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

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[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

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[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

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[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.