. 97-717-TP-UNC. We also deem it reasonable to require the ILECs to respond in writing within three business days to fresh look inquires whether from a customer or from a NEC having an authorized agency relationship on behalf of the customer. Fresh look disputes between an ILEC and a NEC will be handled expeditiously pursuant to the Commission's carrier-to-carrier complaint process set forth in 845 Guideline XVIII.C.

The final item we feel compelled to address on this matter is the suggestion made by Brooks Fiber that once the ILEC is informed by the NEC that a customer is going to terminate a long term arrangement, that the ILEC should be prohibited from contacting the customer until after cut-over occurs. We fail to see how this suggestion benefits consumers and, consequently, we will not adopt such a requirement. The customer should have the benefit of multiple offers from a variety of competitors and to that end prohibiting the ILECs from contacting the customer removes one of the customers options. Such an approach is, in our opinion, counter-productive to the purposes for which fresh look was adopted.

L. **Which companies are eligible to offer fresh look?**

Are resellers also permitted to utilize the fresh look window?

TRA asserts that the Commission already effectively resolved this issue when it determined that NECs have a duty to notify the Commission as to the date its interconnection arrangement is operational. TRA points out that under the Commission's definitions a reseller qualifies as a NEC and NECs are considered to be either facilities or non-facilities based entities. Moreover, TRA submits that the decision to include non-facilities based carriers as NECs is supported by sound public policy and by the Telecommunications Act of 1996. MCI, CBG, AT&T, Columbus, and OCOM agree with TRA's legal analysis.

NEXTLINK, Brooks Fiber, ICG, and ALLTEL aver that since resellers will only be provisioning services already offered by ILECs then resellers should not qualify for fresh look. Ameritech and GTE contend that resellers should not be permitted to resell the same contract to the same end user even during fresh look. Rationale for this position can be found in a recently released Entry on Rehearing in the Ameritech/AT&T arbitration proceeding, Case No. 96-752-TP-ARB. Beyond this issue, Ameritech states that the Commission must either fully include or exclude resellers from any fresh look period.

As pointed out by TRA, at the time we adopted fresh look we considered whether or not resellers should be permitted to trigger fresh look and we answered that question in the affirmative. We will not, at this juncture, reexamine that issue. On Ameritech's issue, we clarify our fresh look policy by stating that resellers will not be permitted to resell the same contract to the same end user during a fresh look window.

m. What constitutes a market?

AT&T and MCI recommend that the market determination be made by reviewing not only the geographic market, but also the service-specific and customer segment-specific aspects of the market. NEXTLINK submits that the market should be the defined by the geographic scope where the interconnection agreement is operational. For example, for NEXTLINK the market would entail the Cleveland and Columbus areas as that is where its interconnection agreement is operational. Brooks Fiber, on the other hand, contends that fresh look is triggered by operational interconnection arrangements and separate interconnection arrangements are executed for each wire center. Therefore, the appropriate market for fresh look purposes must be determined on a wire center-by-wire center basis.

ICG contends that fresh look should be triggered on a metropolitan statistical area (MSA) basis in each major market. Further, ICG recommends that fresh look commence as quickly as possible in those major markets. GTE agrees that the market should entail all ILEC exchanges within an MSA where a NEC is capable of offering service regardless of whether the NEC actually chooses to or not. Moreover, for rural areas, GTE would define the market on a tandem central office area basis.

Ameritech maintains that the geographic area opened up as a result of fresh look should be consistent with the interconnection arrangement negotiated by the NEC. Since most NECs have sought tandem connections in order to cover a wide geographic area with a minimal number of interconnection points, Ameritech argues that fresh look should be triggered on a tandem or LATA basis. Responding to AT&T's and MCI's comments, Ameritech asserts that opening fresh look on a service-specific or customer class-specific basis appears unworkable and AT&T and MCI failed to provide any process or proposal on how to implement these concepts. Ameritech then surmises that AT&T is merely attempting to delay the implementation of fresh look to match its Ohio business plans.

Despite the extensive comments this question engendered, there was no clear consensus on an answer. The difficulty is that the determination of a market for purposes of fresh look must be tied in some measure to an identifiable geographic area and at the same time easily understood by customers. For these reasons, none of the options identified by the commenters meet these standards. NEXTLINK's proposal is no more clear than using the term "market". AT&T's and MCI's proposals would be difficult to track administratively and, if tied to services, might never end as new services are being developed all the time. A wire center-by-wire center approach does not easily translate to geographic areas commonly used by this Commission. An MSA or tandem[11] approach is, in our view, too large of a geographic market. For example, the Columbus MSA covers all of seven counties in central Ohio. While a NEC reseller may be able to serve customers throughout such an area by interconnecting with an ILEC, facilities-based NECs would have a difficult time serving such a broad geographic area.

Rather than adopt any of the proposals set forth above, we find that, in identifying for purposes of declaring fresh look, the NECs should explain in the notices[12] they file in the in-

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11 For purposes of this discussion we will use tandem as synonymous with LATA.

12 By an Entry issued this same date in Case No. 95-845-TP-COI, modifications to the standardized Reporting Form (SRF), including the promulgation of a uniform fresh look notice, have been made to add requirements to the SRF already adopted as part of the 845 Guidelines.

> volved UNC with docketing and copy to the chief of the telecommunications division the ILEC NXX prefixes in which they can originate service to customers and the corresponding ILEC telephone exchanges involved. Identifying ILEC NXX prefixes is an easily understood concept for customers while identification of the telephone exchanges provides our staff with a simple manner in which to track when and where fresh look has opened and where it has closed.

It is, therefore,

ORDERED, That the comments set forth in Finding (4) are accepted as timely filed. It is, further,

ORDERED, That the Commission's fresh look policies are further clarified in accordance with Finding (6). It is, further.

ORDERED, That NEXTLINK, ICG, Time Warner, Brooks Fiber, and any other operational new entrant providers as defined herein, file notice within five calendar days as set forth in Finding (6). It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record in Case No. 95-845-TP-COI, all persons filing comments in this proceeding, and all interested persons of record in this matter.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler	Ronda Hartman Fergus
David W. Johnson	Judith A. Jones

JRJ;geb

Entered in the Journal
JUL 17 1997
A True Copy
Gary E. Vigorito
Secretary

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DATE MAILED
APR 1 1997

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin — 05-TI-138

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND SECOND FINAL ORDER

Proceedings

In its "Supplemental Findings of Fact, Conclusions of Law, and Interim Order" (Interim Order) issued September 23, 1996, the Commission determined that it has the jurisdiction to order implementation of "fresh-look" procedures with respect to telecommunications contracts executed pursuant to tariffs filed under s. 196.194(1), Stats. The Commission decided, however, to further investigate: (1) the type, nature, and number of contracts at issue; (2) appropriate fresh-look procedures; (3) customer desires and concerns; (4) possible exemptions or limitations on fresh-look procedures; and (5) issues regarding existing contracts that may be relevant to the Commission under 47 U.S.C. §§ 253 and 271. Staff was directed to "propose a further process, including a hearing if appropriate to finally determine whether to adopt a fresh-look procedure." (Interim Order, p. 10).

On December 12, 1996, the Commission issued an "Amended Notice of Investigation and Request for Comments" seeking public input on the issues as they related to further process.

EXHIBIT
"F"

price-cap regulated utilities. None of these arguments appears incapable of being dealt with in a rulemaking proceeding.

Supporters of fresh-look favored implementation when a "meaningful" choice of facilities-based providers would actually be available to a customer. The supporting comments uniformly supported the abolition of early termination penalties. None of the comments appeared to suggest any other fresh-look procedure than that used by the Federal Communications Commission (FCC) in recent proceedings. Preliminary investigation shows that this "FCC-style" of fresh-look entails a re-pricing of a long-term contract to the term of performance that a terminating customer would actually receive. With a shorter term contract, a customer will most likely be obliged to pay a higher price. The terminating customer would pay the ILEC the price difference, with interest. The intent is to prevent a windfall to the customer and assure that the ILEC is kept whole as to the basic economic bargain, thereby avoiding a "taking."

MCI commented that fresh-look procedures should only be applied to local exchange service markets and other related services for which "head-to-head" facilities-based competition is arising for the first time. Such competition is largely traceable to 1993 Wisconsin Act 496, the Telecommunications Act of 1996, P. Law 104-104, 110 Stat. 56 (1996), 47 U.S.C. §§ 151 - 613, and the Commission's "Findings of Fact, Conclusions of Law and First Final Order" (First Final Order), dated July 3, 1996. Staff comments note that, from Commission experience, this perspective would suggest mostly ILEC individual contracts for local exchange private line, CENTREX, and CENTREX-like services would be candidates for fresh-look. The staff, however, was unable to make conclusions about any specific limits on the types of contracts that should be subject to fresh-look. The

s. 196.194(1). Stats., for which facilities-based competition is appearing in the local exchange markets as a result of 1993 Wis. Act 496, the 1996 Act, and this docket, are appropriate subjects for the application of fresh-look to promote additional competition in local exchange service markets. This finding, however, is subject to identifying any other contracts for application of fresh-look and the appropriate specification of territories, customers, or other relevant qualifications. In addition, the Commission finds that a rulemaking is appropriate for the further development and any potential adoption of a fresh-look procedure. Therefore, it is also appropriate to make final the Commission's Interim Order.

ULTIMATE FINDINGS OF FACT

THE COMMISSION FINDS:

1. It is reasonable and in the public interest with respect to the promotion of competition to find that the FCC-style of fresh-look procedure, with the abolition of termination penalties, should be used to advance competition. subject, however, to the establishment of appropriate procedural details, as discussed in the Findings of Fact, upon completion of a rulemaking proceeding.

2. It is reasonable and in the public interest in the promotion of competition to find that private line, CENTREX, and CENTREX-like service contracts under s. 196.194(1), Stats., for which facilities-based competition is being created by the opening of the local exchange markets pursuant to 1993 Wis. Act 496, the 1996 Act, and this docket, are appropriate subjects for fresh-look procedures, subject, however, to completion of a rulemaking proceeding that provides for the identification of other contracts appropriate for

Docket 05-TI-138

SECOND FINAL ORDER

THE COMMISSION THEREFORE ORDERS:

1. This order shall be effective upon mailing.

2. The further development and any potential adoption of a fresh-look procedure shall be conducted in a rulemaking proceeding under the provisions of ch. 227, Stats.

3. Except as inconsistent with order paragraph 2 above, the Interim Order be, and is hereby, made final.

4. Jurisdiction is retained.

Dated at Madison, Wisconsin March 27, 1997

By the Commission.

Lynda L. Dorr

Lynda L. Dorr
Secretary to the Commission

LLD:MSV:efa:jah:h:\ss\order\051382nd.v2

Attachment

See attached Notice of Appeal Rights.

APPENDIX A

This proceeding is not a contested case under Chapter 227, Stats., therefore there are no parties to be listed or certified under s. 227.47, Stats. However, an investigation was conducted, and the persons listed below participated.

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(Not a party but must be served)
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