

permitting reclamation only when the LEC is ordered to do so by law, by a duly filed tariff to provide service to end users or interconnectors, or by eminent domain.¹²⁶ GTE argues that Teleport misreads its tariff to require that space be used in six months. According to GTE, the tariff simply requires that applicants for space have the capability to terminate transmission within six months, to ensure that interconnectors will not reserve scarce central office space for future use.¹²⁷

44. Discussion. The Special Access Order states that LECs will be permitted to include in their tariffs reasonable restrictions on warehousing of unused space by interconnectors.¹²⁸ We have reviewed the arguments of the parties and find that investigation of tariff provisions governing warehousing is warranted. To assist in our resolution of this issue, we direct the LECs to provide the following information:

(a) LECs that regulate the amount of floor space items such as ancillary equipment or file cabinets may occupy in an interconnector's cage should explain why they believe such regulation is reasonable and under what circumstances violation of such a limit should trigger eviction. In addition, assuming arguendo that such limitations are reasonable, LECs should address whether an interconnector should be evicted for violating such a provision if: (1) it is operational and space for additional interconnectors is available; (2) it is operational and space for additional interconnectors is not available; (3) it is not operational and space for additional interconnectors is available; and (4) it is not operational and space for additional interconnectors is not available.

(b) LECs that set a time limit within which an interconnector must become operational should explain why such regulation is reasonable, the minimum time period within which it is reasonable to direct an interconnector to become operational, and under what circumstances should violation of such regulation trigger eviction. For example, if space for additional interconnectors is available, is it reasonable to require current interconnectors to become operational or lose their space?

(c) LECs that refuse to rent additional space to an existing interconnector on the grounds that the interconnector has not efficiently used its initial interconnection space should explain on what basis they will make this determination and whether such provision is reasonable, particularly where there is still space for additional interconnectors.

G. Are the LECs' provisions regarding notice to or from interconnectors in the event of service termination reasonable?

45. Pleadings. Teleport argues generally that the LECs' termination provisions make no allowance for protection of the rights of interconnectors and their customers

¹²⁶ Id. at 10-11.

¹²⁷ GTE Reply at 8-9.

¹²⁸ Special Access Order, 7 FCC Rcd at 7408.

when LECs seek to terminate interconnection arrangements.¹²⁹ PUCO objects that CBT does not provide the interconnector sufficient opportunity or time to respond to alleged violations, to rectify problems, or to prevent termination of the arrangement. It also opposes the provision which permits CBT, in some instances, to disconnect without any notice to the interconnector.¹³⁰ In response, BellSouth claims that its fifteen-day notice period is a reasonable time in which the interconnector can take remedial measures.¹³¹ NYNEX asserts that it must be permitted to reclaim space on reasonable notice to meet its legal obligations, or if the space is not being efficiently used.¹³² In addition, US West argues that requiring 30 days' notice prior to termination of service is a standard tariff provision.¹³³

46. ALTS objects to US West's requirement that interconnectors provide US West with notification of an intention to vacate the collocation space at least 180 days before leaving. ALTS asserts the notice period should be 30 days.¹³⁴ Bell Atlantic requires the customer to give 90 days' prior written notice in order to terminate.¹³⁵ US West responds that it is willing to modify its tariff to require only 90 days' notice from an interconnector when an interconnector plans to vacate space or to rephrase the provision to make it advisory in nature, if the Commission desires.¹³⁶

47. Discussion. We have reviewed the arguments of the parties and find that investigation is warranted. To assist in our resolution of this issue, we direct the LECs to provide the following information:

(a) LECs should specify the notice period their tariffs provide for notifying interconnectors of the LEC's intention to terminate the interconnection arrangement. LECs should explain why they consider this to be a reasonable notice period.

(b) LECs should specify the notice period contained in their tariffs within which an

¹²⁹ Teleport Petition at App. A Item 16 (objecting to Ameritech's 90-day notice period, BellSouth's 15-day notice period, and NYNEX's 60-day notice period).

¹³⁰ PUCO Petition at 10-11.

¹³¹ BellSouth Reply at 32-33 (citing Special Access Order, 7 FCC Rcd at 7392).

¹³² NYNEX Reply at 23-24. NYNEX adds that an interconnector is protected from harm if space is reclaimed because the Special Access Order requires NYNEX to provide the interconnector with comparable floor space for physical or virtual collocation. NYNEX adds that it has not yet been necessary to relocate an installed interconnection arrangement, and it does not anticipate the need to do so in the near future. Id. at 24 n.41.

¹³³ US West Reply at 72-73.

¹³⁴ ALTS Petition at App. D p.6.

¹³⁵ Bell Atlantic Transmittal No. 571, Sec. 19.3(J).

¹³⁶ US West Reply at 83.

interconnector must notify the LEC of the interconnector's intent to terminate the interconnection arrangement. LECs should explain why they consider this to be a reasonable notice period.

(c) LEC should justify any differences in length between the notice periods they specified in (a) and (b) above.

H. Are the LECs' provisions permitting them to terminate a collocation arrangement reasonable?

48. Pleadings. The petitioners argue that the reasons cited in the tariffs for termination of the collocation agreements are vague or overly broad.¹³⁷ They further contend that the LECs have too much discretion in deciding whether to terminate the collocation agreement.¹³⁸ Ad Hoc asserts that the termination provisions in the LECs' expanded interconnection tariffs may be standard in tariffs applicable to end users, but are inappropriate in a tariff offering service to a competitor because a greater potential for abuse exists.¹³⁹ Ad Hoc and Teleport also argue against a number of conditions for termination in the Ameritech and US West tariffs. Both petitioners object to the "default" provision in Ameritech's tariff permitting it to terminate an interconnector's right to the premises by any lawful means.¹⁴⁰ Ad Hoc also finds unreasonable tariff provisions permitting Ameritech to terminate the interconnector's possession of the premises if required by law, court or regulatory body order; if the tariff is eliminated or the premises sold; or if Ameritech requires the premises for equipment or facilities necessary to provide telecommunications services to customers.¹⁴¹ Both Ad Hoc and Teleport object to tariff provisions permitting US West to discontinue service if an interconnector fails to pay charges under NECA Tariff 5 (access service tariff).¹⁴² Ad Hoc also objects to tariff provisions permitting US West to place a lien for all interconnection-related charges on an interconnector's property within its collocated central office space; prohibiting interconnector removal of the property without US West's consent; and permitting US West to enter an interconnector's space and take possession of and sell an interconnector's

¹³⁷ Ad Hoc Petition at 33; PUCO Petition at 10-11; Teleport Petition at App. A Item 16.

¹³⁸ PAC Petition at 7; PUCO Petition at 11; Teleport Petition at App. A Item 16.

¹³⁹ Ad Hoc Petition at 33-34.

¹⁴⁰ *Id.* at 39-40; Teleport Petition at App. A Item 16. Teleport notes that "default" includes the failure of an interconnector to use its collocated space as a transmission node within 12 months.

¹⁴¹ Ad Hoc Petition at 34.

¹⁴² *Id.* at 33; Teleport Petition at App. A Item 16. US West states it will delete the compliance with NECA Tariff No. 5 until such time as switched interconnection is tariffed. US West Reply at 86-87.

interconnectors should be charged for termination of the collocation arrangement.

(d) Parties should explain the circumstances, if any, when termination of a collocation agreement should be explicitly prohibited by the LEC, the interconnector, or both parties. For example, if a party argues that termination should be prohibited during the pendency of a Section 208 proceeding, it should explain the point in the proceeding when termination should no longer be allowed, and at what point in the proceeding termination should be permitted again.

(e) US West and other LECs whose tariffs permit them to place liens on the equipment of interconnectors should justify why they believe such provisions are reasonable. Parties opposing equipment liens should explain why such liens are unreasonable, and should describe the policies they propose as an alternative, why such policies are reasonable, and how those policies could be implemented.

I. Are the LECs' provisions regarding termination of collocation arrangements in the event of a catastrophic loss reasonable?

51. **Pleadings.** ALTS and Teleport object to US West's provision giving US West 45 days following casualty damage to a collocation space to state the time it reasonably believes necessary to repair the damage.¹⁴⁸ ALTS recommends limiting it to no more than 30 days. ALTS feels its necessary for the interconnector to be informed of expected repair times as soon as possible so it can minimize disruption to its business and quickly determine whether and how to reconfigure its network.¹⁴⁹ Teleport also objects to US West's provision providing for an abatement of charges only if damages cannot be repaired in 90 days.¹⁵⁰

52. In addition, Teleport opposes Ameritech's provision requiring interconnector's to provide written notice of the need for repairs before providing them, asserting that the need for repairs should be apparent to the LEC's employees, who are in the building on a daily basis. Teleport also objects to Ameritech's provision that permits Ameritech either to repair the damage, force the interconnector to leave the office, or to give the customer the opportunity to pay for the damages in lieu of termination. Teleport also complains that Bell Atlantic's and BellSouth's tariffs leave the interconnector without recourse if the building is found to be unusable. Teleport wants NYNEX to delete the provision permitting it to terminate an interconnector's license if the interconnector's space is deemed irreparable, even if the rest of the central office is functional. In addition, Teleport avers that GTE's, Pacific's, and US West's tariffs do not appear to cover repairs of central offices in the event of major damage.¹⁵¹

¹⁴⁸ ALTS Petition at App. D pp.1-2; Teleport Petition at App. A Item 18.

¹⁴⁹ ALTS Petition at App. D pp.1-2.

¹⁵⁰ Teleport Petition at App. A Item 18.

¹⁵¹ *Id.*

53. In response, Pacific states it will amend its tariff to waive the 30-day notice interconnectors are normally required to give in order to terminate service, should a catastrophic event be the reason termination is necessary.¹⁵² US West states it will notify interconnectors within 45 days whether it plans to repair or rebuild property damaged as a result of casualty. It maintains that a 45-day period is necessary to maintain flexibility in making repair/rebuild decisions, although it promises to work closely with interconnectors when casualties occur. It considers the difference between its 45 days and ALTS' suggestion of 30 days to be "fairly immaterial," but considers Teleport's suggestion of three to seven days to be unrealistically short.¹⁵³ Ameritech claims it will make normal repairs, but will terminate the lease if extensive damage or destruction of the collocation space occurs.¹⁵⁴ Pacific argues that terminating a collocation arrangement is reasonable if a LEC decides not to rebuild a central office that is partially or totally destroyed.¹⁵⁵ GTE argues that telecommunications restoration priorities are governed by Commission rules, which are referenced in GTE's tariffs. In addition, GTE states its tariffs already contain provisions that govern termination in the event of a catastrophic loss, and no further provisions are needed in the expanded interconnection tariff.¹⁵⁶

54. Discussion. We have reviewed the arguments of the parties and find that investigation is warranted. To assist in our resolution of this issue, we request the following information:

(a) LECs should justify the time period in their tariff within which they will inform interconnectors of their plans to rebuild or relocate in the event of catastrophic loss. Parties that oppose a particular notice period should explain why they believe it is unreasonable and should suggest a period they consider to be reasonable.

(b) Parties should also discuss whether LECs should be required to place language in their tariffs requiring that: (1) where an interconnector's space is not usable due to a catastrophic event, but the central office is, the LEC shall provide alternative facilities within the CO within three days; the LEC shall be responsible for payment of all repairs to the collocation space; no nonrecurring charges shall be applied to the interconnector in connection with the service rearrangements and other changes necessitated by the accident; and the interconnector should have the right to terminate its temporary collocation arrangement without charge and relocate to another central office without charge, if a permanent collocation space cannot be provided within 90 days; and (2) where both the interconnector's space and the CO is unusable, the LEC should be

¹⁵² Pacific Reply at 44.

¹⁵³ US West Reply at 75-77.

¹⁵⁴ Ameritech Reply at 33.

¹⁵⁵ Pacific Reply at 44.

¹⁵⁶ GTE Reply at 16-17 (also noting that while it provides credit for service outages for the cross-connect element, it is inappropriate to provide credits for the power element, floor space, and cable space recurring charges, since GTE provides back-up DC power).

required to provide alternative facilities in another CO within seven days; the LEC should be responsible for repairs to the collocation space and should restore the interconnector's facility within the same time frame as its other repairs to the facility; no nonrecurring charges should be applied to the interconnector in connection with the service rearrangements and other changes necessitated by the accident; and the interconnector should have the right to terminate its original collocation arrangement without charge and relocate to another central office without charge if a permanent collocation space in the original central office cannot be provided within ninety days. Parties should comment on whether any other provisions regarding interconnectors and catastrophic loss should be included in the LECs' tariffs, and should specify why they believe the provisions they support are reasonable and why those they oppose are not. Finally, parties should address whether and how such provisions should be modified if the interconnector is responsible for causing the catastrophic event.

J. Are the LECs' relocation provisions reasonable?

55. Pleadings. Teleport complains that Ameritech, BellSouth, GTE, NYNEX, Pacific, SWB, and US West include provisions in their tariffs which allow them to force an interconnector to move its facilities within a wire center or to another wire center. Teleport asserts that strict guidelines must be placed on this ability. It also argues that where relocation forces an interconnector into a different central office, the LEC should be required to provide interoffice connections back to the original office at no charge, so the interconnector is placed in no worse position than if the LEC had not relocated it.¹⁵⁷ ALTS asserts that a LEC should reimburse the interconnector for reasonable direct costs and expenses, including tenant improvements if a LEC is allowed to reclaim space.¹⁵⁸

56. The LECs reply that flexibility in relocation is essential to managing their overall operations, and enables them to allocate central office floor space to meet the present and future needs for space required for their own and the interconnectors' equipment.¹⁵⁹ BellSouth, Pacific, and SWB contend that Teleport's requested conditions - that the circumstances permitting relocation or rearrangement be narrowly defined, and that the interconnector not be charged -- are contained in their tariffs.¹⁶⁰ GTE replies that its right to reclaim space for good cause on six months' notice is limited to extraordinary situations when required under state public service law, and that displaced interconnectors will be reimbursed reasonable direct costs.¹⁶¹

57. Discussion. We have reviewed the arguments of the parties and find that

following information:

(a) LECs should describe their policy regarding providing advance notice to the interconnector that the LEC intends to relocate the interconnector's space or equipment. LECs whose tariffs do not contain notice provisions for this occurrence should justify why the absence of those provisions is reasonable. Parties objecting to the notice provisions in the LEC tariffs should explain why the alternatives they offer are more reasonable than those already in the tariffs.

(b) LECs should describe the conditions under which they will require that an interconnector's space or equipment be moved, either within a wire center or to another wire center. LECs using a blanket provision in their tariffs, rather than listing specific conditions, should justify why such a provision is reasonable. Parties suggesting guidelines regarding this issue should justify the reasonableness of their suggestions.

(c) LECs should specify the conditions under which they will or will not charge the interconnector for the relocation of the interconnector's facilities. Parties offering guidelines regarding this issue should explain why their guidelines are reasonable.

K. Are the LECs' insurance provisions reasonable?

58. Pleadings. MFS, PAC, TDL, Sprint, Teleport, Ad Hoc, and PUCO, collectively, contend that the insurance coverage requirements proposed by Ameritech, Bell Atlantic, BellSouth, CBT, United, GTE, NYNEX, SWB, US West, and Pacific are excessive and lack support.¹⁶² These petitioners assert that these excessive insurance requirements include high comprehensive general liability coverage per occurrence,¹⁶³ high umbrella/excess liability coverage,¹⁶⁴ high employers' liability coverage,¹⁶⁵ workman's compensation,¹⁶⁶ and automobile insurance.¹⁶⁷ The petitioners also object to the

¹⁶² Ad Hoc Petition at 38; MFS Petition at 37-38; PAC Petition at 7-8; PUCO Petition at 11-12; Sprint Petition at 12-13; TDL Petition at 8; Teleport Petition at App. A Item 4. See also WilTel Petition at 10-11.

¹⁶³ Ad Hoc Petition at 38; MFS Petition at 37; PAC Petition at 7; PUCO Petition at 11-12; Sprint Petition at 13; TDL Petition at 8. MFS and Teleport note the LECs have proposed comprehensive general liability insurance coverage ranging from \$1 million to \$25 million. MFS suggests an appropriate industry standard would be \$2 million, while Teleport argues that it should be \$1 million. MFS Petition at 37; Teleport Petition at App. A Item 4.

¹⁶⁴ Ad Hoc Petition at 38; PAC Petition at 7; PUCO Petition at 11-12; Sprint Petition at 13; TDL Petition at 8.

¹⁶⁵ PUCO Petition at 12; Sprint Petition at 13.

¹⁶⁶ Teleport Petition at App. A Item 4.

¹⁶⁷ PUCO finds particularly egregious Ameritech's requirement for automobile insurance for central office interconnection. PUCO Petition at 12. Teleport also notes that several LECs impose \$1 million insurance requirements for automobiles, even though their tariffs refuse to

requirement that physical interconnectors must conform to the recommendations of the telephone company's fire or property insurance company.¹⁶⁸ Teleport argues that all LECs should include the option of self-insurance, as Ameritech has done. Teleport claims that self-insurance allows interconnectors to amortize their own insurance risks if they so choose.¹⁶⁹

59. The LECs reply that the levels of insurance they require are reasonable when compared to levels of investment in their central office facilities.¹⁷⁰ Bell Atlantic and GTE argue that the insurance requirements in their tariffs are typical of those found in commercial leases and other agreements.¹⁷¹ Ameritech contends that its insurance requirements for interconnectors are set at levels comparable to its own levels of self-insurance.¹⁷² Further, the LECs contend, lowering the required level of coverage will not appreciably change the premiums.¹⁷³ BellSouth adds that most parties seeking physical collocation likely possess the requisite coverage.¹⁷⁴ SWB states it would consider allowing interconnectors to "self insure" their responsibility for physical loss or damage to its property, adding that the financial impact from such a loss can be financed by a property insurance policy.¹⁷⁵ Bell Atlantic asserts that it does not object to an interconnector's self-insuring, so long as that company demonstrates its financial capacity to do so.¹⁷⁶ Pacific, however, objects to permitting self-insurance, claiming that some interconnectors do not have the financial capacity to do so.¹⁷⁷

60. MFS, Sprint, and Teleport also object to the LECs' specification of particular

provide parking privileges for interconnector personnel. Teleport Petition at App. A Item 4.

¹⁶⁸ Sprint Petition at 13.

¹⁶⁹ Teleport Petition at App. A Item 4 (including a table comparing as filed insurance requirements).

¹⁷⁰ Ameritech Reply at 29; BellSouth Reply at 27; CBT Reply at 6-8; Lincoln Reply at 6-7; NYNEX Reply at 23-27; SWB Reply at 38; United/Centel Reply at 15-17; and US West Reply at 18-19.

¹⁷¹ Bell Atlantic Reply at 12 Item 13; GTE Reply at 17-19.

¹⁷² Ameritech Reply at 28-29.

¹⁷³ CBT Reply at 6-8; Pacific Reply at 32-34 (arguing that the premium for \$5 million liability policy is only 20% more than the premium for a \$1 million policy).

¹⁷⁴ BellSouth Reply at 27 and n.37.

¹⁷⁵ SWB Reply at 38.

¹⁷⁶ Bell Atlantic Reply at App. A Item 13.

¹⁷⁷ Pacific Reply at 32-34 (insurance from a Best-rated "A" insurance carrier is reasonable).

ratings for the insurance companies underwriting the coverage.¹⁷⁸ Sprint terms unreasonable Bell Atlantic's and CBT's requirements that all insurance be in effect on or before the commencement of work; many LECs' requirements that certificates of insurance and copies of policies be submitted prior to commencement of the work (Bell Atlantic, BellSouth, CBT, NYNEX, SWB), upon execution of the agreement (Ameritech), or when the Access Service Request is placed (GTE); and SWB's requirement that all subcontractors who enter the space maintain similar insurance.¹⁷⁹ PAC argues that the insurance policy should take effect when the interconnector occupies the space.¹⁸⁰

61. The LECs claim these provisions are necessary and reasonable. SWB contends its requires an A.M. Best Rating of A+VII for the standard policy and the umbrella limits because the continuous nature of the interconnectors' operations and access to SWB's premises increases the potential for loss or damage. BellSouth contends, as of July 31, 1991, that over 40 percent of all insurance carriers held an A.M. BEST rating of B+VI or better.¹⁸¹ BellSouth also asserts that it requires certificates of insurance or copies of insurance policies to evidence compliance with the coverage limits in its tariff.¹⁸² CBT argues that in order for CBT to be protected, insurance must be in effect prior to the start of work.¹⁸³ GTE states that it requires proof of insurance at the time the order for interconnection is placed, which is reasonable because space is almost immediately allocated to the interconnector.¹⁸⁴

62. Discussion. The Special Access Order states that insurance levels and other similar matters are best resolved through informal discussions among interested parties, with those resolutions reflected in the LEC tariffs. The Order requires that the arrangements in the tariffs must meet legitimate concerns and may not be unreasonably restrictive or expensive.¹⁸⁵ We have reviewed the arguments of the parties and find that investigation is warranted.

63. To assist in our resolution of this issue, we direct the LECs to provide the following information:

- (a) LECs should justify the levels and types of insurance coverage they specify for

¹⁷⁸ MFS Petition at 38; Sprint Petition at 13; Teleport Petition at App. A Item 4.

¹⁷⁹ Sprint Petition at 13-14.

¹⁸⁰ PAC Petition at 7.

¹⁸¹ BellSouth Reply at 27.

¹⁸² Id. at 29-40.

¹⁸³ CBT Reply at 6-8.

¹⁸⁴ GTE Reply at 17-19.

¹⁸⁵ Special Access Order, 7 FCC Rcd at 7407 n.189.

interconnectors in their tariffs. LECs that impose insurance requirements for automobiles, even though their tariffs specifically prohibit parking by interconnector personnel, should also justify these requirements. LECs having both interstate and intrastate collocation tariffs should also explain any differences between their tariffs concerning levels and types of coverage. Likewise, they should justify differences between the insurance levels and types of coverage LECs require of interconnectors and the levels and types of coverage that they hold themselves.

(b) LECs that do not permit interconnectors to self-insure under any circumstances

negligence claims.¹⁸⁹ PAC also asserts that Bell Atlantic's indemnification provisions in Section 19.3.7(B) are too vague.¹⁹⁰

65. Bell Atlantic, Pacific and US West argue that their tariff provisions are similar to a standard landlord/tenant relationship, where the liability risks are borne by the tenants.¹⁹¹ Pacific adds that reciprocity in the landlord/tenant relationship is illogical, since the tenant is not providing a reciprocal service which would require a LEC to bear liability.¹⁹² Bell Atlantic contends that its indemnity provisions are designed solely to keep it whole in the event of an interconnector-caused loss.¹⁹³ GTE explains that its tariffs state GTE will reimburse interconnectors for damages to premises or equipment caused by either its negligence or willful misconduct.¹⁹⁴ BellSouth, GTE and US West claim the liability provisions in their expanded interconnection tariffs are similar to provisions in their interstate special access tariffs.¹⁹⁵

66. Discussion. We have reviewed the arguments of the parties and find that investigation is warranted. To assist in our resolution of this issue, we direct the LECs to provide the following information:

(a) LECs should explain the policies articulated in their tariffs concerning an interconnector's right of action against a LEC for negligence, gross negligence, willful misconduct, or intentional harm. LECs should explain why these provisions are reasonable. They should also explain why it is reasonable for them to include language limiting their own liability while they hold interconnectors liable for more than they would assume under their tariffs.

(b) Sections 19.3.7(B) and (E) of Bell Atlantic's tariff hold interconnectors liable for losses and claims for property damages, or injury or death to persons, or for environmental conditions which violate laws or regulations, that result from certain interconnector-related activities, for "at least 3 years" from the termination, cancellation, modification, or rescission of the collocation arrangement. Bell Atlantic should explain why it believes it is reasonable for it to hold interconnectors liable in such instances after the

¹⁸⁹ Ad Hoc Petition at 36-37; MFS Petition at 40-41; PAC Petition at 9; Sprint Petition at 14; TDL Petition at 8; Teleport Petition at App. A Item 5; WilTel Petition at 10-11; WilTel Petition (Bell Atlantic) at 6.

¹⁹⁰ PAC Petition at 9.

¹⁹¹ Bell Atlantic Reply at App. A Item 13; Pacific Reply at 34-35; US West Reply at 71-72.

¹⁹² Pacific Reply at 34-35.

¹⁹³ Bell Atlantic Reply at App. A Item 13.

¹⁹⁴ GTE Reply at 19-20.

¹⁹⁵ BellSouth Reply at 29-30; GTE Reply at 19-20; US West Reply at 71-72.

collocation arrangement is terminated. Bell Atlantic should also explain why it believes it is reasonable to hold interconnectors liable for an indeterminate period, with a minimum but not maximum time limitation.

M. Are the LECs' provisions regarding whether to bill from their state or interstate expanded interconnection tariffs reasonable?

67. Discussion. LECs offering expanded interconnection service are not exempt from the general requirement that LECs bill customers at the rates set forth in their interstate tariffs for interstate service, and at the rates set forth in their intrastate tariffs for intrastate service.¹⁹⁶ The Commission's rules require the LECs to apply the "ten percent rule" to their special access services for separations purposes. The rules do not, however, specifically state that LECs offering expanded interconnection service must apply the "ten percent rule" to their expanded interconnection service, even though expanded interconnection is currently used by the interconnectors to provide only special access service. It would appear to be reasonable for the LECs to use the ten percent rule to determine which tariff to use for billing special access expanded interconnection service. Most LECs fail to address this issue. This omission is particularly critical for the LECs that offer intrastate expanded interconnection, since these LECs, by definition,

N. Are the LECs' provisions regarding letters of agency reasonable?

69. **Pleadings.** Teleport objects to provisions in the Ameritech, BellSouth, NYNEX, US West and Pacific tariffs that would restrict the ability of an interconnector's customer to utilize letters of agency (LOAs) issued by interconnectors which authorize the customer to request end-to-end service from the LECs, including provision of the cross-connect element from the LEC central office into the interconnector's cage.¹⁹⁸ Teleport explains that large IXCs sometimes require LOAs because they make circuits provided partially by interconnectors and partially by LECs administratively equivalent to circuits provided solely by the LEC. Teleport argues that without LOAs, interconnectors providing access services are placed at a competitive disadvantage to LECs providing their own end-to-end service.¹⁹⁹ MCI argues that without LOAs, rather than being able to order cross-connects to its chosen interconnector from the LEC, an IXC will instead have to provide the information to the competitive access provider (CAP), which will then have to order the cross-connects from the LEC.²⁰⁰ MCI argues that restrictions prohibiting the use of LOAs unnecessarily increase the administrative burden on IXCs ordering end-to-end services which utilize both LEC and CAP facilities. MCI alleges that this is unnecessarily burdensome, and is a distinct difference from the way in which the non-collocated business is currently organized.²⁰¹

70. Sprint objects to Pacific's and CBT's refusal to bill third parties. Sprint argues that if the LECs are permitted to restrict ordering and billing to the interconnector, there will always be delays in the billing of service to the third parties and, in turn, to the third party's end users. Additionally, Sprint notes that when trouble is reported on a circuit, the LECs records will reflect the interconnector, rather than the third party actually providing service to the end user, thereby resulting in service interval delays which may provide the LECs with a competitive advantage. Sprint asserts that if interconnectors are not allowed to aggregate access service for third parties, interconnector entry into collocated competitive access provision will be much more difficult.²⁰²

71. Ameritech claims it is willing to accept LOAs and to bill appropriate charges to third parties if an interconnector so requests.²⁰³ US West notes that its tariff permits only US West to bill the customer of record for expanded interconnection service, but notes that interconnectors can bill their customers to recover these charges, or that US West could bill the interconnector's customers if the interconnector is willing to enter into a

¹⁹⁸ Teleport Petition at App. A Item 9; Teleport July 2, 1993, Ex Parte.

¹⁹⁹ Teleport July 2, 1993, Ex Parte.

²⁰⁰ MCI Petition at 11.

²⁰¹ Id.

²⁰² Sprint Petition at 10-11.

²⁰³ Ameritech Reply at 36.

billing and collection agreement.²⁰⁴ Pacific replies that it will revise its tariff to permit the expanded interconnection cross-connect to be ordered by either the interconnector or the customer, and billed under the same rules that apply to its Special Access billing arrangements.²⁰⁵

72. **Discussion.** We have reviewed the arguments of the parties and find that investigation is warranted. To assist in our resolution of this issue, we direct the LECs to provide the following information:

(a) Is it reasonable for LECs to refuse to honor letters of agency allowing an interconnectors' customers to negotiate services with a LEC on the interconnector's behalf? Parties opposing the use of LOAs by interconnectors or their customers should explain why allowing those customers the option of using LOAs for billing or ordering end-to-end service is unreasonable. Parties commenting on this issue should explain the impact on the ordering process as well as the billing process if their position is adopted.

(b) Should LECs state in their tariffs that they will accept an order for end-to-end service which includes a request to install the cross-connect to the interconnector's space, when the order is placed by an interconnector's customer using a letter of agency from the interconnector? Parties commenting on this statement or offering alternatives should explain why their suggestions are reasonable.

(c) Should LECs state in their tariffs that they will bill charges for the special access cross-connect rate elements and subtending end link services to third parties specified by the customers when ordering the services? Parties commenting on this statement or offering alternatives should explain why their suggestions are reasonable.

O. Are the LECs' provisions regarding inspections of interconnector space and facilities reasonable?

73. **Pleadings.** Teleport objects that the tariffs of Bell Atlantic, Ameritech, BellSouth, NYNEX, Pacific, SWB, and US West permit them to perform unlimited and unplanned inspections of interconnector equipment space and facilities, in many instances at the interconnector's expense.²⁰⁶ Sprint and PAC also term unreasonable Bell Atlantic's requirement that the interconnector bear the cost of Bell Atlantic's inspection of the

²⁰⁴ US West Reply at 81-82.

²⁰⁵ Pacific Reply at 51. In its June 14 filing, Pacific amended its tariff to state that "expanded interconnection cross-connects (EISCCs) may be ordered by the interconnector, but not under LOAs or authorization. EISCCs may also be ordered by customers ordering Special Access Service that will terminate at the interconnector's cage. The EISCC will be ordered and billed under the same rules that apply to Special Access Service as set forth in Sections 2 and 5, preceding." Pacific Tariff Sec. 16.6.4.

²⁰⁶ Teleport Petition at App. A Item 7.

collocator's equipment.²⁰⁷ Alternatively, PAC asserts that the collocator should have the right to charge Bell Atlantic to inspect its facilities.²⁰⁸ Teleport argues that LECs should be permitted to inspect, on at least 2 weeks' notice, the collocation arrangement at the time the service is initially installed and no more than once in each succeeding 12-month period, unless a legitimate emergency situation exists. Teleport further asserts that the LEC should only be allowed to charge for the inspection if it finds that the interconnector is in noncompliance and that this noncompliance imposes an immediate and significant threat of harm to the LEC's network.²⁰⁹

74. NYNEX replies that its provision permitting inspection, on reasonable notice, of the area of its central office being used by the interconnectors is reasonable.²¹⁰ US West does not believe its right to inspect without notice poses a serious threat of abuse or interference with an interconnector's ability to provide service. US West also asserts that unannounced inspections are a reasonable tool for finding tariff violations. US West argues that this provision is reasonable because it will evict only for "material breaches" of the tariff.²¹¹ US West is willing to revise its tariff to ensure the confidentiality of any information gained during inspections, and promises not to use this information in its strategic planning.²¹² US West also notes that it does not charge for inspections it anticipates conducting.²¹³

75. Pacific states that its tariff provision allowing it to inspect collocator space is reasonable because it is limited to inspections with advance notice only, except in

safety standards are met.²¹⁶

76. Bell Atlantic responds that the sole purpose of these inspections is to detect problems that could damage the central office and impair service Bell Atlantic provides to others. Bell Atlantic asserts that after the collocater has installed its equipment, Bell Atlantic intends to perform an initial inspection to assure conformance with tariff requirements. Bell Atlantic states that the cost of that inspection is included in the space preparation fee. Bell Atlantic asserts that, thereafter, it will charge for inspections only where a collocater is violating a provision of the collocation tariff.²¹⁷ BellSouth contends that its tariff establishes reasonable terms for inspection. BellSouth asserts that its right to inspect the collocation space to insure compliance with its tariff derives from its statutory obligation to enforce its tariff. BellSouth further asserts that it should not be prevented from protecting and securing its interests. In addition, BellSouth states that it

P. Should LECs be permitted to include provisions regarding the payment of taxes and similar assessments by interconnectors?

78. **Discussion.** US West's tariff contains a provision requiring interconnectors to pay, before delinquency, all taxes and other charges assessed on the interconnector's operations and equipment located at the leased physical site.²²⁰ We find that investigation of this provision is warranted. To assist in our resolution of this issue, we request the following information:

(a) US West, and any other LEC with a similar provision, should explain why they believe it is reasonable to include such provisions in their tariffs, what they believe would be the consequence of deleting such provisions and, given these consequences, whether deletion of such provisions would be reasonable. Parties opposing such provisions should explain why they believe tariff provisions regarding the payment of taxes by an interconnector are not relevant to, and should not be included in, the LECs' interconnection tariffs.

IV. OTHER ISSUES

79. Petitioners also find unreasonable provisions in the LECs' tariffs that: do not provide the interconnector with application response and/or construction deadlines;²²¹ seek to prevent or limit assignment of collocation arrangements;²²² and require minimum service periods.²²³ Some LECs reply that their tariffs contain application response and/or construction deadlines;²²⁴ others respond that such deadlines are not reasonable because each case differs and many construction-related activities are beyond their control.²²⁵ LECs also argue that interconnectors' should not be able to unilaterally assign the interconnector's collocation rights, and that the LECs' terms are not overly restrictive;²²⁶ and they must require minimum terms to ensure they recover their initial costs, without

²²⁰ US West Communications, Tariff FCC No. 1, Section 2.3.1(D).

²²¹ MCI Petition at 11-12; PUCO Petition at 8.

²²² PUCO Petition at 13; WiTel Petition at 11.

²²³ Ad Hoc Petition at 34-35; Teleport Petition at App. A Item 14. PUCO, however, objects that some terms are not long enough. PUCO Petition at 7-8. Similarly, PUCO and Sprint object to a provision in CBT's tariff that states that CBT does not guarantee that the space occupied by an interconnector will be available for an additional period beyond the original term. PUCO Petition at 14; Sprint Petition at 20.

²²⁴ See, e.g., Lincoln Reply at 4-5.

²²⁵ See, e.g., BellSouth Reply at 22-24; SWB Reply at 39-40.

²²⁶ See, e.g., BellSouth Reply at 21-22; Pacific Reply at 51; US West Reply at 24.

requiring substantial initial payments from the interconnectors.²²⁷

80. We have reviewed the petitions and the replies of the parties to this proceeding concerning the above-mentioned issues. We conclude that no compelling argument has been presented that these tariff revisions are so patently unlawful as to require rejection, and that no question has been presented that warrants investigation at this time.

V. PROCEDURAL MATTERS

A. Filing Schedules

81. This investigation will be conducted as a notice and comment proceeding. CC Docket No. 93-162 has been assigned for this purpose. The carriers listed in Appendix A to this Order are designated as parties. These parties shall file their direct cases no later than August 13, 1993. The direct cases must present the parties' positions with respect to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than September 10, 1993, and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." The parties may each file a "Rebuttal" to oppositions or comments no later than September 20, 1993.

82. An original and seven copies of all pleadings shall be filed with the Secretary of the Commission. In addition, parties shall file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M St. N.W., Washington, D.C. 20554. Parties shall also deliver one copy of such pleadings to the Commission's commercial copying firm, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments should specify the docket number of this investigation.

83. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission may take into account information and ideas not contained in pleadings, provided that such information is placed in the public file, and provided that the fact of reliance on such information is noted in the Order.

B. Ex Parte Requirements

84. Ex Parte contacts (i.e., written or oral communications which address the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved

with the Secretary and Commission employees receiving each presentation. For other requirements, see generally Section 1.1200 et seq. of the Commission's Rules, 47 C.F.R. §§ 1.200 et seq.

C. Paperwork Reduction Act

85. The investigation established in this Order has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure or other record retention requirements as contemplated under the statute.

VI. ORDERING CLAUSES

86. IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, that the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

87. IT IS FURTHER ORDERED that the local exchange carriers listed in Appendix A of this Order SHALL BE parties to this proceedings.

88. IT IS FURTHER ORDERED that each local exchange carrier that is a party to this proceedings SHALL INCLUDE, in its direct case, a response to each request for information that it is required to answer in Section III of this Order.

89. IT IS FURTHER ORDERED that the petitions for rejection or suspension and investigation of the captioned tariffs filed by the petitioners listed in Appendix B ARE GRANTED to the extent indicated and otherwise ARE DENIED.

90. IT IS FURTHER ORDERED that this Order IS EFFECTIVE upon adoption.

FEDERAL COMMUNICATIONS COMMISSION



Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

APPENDIX A

Parties to Investigation

Ameritech Operating Companies (Ameritech)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Telecommunications Inc. (BellSouth)
Centel Telephone Company (Centel)
Cincinnati Bell Telephone Company (CBT)
GTE System Telephone Companies (GSTC)*
GTE Telephone Operating Companies (GTOC)*
Lincoln Telephone and Telegraph Co. (Lincoln)
Nevada Bell (Nevada)
NYNEX Telephone Companies (NYNEX)
Pacific Bell (Pacific)
Rochester Telephone Corporation (Rochester)
Southern New England Telephone Co. (SNET)
Southwestern Bell Telephone Company (SWB)
United Telephone Companies (United)
US West Communications, Inc. (US West)

***GTOC and GSTC are also referred to collectively as GTE.**

APPENDIX B

Parties Filing Petitions to Reject or Suspend and Investigate

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Association for Local Telecommunications Services (ALTS)
MCI Communications Corporation (MCI)
MFS Communications Company, Inc. (MFS)
Penn Access Corporation (PAC)
Public Utilities Commission of Ohio (PUCO)
Sprint Communications Company L.P. (Sprint)
Teleport Communications Group, Inc. (Teleport)
Teleport Denver Ltd. (TDL)
Wiltel, Inc. (WilTel)
Wiltel, Inc. (WilTel)

APPENDIX C

**Tariff Review Plan
for Expanded Interconnection**

INSTRUCTIONS FOR TARIFF REVIEW PLAN

ROW INSTRUCTIONS:

- (1) LECs may add more rows, if needed.
- (2) Row 1: Total of Rows 2 through 20.
- (3) Row 23: Find Cost of Money (Percentage) = I by substituting I into the following equation:
Row #22 = @pmt (Row #1, I, Row #1 / Row #21) - Row #21
- (4) Row 26: Total of Rows 27 through 32.
- (5) Row 34: Total of Rows 35 through 50.
- (6) Row 51: Sum of Rows 21, 22, 24, 25, 26, 33, 34.
- (7) Row 52: Row 51 / 12
- (8) Row 55: (Row 53 * 12) / Sum (Rows 21, 22, 24, 25, 33)
- (9) Row 56: Row 53 / Row 52

Entrance Facility Installation Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	\$	\$	\$	\$
2	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$
3	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$
4	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$
5	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$
6	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$
7	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$
8	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$
9	List: Name - Pt. 32 Acct No. - Dep. Life	\$	\$	\$	\$