Customer First Order at 66-67. The ICC also required that Ameritech Illinois allow residential resale, but placed a restriction that residential services can only be resold to residential customers.

2. Number Portability

The FCC notes that it plans to address number portability issues raised by the 1996 Act in CC Docket No. 95-116. NPRM at para. 199. The ICC agrees with this approach.

The FCC notes the work of the number portability task force in Illinois. As mentioned previously, this task force was instrumental in evaluating the various number portability approaches, refining the Location Routing Number ("LRN") approach proposed by AT&T, and developing an industry consensus that the LRN approach should be implemented in the Chicago area. The ICC has approved this recommendation and is addressing statewide number portability issues in a separate rulemaking. See Docket 96-0128. Recently, the industry task force has chosen Lockheed Martin to develop the database needed for implementation in the Chicago area. The ICC stresses that this landmark work illustrates the need for States to be allowed to continue to move forward individually on local competition issues, beyond minimum FCC regulations. The rapid progress toward implementing number portability in Illinois, which has been mirrored by several other States, would not have been possible on a nationwide scale.

3. Dialing Parity

The ICC agrees with the FCC's tentative conclusion that section 251(b)(3) creates a duty to provide dialing parity with respect to international, interstate, and intrastate, local and toll services. NPRM at para. 206.

The FCC seeks comment on specific methods for implementing local and toll dialing parity. NPRM at para. 209. Illinois is one of eight states that ordered intraLATA toll dialing parity prior to December 19, 1995, the date after which states were prohibited under the 1996 Act from requiring that BOCs implement intraLATA dialing parity prior to receiving interLATA relief. The ICC ordered that all LECs, both new and incumbent, implement intraLATA presubscription using a 2-PIC method, except in the single exchange where the incumbent LEC (Moultrie Independent Telephone Company) had previously implemented 1-PIC interLATA and intraLATA presubscription.

Illinois settled on the 2-PIC method and required presubscription of intraLATA measured usage calls over 15 miles. Untimed, flat-rate, and measured Extended Area Service (EAS) calls were not included, because it appeared doubtful that any competitor could match the prices of those services, and the ICC did not want to subject customers to unreasonably high prices.

Only minimum federal rules regarding dialing parity are needed, to ensure that States act where they have not. Detailed, highly preemptive federal dialing parity standards might threaten the work already accomplished in states like Illinois. If

national standards are implemented, an appropriate requirement would be that at least a modified 2-PIC method be implemented, with a clear statement that States may adopt methods that allow greater customer choice, including the 2-PIC method adopted in Illinois, as well as more sophisticated "multi-PIC" or "smart-PIC" methods.

The FCC seeks comment on what implementation schedule should be adopted for dialing parity obligations for all LECs. NPRM at para. 212. The ICC adopted implementation deadlines of April 7, 1996, for Ameritech Illinois, and November 1, 1996, for the other incumbent LECs and for all new LECs in Illinois. The ICC provided that waivers could be granted if dialing parity is shown to be not technically feasible or if the costs are expected to substantially exceed reasonably anticipated benefits. Extensions may also be requested by carriers not able to implement presubscription in the specified time frame.[41] The FCC's rules should not require that these deadlines and waiver procedures be modified in Illinois.

The FCC seeks comment as to whether the FCC should require LECs to notify consumers about carrier selection procedures or impose any additional consumer education requirements. NPRM at para. 213. Customer notification and education is essential, and that LECs are uniquely situated to assist in this function.

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[41]Only one request for an extension of time has been made. Ameritech Illinois requested, and the ICC granted, a short delay in the implementation of intraLATA presubscription in twelve small exchanges, to allow time needed for necessary equipment upgrades (Docket 96-0090).

Further, at least until there is widespread local competition, the LEC has a bottleneck relationship with new customers calling for local service and an unparalleled opportunity to influence such customers' choice of intraLATA carrier. The LEC alone sends a bill that reaches every customer every month. The ICC adopted the following requirements in 83 Il. Adm. Code Part 773 regarding the manner in which LECs must notify customers regarding presubscription:

a) For each incumbent LEC exchange that was an interLATA equal access exchange as of the effective date of this Part, and for each new LEC, the LEC shall provide written notice to its customers of the availability of presubscription, as follows:

   1) The notice shall be provided to existing customers at least 30 days prior to the implementation of presubscription consistent with this Part.

   2) The notice shall be provided to new customers who request network access service between the time the notice is distributed and the date presubscription is implemented consistent with this Part, at the time they request service.

   3) The notice shall describe presubscription, the customers' choices, how to select among the presubscription choices, and any related charges in a manner that does not attempt to influence customers regarding their selections.

b) For each incumbent LEC exchange that was not an interLATA equal access exchange as of the effective date of this Part, balloting shall be required for both interLATA and intraLATA usage, as follows:

   1) Balloting shall be in accordance with the FCC's Memorandum Opinion and Orders in CC Docket No. 83-1145, Phase I, and balloting shall include both interLATA and intraLATA choices.

   2) Customers' intraLATA usage subject to presubscription shall not be allocated, and shall continue to be provided by the incumbent LEC (or primary toll carrier)

until the customer selects a different intraLATA presubscription choice.

c) For new customers requesting network access service after presubscription consistent with this Part is implemented in an exchange, the LEC or other carrier receiving the request shall inform the customer, when service is requested, of its presubscription choices and shall provide the following information before either asking for the customer's presubscription selections and/or marketing its own interexchange services:

1) The customer service representative shall inform the new customer that the customer can select from a number of interexchange carriers for presubscribed interexchange service, and shall describe the available presubscription choices in a manner that does not attempt to influence customers regarding their selections.

2) The representative shall offer to provide the names of interexchange carriers serving that office in random order as well as the telephone numbers of the interexchange carriers.

3) If the customer indicates its selections, the representative shall not solicit the customer further for the carrier's interexchange services.

4) Customers shall retain their existing intraLATA dialing arrangements as of the effective date of this Part until they make presubscription selections, and may change their selections at any time, subject to charges specified in section 773.160. Procedures for intraLATA and interLATA selection changes shall be in accordance with the FCC's Memorandum Opinion and Orders in CC Docket No. 83-1145, Phase I and 47 CFR Part 64.1100.

The ICC would not object to adoption of these customer notification rules at the national level, or other minimum rules that do not preclude Illinois from continuing to implement intraLATA presubscription according to its rules.

Section 251(b)(3) prohibits "unreasonable dialing delays." The FCC seeks comment on the appropriate definition of the term "dialing delay" and on appropriate methods for measuring and

recording that delay. NPRM at para. 218. As discussed previously, the ICC has created a task force to implement number portability in the Chicago area. One of the more recent inquiries of that task force is dialing delays associated with porting numbers. Progress has been made in recognizing that network configuration has a great deal to do with the length of the dialing delay, but no recommendation has been made by the task force. The task force plans to set a standard for measuring and limiting dialing delays associated with number portability. Once the task force has identified an acceptable period of dialing delay, the FCC may wish to establish that same duration of dialing delay as acceptable for the purposes of section 251(b)(3).

The FCC seeks comment on what, if any, standard should be used for arbitration to determine the dialing parity implementation costs that LECs should be permitted to recover, and how those costs should be recovered. NPRM at para. 219. Following are Illinois' requirements, contained in 83 Il. Adm. Code Part 773, regarding cost recovery for intraLATA presubscription:

a) Each LEC shall allow customers to change presubscription selections once at no charge within six months following implementation within an exchange of presubscription, and shall allow each new customer to select presubscription arrangements at no charge at the time network access service is initiated. At other times, each LEC may impose a reasonable, tariffed charge for changes in a customer's presubscription selections.

b) Each LEC may seek to recover reasonable separated intrastate costs limited to initial incremental expenditures related

directly to the provision of presubscription that would not be required absent the provision of presubscription.

c) In determining presubscription cost recovery, each LEC shall amortize all separated intrastate presubscription costs over at least a three year period.

d) Each LEC that provides noncompetitive services and is not an average schedule company shall use the following procedures for recovery of intrastate presubscription costs:

1) A tariffed presubscription cost recovery charge shall be applied to all switched originating intraMSA intrastate minutes of use subject to presubscription and originated by the LEC's customers, whether carried by the LEC or another interexchange carrier. If the LEC is a Primary Toll Carrier, such charges shall not apply to customers of other LECs with which the LEC has a Primary Toll Carrier arrangement;

2) The LEC shall submit the proposed presubscription cost recovery charge and full cost documentation as part of its tariff filing made to implement presubscription consistent with this Part;

3) In non-equal access exchanges where both inter- and intraLATA equal access are implemented concurrently, LECs should develop separate inter- and intraLATA cost recovery charges, consistent with the FCC requirements and this Part.

e) Each LEC that is an average schedule company shall, through its concurrence in the Illinois Small Company Exchange Carrier Association ("ISCECA") intrastate switching tariffs, use the following procedures for recovery of intrastate presubscription costs:

1) An addition to the local switching rates shall be applied to all switched intrastate minutes of use subject to presubscription and originated by the LEC's customers;

2) ISCECA shall submit the proposed addition to its local switching rates and full cost documentation through a tariff filing made to recover intrastate presubscription costs consistent with this Part;

3) The addition to the local switching rates shall apply for the amortization period only. At the end of the amortization period, ISCECA shall file the appropriate local switching tariff reflecting the removal of such addition to its local switching rates.

This approach is competitively neutral in that it allows start-up costs to be recovered equitably from all switched originating intraLATA intrastate minutes of use subject to presubscription. The ICC has instituted this mechanism for cost recovery and opposes any federal mandates on cost recovery that would preempt this mechanism. To the fullest extent possible, the FCC should leave cost recovery for dialing parity to the States in which dialing parity is being implemented.

The FCC requests comments on the nondiscriminatory access of all providers to the operator services and directory assistance of the incumbent LEC via resale of those services. NPRM at para. 214. While the ICC recognizes a possible need for federal requirements in this area, it cannot comment on these issues because of ICC Docket 95-0458, the pending resale proceeding.

4. Access to Rights-of-Way

The ICC prefers that issues relating to rights-of-way be negotiated among telecommunications providers, with little resort to the processes of the ICC. The ICC has in place several rules that govern right-of-way acquisitions (83 Il. Adm. Code Part 300), precondemnation negotiations (83 Il. Adm. Code Part 780) and engineering and safety requirements (83 Il. Adm. Code Parts 305 and 785) (attached). However, when it comes to agreements among carriers, cooperation and negotiation provide the most efficient mechanisms to address such issues. This position is quite clear in the ICC's attached rule regarding pole

attachments. 83 Il. Adm. Code Part 315. This position was reaffirmed in the Customers First Order,[42] where the ICC stated that:

> the [ICC] expects all carriers to use good faith efforts to cooperate with one another and provide other carriers, including competitors, with reasonable access to their poles and conduits. If there prove to be problems, any carrier can bring them to the [ICC's] attention through the complaint process.

The ICC also stated that:

> [w]ith respect to rights of way, the [ICC] notes that the authority of local municipalities and third party property rights are implicated. It would be appropriate for industry workshops to be held to address these issues, and to consider the appropriate role for the [ICC] in such matters.

In Illinois, it is common procedure for telecommunications carriers to reach contractual agreements regarding access, pricing, cost allocation, capacity determinations, safety and reliability issues relating to poles, ducts, conduits, and other pathways. These contracts are then filed with the ICC for reference. The ICC sees no reason why these arrangements should change, unless there is a complaint. If a dispute goes unresolved, the State commission should be the agent to resolve this dispute in accordance with the mediation and arbitration requirements of section 252.

The FCC seeks a definition for nondiscriminatory access to an incumbent LEC's rights-of-way. NPRM at para. 222. Access encompasses the terms and conditions based on which arrangements are made with an incumbent LEC to access a pole, duct, conduit or

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[42]Customers First Order at 132.

right-of-way. In order for access to be "nondiscriminatory" an incumbent LEC would have to provide access to poles, ducts, conduits and rights-of-way on terms that do not discriminate on an unreasonable or unjust basis[43] between requesting telecommunications carriers that are similarly situated. An incumbent LEC would also have to offer access to these poles, ducts, conduits and rights-of-way to the telecommunications carrier at rates, terms and conditions that do not discriminate, on an unreasonable or unjust basis, between that carrier and the incumbent LEC or any of its affiliates. Contractual agreements with affiliates would provide a basis or measure when mediating or arbitrating between carriers during a dispute.

5. Reciprocal Compensation for Transport and Termination of Traffic

In paragraph 230, the FCC seeks comment on the types of traffic that are encompassed by the "transport and termination of telecommunications" under section 251(b)(5). In the Customers First proceeding, the ICC established reciprocal compensation rates for Ameritech Illinois, to be available for calls that originate from new LECs' customers whose vertical and horizontal (V&H) coordinates are no more than 15 miles from the V&H coordinates of the called party on Ameritech Illinois' network. Access charges apply for longer calls. The ICC has not addressed whether reciprocal compensation rates should apply for calls

[43]For a more detailed discussion of the ICC's interpretation of "nondiscriminatory," see the response to paragraph 156, supra.

between adjacent non-competing LECs. Since Ameritech Illinois recently filed a Request for Approval asking that the ICC review and approve, pursuant to section 252, a negotiated agreement with Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One-Chicago that provides reciprocal compensation, the ICC will not comment to the FCC at this time regarding the applicability of local termination rates to CMRS providers.

The scope of calls that the ICC found eligible for reciprocal compensation complements and is coordinated with the ICC's determination regarding the scope of calls eligible for intraLATA presubscription (intraLATA calls over 15 miles can be presubscribed to competing carriers). For Ameritech Illinois, this is a reasonable combination that allows competitors for both local and longer distance calls. The ICC submits this combination for FCC consideration. If the FCC sets minimum standards regarding which calls are eligible for reciprocal compensation, it should not preclude the balanced outcome that the ICC has adopted for Ameritech Illinois.

In paragraph 232 of the NPRM, the FCC seeks comment on whether the pricing criteria set forth in sections 252(d)(1) and 252(d)(2) should be considered separately. Section 252(d)(1) sets the pricing standard for interconnection and unbundled elements, whereas section 252(d)(2) addresses transport and termination of local exchange traffic. Interconnection, unbundled network elements, and transport and termination of traffic are all carrier-to-carrier relationships. However,

consistent with our discussion in response to paragraph 53, supra, the obligation to provide interconnection and unbundled network elements confers an obligation to provide certain facilities, whereas a carrier receives no right to the use of any special facilities by paying for the transport and termination of a call. At the same time, there is some substitutability between the use of unbundled network elements and the choice to let the incumbent LEC transport and terminate a competitor's traffic. Thus, if the FCC establishes national cost and pricing methodologies, it should consider this substitutability and the effects of pricing policies on carriers' choices. The ICC cautions that two widely disparate policies for the pricing of these services may have potentially distorting effects on the marketplace.

In paragraph 233, the FCC seeks comment on whether the 1996 Act permits States to use identical pricing rules for transport and termination and for interconnection and network elements and, if different rules are used, whether it will be possible to distinguish transport and termination from the other categories of service. The FCC also seeks comment on whether, if two different pricing rules could apply to a particular situation, the FCC should require that the new entrant be able to choose between them.

The 1996 Act uses distinctly different language in the pricing standard in section 252(d)(1) compared to section 252(d)(2), which clearly implies that the pricing standards may

differ. Section 252(d)(1)(A) states that the pricing standard for interconnection and network elements is to be based on cost (determined without reference to a rate-of-return or other rate-based proceeding) and may include a reasonable profit, whereas section 252(d)(2)(A)(ii) states that the pricing standard for transport and termination of traffic is to be based on a reasonable approximation of the additional costs of terminating such calls. It appears, however, that the two pricing standards are not necessarily mutually exclusive. For example, a State commission may implement section 251(d)(1)(A) by adopting a LRSIC methodology to establish costs. Similarly, a State commission may determine that a reasonable approximation of the additional costs of transport and termination of calls can also be established using a LRSIC methodology. In pricing interconnection and network elements, a State commission may choose whether and how to include a reasonable profit. Both of these approaches are based on LRSIC costs. It appears that the language does not prohibit the States from using identical pricing standards for the two categories of service. The ICC does not know of any reasons why transport and termination could not be distinguished and separated from other categories of service for measurement and pricing purposes, and is not aware of any reason why carriers should be restricted in their choice of which services they can request of the incumbents.

Paragraph 234 of the NPRM discusses the potential benefits associated with rate ceilings and/or rate floors with respect to

the transport and termination of traffic and seeks comment on these issues. The ICC is currently investigating the merits of such proposals in its generic access docket (ICC Docket 94-0047) and therefore cannot discuss the specifics of these proposals. However, these issues should be addressed by the States, not the FCC. The potential interaction between access charges and termination rates must be considered carefully when rates for the termination of local traffic are set. In the Customers First proceedings, the ICC concluded that the access and local termination rate structures should eventually merge. Customers First Order at 98. However, the ICC cautions the FCC that these issues must be carefully evaluated by each State.

The FCC also seeks comment on the meaning of section 252(d)(2)(B)(ii). NPRM at para. 234. The FCC characterizes this subsection as "prohibiting" rate regulation proceedings to establish transport and termination costs and any requirement that carriers maintain records regarding transport and termination costs. The FCC's interpretation is a misreading of the statute. Rather, this subsection states that it "shall not be construed...to authorize the [FCC] or any State commission" to conduct such proceedings or to establish such requirements. The difference between "prohibiting" and "not authorizing" is an important distinction. This section does not take away any authority that may exist independently of the 1996 Act regarding these matters.

Paragraph 235 of the NPRM seeks comment on whether symmetrical compensation arrangements are consistent with the requirement that mutual compensation is to be based upon a reasonable approximation of the costs that each carrier incurs when terminating traffic. The answer to this question ultimately depends upon how much flexibility is allowed in the interpretation of the phrase "a reasonable approximation" of such costs. If the FCC establishes general cost and pricing guidelines, it should allow the States to address such issues on a case-by-case basis.

Paragraph 238 of the NPRM seeks comment on whether the FCC should require rate symmetry, whether it should allow States to make the decision regarding symmetry or whether it should allow new LECs to charge rates higher than the incumbent's rates. In the Customers First proceedings, the reciprocal termination rates established for Ameritech Illinois are available to new entrants that charge Ameritech Illinois no more than those rates.[44] They are based on Ameritech Illinois' costs (LRSIC) and allow for recovery of some common costs. The rates are also set such that Ameritech Illinois' local usage rates pass an imputation test wherein the primary imputed costs are the local termination rates. The ICC stated that this structure may need to be reconsidered in the generic access docket (ICC Docket 94-0047) due its potential interaction with switched access rates. The

[44]Customer First Order at 84 and 101. The adopted rates are 0.5 cent per minute for traffic delivered at an end office and 0.75 cent per minute for traffic delivered at a tandem office.

States should be allowed to determine whether symmetrical rates should be adopted for the transport and termination of local traffic.

In paragraphs 239-243, the FCC describes some of the potential merits of bill and keep arrangements and questions whether section 252(d)(2)(B)(i) authorizes States to impose bill and keep arrangements.

Clearly, the language in section 252(d)(2)(B)(i) does not prohibit States from approving bill and keep arrangements. However, the language does not grant the FCC authority to impose bill and keep arrangements on intrastate charges for transport and termination of traffic. The States should retain the flexibility to adopt bill and keep arrangements for transport and termination.

Paragraph 243 seeks comment as to whether bill and keep options should be restricted by the FCC in some manner. As stated previously, when the rates related to the transportation and termination of traffic are established, the State commission must consider the relationship between these rates and the switched access rates. The FCC should not establish any restrictions which inhibit the States' ability to establish a reasonable relationship between these rates.

D. Duties Imposed on Telecommunications Carriers by Section 251(a)

The FCC seeks comment on its tentative interpretation of the definition of a "telecommunications carrier," to include

"carriers ... engaged in providing for a fee local, interexchange, or international basic services, directly to the public or to such classes of users as to be effectively available directly to the public ..." The FCC also solicits comment on whether a provider may qualify as a telecommunications carrier for some purposes but not others. The FCC goes on to give the example of a carrier that provides an information service, in addition to an unrelated telecommunications service. NPRM at para. 246. The ICC supports the FCC's tentative conclusion regarding what constitutes a "telecommunications carrier" for the purposes of section 251. If a company provides both telecommunications services and information services, it must be classified as a "telecommunications carrier" for purposes of section 251.

The FCC tentatively concludes that it should continue to determine whether mobile satellite services ("MSS") are correctly defined as CMRS or PMRS based on the factors set forth in the CMRS Second Report and Order. NPRM at para. 247. The ICC agrees that MSS should be defined as either CMRS or PMRS according to the FCC's definitions. However, if an MSS provider's services are substitutable for those of a landline LEC, the MSS provider should also be defined as a LEC, and treated accordingly under proper State and federal law. The ICC agrees with the FCC that a carrier engaged in providing for a fee, local, interexchange or international basic services

directly to the public, falls under the definition of telecommunications carrier, as provided by the 1996 Act.

The FCC solicits comments regarding measures needed to ensure that telecommunications carriers comply with the requirements of section 251(a)(2) regarding access by persons with disabilities and coordination of network planning. NPRM at para. 249. It has been the ICC's experience that cooperation between a State commission and telecommunications carriers provides the most effective method to ensure compliance with the various state and federal requirements regarding access by persons with disabilities. This cooperation has been consistently successful when there is a legal requirement that a carrier perform a certain function. This leads the ICC to recommend that the FCC take great care in crafting the guidelines regarding accessibility of telecommunications and customer premises equipment to persons with disabilities. These guidelines should be very clear, specific, and should extend the maximum possible authority to State commissions for implementation.

Although the ICC cannot, at this time, provide an extensive definition of what should constitute network features, functions or capabilities as they relate to section 251(a)(2), as requested in paragraph 249, the ICC urges the FCC to consider including the following elements in its definition of network features available to persons with disabilities. Persons with speech and hearing disabilities should have access to intercept message

announcements. Currently, when a Text Telephone (TT) user dials a number that has been disconnected, for example, their TT cannot read the recorded message announced once the call has been connected. As a result, TT users can neither differentiate a temporarily disconnected number from a permanently disconnected number, nor obtain the alternative number if it is part of the recorded announcement. Providing intercept message announcements to TT users is technically feasible and may provide information needed in an emergency situation.

Persons with speech or hearing disabilities should have access to the same directory assistance (411 and 555-1212), telephone repair assistance numbers (611), and operator services (0) as all other telecommunications users. Persons with disabilities are currently required to call special telephone numbers to access these services. Allowing TT users to access these numbers would be neither costly nor complicated. An operator handling a call would revert to using the TT if not met with a response after two greetings. The cost of doing so is minimal, since reverting from the verbal communication mode to the TT mode merely requires the push of a button, or the placement of the telephone hand set on the TT device. This system is required for access to 911 services, and should be extended to directory assistance, telephone repair service and operator services. It has also come to the ICC's attention that there are some answering machines that can distinguish between

voice calls and TT calls. These machines may be used to allow TT users to access these services.

Finally, persons with speech and hearing disabilities have indicated an interest in obtaining a three digit number, such as 511 or 811, with which to access a telecommunications relay center. The FCC may wish to consider this as part of the definition of network capabilities to be available to persons with disabilities.

E. Number Administration

The ICC does not take issue with the FCC's tentative conclusion that the FCC's North American Numbering Plan Order satisfies its responsibilities to implement section 251(e)(1). NPRM at para. 252.

F. Exemptions, Suspensions, and Modifications

The FCC seeks comment on whether it can and should establish standards to assist the States in satisfying their obligations under section 251(f). NPRM at para. 261. The ICC certainly agrees with the FCC's tentative conclusion that the States alone have authority to make determinations under section 251(f), and sees no need for federal regulations in this area.

G. Continued Enforcement of Exchange Access and Interconnection Regulations

The ICC has no comments on this section of the NPRM at this time.

H. Advanced Telecommunications Capabilities

The FCC seeks comment on how it can advance the goal in section 706(a) of the 1996 Act to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms)" within the context of implementation of sections 251 and 252. NPRM at para. 263.

Illinois has taken significant steps to provide educational institutions with access to advanced telecommunications capabilities. Section 13-505.7 was added to the Illinois Public Utilities Act in 1995, which allows telecommunications carriers to offer special interactive video learning services for the exclusive use of qualified educational institutions, and exempts such services from existing statutory imputation requirements. The special video learning services consist of video, data, voice, and electronic information used by a qualified educational institution for instruction, learning, and training. Qualified educational institutions are limited to school districts, public or private not-for-profit schools enrolling more than 20 pupils for kindergarten through grade 12, and public or private degree granting, not-for-profit colleges or universities.

Since this amendment to the Illinois Public Utilities Act was enacted, both Ameritech Illinois and GTE North have filed tariffs providing discounted advanced telecommunications services to qualified educational institutions.

The ICC suggests that, if the FCC accepts the ICC's interpretation of "nondiscriminatory"[45] and if it adopts pricing standards for section 252(d)(1)(A), the FCC should allow carriers to price interconnection and unbundled network elements at cost, with no consideration for additional "reasonable profit," for interconnection or unbundled network elements to serve a school, library and/or healthcare provider. This may significantly decrease the cost incurred by the school, library and/or healthcare provider, so that it can access and benefit from advanced telecommunications services. This may also encourage competition among carriers that provide advanced telecommunications services to such institutions, since they will not have to provide the incumbent LEC with "reasonable profit." To a competitor, this is an added cost that the incumbent does not have to incur.

Should the FCC disagree with the ICC's interpretation of "nondiscriminatory" as it relates to section 252(d)(1)(A), the FCC may consider compensating the telecommunications carrier or the eligible institution for the portion of the price that constitutes "reasonable profit," from universal service support pursuant to section 254, or from the Telecommunications Development Fund pursuant to section 714.

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[45] See response to paragraph 156, supra.

III. PROVISIONS OF SECTION 252

A. Arbitration Process

At paragraphs 265 and 266, the FCC seeks comment on a number of matters concerning the arbitration process. First, the FCC seeks comment on whether in this proceeding it should establish regulations necessary and appropriate to carry out its obligations under section 252(e)(5). It is the position of the ICC that the FCC should establish regulations necessary and appropriate to carry out its obligations under section 252(e)(5). As detailed below, regulations would provide some guidance in what could become a rather murky area of state/federal jurisdiction. The simple suggestions outlined below can alleviate many of these potential problems.

The FCC also seeks comment on what constitutes notice of failure to act, and what procedures, if any, it should establish for interested parties to notify the FCC that a State commission has failed to act. The FCC seeks comment on the circumstances under which a State commission should be deemed to have "fail[ed] to act" under section 252(e)(5), noting that section 252(e)(4) states that if the State commission does not approve or reject (1) a negotiated agreement within 90 days, or (2) an arbitrated agreement within 30 days, from the time the agreement is submitted by the parties, the agreement shall be "deemed approved." The FCC seeks comment on the relationship between

this provision and its obligation to assume responsibility under section 252(e)(5). NPRM at para. 266.

It is the position of the ICC that in interpreting sections 252(e)(4) and 252(e)(5), one must assume that Congress did not intend these two sections to be contradictory; therefore, these sections should be read consistently unless it is impossible to do so.[46] Applying this most basic rule of statutory construction, "not act[ing] to approve or reject" the agreement, which results in the agreement being deemed approved, cannot have the same meaning as the words "fail[ing] to carry out its responsibility under this section," which results in FCC preemption.

It is the position of the ICC that with respect to the approval or rejection of negotiated or arbitrated agreements, the FCC may not, under any circumstances, preempt a State commission. Section 252(e)(4) clearly states that if a State commission does not approve or reject (1) a negotiated agreement within 90 days, or (2) an arbitrated agreement within 30 days, from the time the agreement is submitted by the parties, the agreement shall be "deemed approved." The statute does not allow for preemption in these circumstances. Any person or party aggrieved by a State's failure to act within the time specified may seek their remedy in the appropriate Federal district court pursuant to section 252(e)(6).

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[46] See generally, Connecticut National Bank v. Germain, 503 U.S. 249, 253, 112 S. Ct. 1146, 117 L.Ed. 2d 391 (1992).

As to mediation, arbitration, and State commission review of BOC Statements of Generally Available Terms, a simple ministerial solution can be utilized to resolve any tension between the State's right to perform these functions and the FCC's duty to preempt the State when it fails to act. The ICC recommends that, immediately upon receipt of a petition to mediate or arbitrate, or upon receipt of a BOC Statement of Generally Available Terms, the State commission should issue and serve upon the FCC a notice of its intent to either mediate, arbitrate, or consider the Statement of Generally Available Terms, as appropriate. For example, in the case of arbitration, once the State commission sends to the FCC its "Notice of Intent to Arbitrate," the FCC is assured that it need not act unless the State commission fails to issue an arbitration decision 9 months after the LEC received the request for interconnection under section 252.

The ICC recommends that any "Notice of Failure to Act" be given in the form of a sworn petition from one of the parties to the mediation or arbitration, or from the BOC or other party interested in the Statement of Generally Available Terms. The petition should set forth, with specificity, the factual circumstances which support a finding of a failure to act. The petition should be served upon the FCC, the State commission, and the parties to the mediation, arbitration, or review of the Statement of Generally Available Terms. The State commission should be given adequate time to respond to the petition. Even where a State commission is deemed to have failed to act to carry