

7. INTERCONNECTION OF LEC AND CLC NETWORKS  
FOR TERMINATION OF LOCAL TRAFFIC

A. The interconnection of LEC and CLC networks for the termination of local traffic involves not only the construction and maintenance of the interconnecting facilities, but also the throughput of local terminating traffic across those interconnecting facilities. Local exchange networks shall be interconnected so that customers of any local exchange carrier can seamlessly receive calls that originate on another local exchange carrier's network and place calls that terminate on another local exchange carrier's network without dialing extra digits.

B. In the interim, local traffic shall be terminated by the LEC for the CLC and by the CLC for the LEC over the interconnecting facilities described in this Section on the basis of mutual traffic exchange. Mutual traffic exchange, also known as "bill and keep," means the exchange of terminating local traffic between or among CLCs and LECs, whereby LECs and CLCs terminate local exchange traffic originating from end users served by the networks of other LECs or CLCs without explicit charging among or between said carriers for such traffic exchange.

C. Bill and keep rules apply to all local calls (including calls within a 12 mile radius and EAS and ZUM Zone 3) between a CLC network and a LEC end office, even if the call is routed through an access tandem. Toll free, directory assistance, busy line verification, and emergency interrupt calls are not subject to bill and keep provisions.

D. For intraLATA toll calls, CLCs shall pay terminating access charges based on the LECs' existing switched access tariffs.

E. If a CLC uses a LEC tandem to route a call to another CLC, the LEC may impose a charge for the service.

F. Before December 31, 1996, the Commission will review the appropriateness of a bill and keep system, and modify if necessary.

G. CLCs and LECs shall negotiate interconnection arrangements which shall contain mutually agreeable points of interconnection. Upon reaching agreement on the terms of interconnection, parties to the agreement shall file the agreement via advice letter with the Commission for expedited review and approval. Parties shall develop compensation provisions that appropriately reflect the usage of facilities. In the event parties are unable to reach agreement, parties may designate their own separate points of interconnection for

Appendix E  
Page 12

terminating local traffic on each other's networks, if mutually agreeable, until the dispute is resolved by the Commission.

H. Virtual or physical collocation interconnection arrangements are not precluded, and may be implemented by mutual agreement, but shall not be a mandatory form of LEC-CLC interconnection.

I. Two-way trunking will be more conducive to efficient network utilization in a competitive environment. If two way trunks are used, CLCs shall submit percentages on a quarterly basis to LECs that represent the amount of local traffic a CLC is terminating on the LEC's network. Each CLC and LEC shall separately measure its total volumes and percentage of local usage sent to each carrier with which it interconnects and then exchange its measurements with that carrier as well as with CACD for monitoring purposes. Any independent verification of the traffic reported to CACD shall be funded jointly by all certificated local exchange competitors.

J. In every LATA where a carrier originates traffic and interconnects with another carrier, it must interconnect with all of the other carriers' access tandams.

K. If a CLC wishes to interconnect to an end office that is not SS7 capable, the LECs must accommodate the request via MF signaling.

L. Symmetrical rights and obligations shall apply to LECs as well as CLCs in the exchange of confidential information. Each party shall be responsible for designating which information it claims to be confidential.

M. CLCs' liability shall be no greater than the LECs' liability for any action or inaction resulting in a claim against a LEC. Parties may establish the actual limits which must be symmetrical.

N. No competitor shall have the ability to terminate another carrier's service without prior notice or opportunity for proper recourse.

O. LECs may require CLCs with no established credit record who order interconnection service to pay a deposit equal to an estimated two months of recurring flat-rated or usage-based interconnection charges based on the number and type of interconnection facilities ordered from the LEC. Bonds may not be required in addition to deposits.

P. Interconnection standards set forth in subsection 6 of GO 133-B shall apply to both LECs and CLCs.

Appendix E

Page 13

- (1) An Intercompany Interconnection Held Service Order (IIHSO) shall be reported when service is not provided within 15 days of the mutually agreed-upon due date. Local carriers shall file their IIHSOs on the last day of the following month.
- (2) An IIHSO report, broken down by individual CLC, shall contain the following information:
  - a. the service order number
  - b. the due date
  - c. the company requesting interconnection
  - d. whether the IIHSO is overdue to 15-20, 21-25, 26-30, 31-35, 36-40, 40-45, and over 45 days.
  - e. the reporting unit (wire center or plant installation center)
  - f. whether the IIHSO is pending or complete
  - g. an explanation for the IIHSO
- (3) All local carriers shall refund nonrecurring interconnection charges for service orders held 45 days beyond the mutually agreed upon service date. Refunds do not apply if service order completion was delayed due to natural disasters, severe weather, labor disputes, or civil disturbances.

8. ADDITIONAL INTERCOMPANY ARRANGEMENTS

A. LECs shall provide certain essential services under reasonable and nondiscriminatory terms and conditions, either under tariff or by contract on an interim basis pending further determination in Phase II. These essential services include busy line verify/emergency interrupt, and inclusion of CLC customer listings in LECs' directory assistance databases.

B. CLCs shall have access to E-911 provided by the LEC under the same terms and conditions enjoyed by the LEC. LECs shall allow CLCs to connect to the LEC 911 tandems, routers, and other switching points serving the areas in which CLCs provide local exchange telecommunications services, for the provision of E-911 services and for access to all sustaining Public Safety Answering Points (PSAPs). CLCs shall compensate the LECs at a rate that covers the cost of providing access to E-911 and for any other related maintenance costs of E-911 databases.

- (1) Both facilities-based and resale CLCs shall provide residential customers access to E-911 service following disconnection due to nonpayment (i.e., "warm-line service"). Facilities-based CLCs and LECs must offer warm line service to resale CLCs. Resale CLCs shall offer warm line service to a customer as long as the CLC maintains an arrangement for resale service to the

Appendix E  
Page 14

end user's premises. Following termination of the resale arrangement, the obligation to provide warm line service shall revert to the underlying facilities-based CLC or LEC.

- (2) LECs shall provision E-911 trunks within 30 business days from when ordered.
- (3) LECs shall charge CLC the LECs cost for provisioning maps of 911 tandem locations.
- (4) To ensure the timely update of 911 databases, CLCs shall provide information on new customers to the LEC within 24 hours of order completion. LECs shall update their databases within 48 hours of receiving data from the CLC. If the LEC detects an error in the CLC data, the data should be returned to the CLC within 48 hours from when it was first provided to the LEC.
- (5) LEC's shall ship Master Street Address Guide (MSAG) data to the CLC within 72 business hours from the time requested, either on paper, diskette, magnetic tape, or in a format suitable for use with desktop computers.
- (6) CLCs shall provide the 911 database administrator with any necessary information when interim number portability is discontinued to ensure proper and timely response to a 911 call.
- (7) CLCs are required to obtain a toll free number to serve as a contact point where PSAPs can obtain subscriber information from competent and trained personnel 24 hours a day, seven days a week. An industry-led task force shall monitor and enforce this requirement and distribute the toll free numbers to PSAPs.

**C. LECs shall put into place an automated on-line service ordering and implementation scheduling system for use by CLCs. Data pertaining to service and facility availability shall be made available to CLCs. In addition to the GO 133(b) requirement to report held orders for end user service, LECs shall separately report monthly to CACD on held orders related to orders placed by CLCs.**

**D. LECs and CLCs shall provide each other with both answer and disconnect supervision to allow for proper billing of customer calls, as well as all available call detail information necessary to allow both LECs and CLCs to bill their customers properly.**

**E. Billing and collection shall be accomplished by mutual agreements on an interim basis, pending further commission action following a workshop. Agreements shall enable each**

Appendix E  
Page 15

telecommunications service provider TO accept another service provider's telephone line number and other non-proprietary calling cards and TO bill collect on third party calls to a number served by another provider.

F. Access to databases:

- (1) Through mutual agreement CLCs shall compensate the LECs for their cost of including the CLCs' customers in the directory assistance database and for any other related maintenance cost of directory assistance database in the provisioning of 411 services for the CLCs. Queries to the 411 data base shall be charged at the applicable tariff rate.
- (2) CLCs shall be provided access to LEC database services, e.g. 800 Data Base Service and Line Information Data Base (LIDS) Service. CLCs access to and use of such databases shall be through signaling interconnection, with functionality and quality equal to that received by LECs and their affiliates at nondiscriminatory tariffed rate.

G. LECs and CLCS shall make available access to all signaling protocols and all elements of signaling protocols used in the routing of local and interexchange traffic, including signaling protocols used in the query of call processing databases, and shall make available all signaling resources and information necessary for the routing of local and interexchange traffic. All such signaling protocols, elements, resources, and information shall be provided by LECs in a manner equivalent to their provision to themselves and to other LECs. LECs and CLCS shall be prohibited from interfering in the transmission of signaling information between customers and interconnected carriers, and may not claim proprietary right to signaling protocols or elements of signaling protocols.

H. LECs and CLCs shall be required to enter into mutual agreements for the interoperability of operator services between networks, including but not limited to the ability of operators on each network to perform such operator functions as reverse billing, line verification, and call interrupt.

I. LECs and CLCs shall develop mutually agreeable and reciprocal arrangements for the protection of their respective customer proprietary network information.

J. With respect to the publishing of telephone directories, the following provisions shall apply to LECs:

Appendix E  
Page 16

- (1) LECs and CLCs that provide local telephone service shall, upon request, provide subscriber list information gather in their capacity as providers of such service in a timely manner and on an unbundled basis, under nondiscriminatory reasonable rates, terms, and conditions, to any person for the purpose of publishing directories in any format, subject to the requirements of PU Code §§ 2891 and 2891.1.
- (2) LECs shall include CLCs' customers' telephone numbers in their "White Pages" and directory listings associated with the areas in which the CLC provides local exchange telecommunications services to its customers, except for CLC customers who desire not to have their telephone numbers appear in such listings and databases, at nondiscriminatory tariff rates charged to the CLC or its customer.
- (3) For any listing beyond a basic listing in the "White Pages," CLCs or their customers must pay the nondiscriminatory tariff rates established by the LEC or its affiliate.
- (4) Each CLC shall provide the LEC with its request for white pages and directory assistance and updates to those listings in a format required by the LEC, which format shall be provided to the CLC by the LEC on a magnetic tape or computer disc or other mutually agreeable transmission medium.
- (5) Until further Commission resolution, LECs and CLCs may develop mutually agreeable arrangements to distribute the local "White" and "Yellow Pages" directories to all CLC customers in a given service area.
- (6) LECs shall include in the section of the "White Pages" that precedes customer listings, information concerning each CLC on the same basis that it includes the information for itself or its LEC affiliates offering local-exchange telecommunications service in the geographic area covered by the relevant "White Pages". CLCs shall have the discretion to determine directories in which they wish to be listed. On an interim basis, CLCs shall be charged the rates established in D.94-09-065.

Universal Lifeline Telephone Service shall be provided by both LECs and CLCs at the statewide rates established in D.94-09-065. Rules for Universal Lifeline service will be finalized in the Universal Service Rulemaking, R.95-01-020.

10. JOINT LEC/CLC PROVISIONING OF SWITCHED CARRIER ACCESS SERVICES

CLCs and LECs shall establish through mutual agreement meet-point billing arrangements to enable CLCs to provide Switched Access Services to third parties via LEC access tandems, in accordance with the Meet-Point Billing and Provisioning Guidelines adopted by the Ordering and Billing Forum, subject to the following requirements:

A. CLC and LEC shall arrange for CLC to subtend the LEC access tandem which the LEC's own end offices that serve the same NXX Service Area subtend for the provision of Switched Access Services.

B. Subject to mutual agreement, the meet-point connection for the tandem subtending arrangement shall be established at the CLC's NXX Rating Point, at a collocation facility maintained by the CLC (or the CLC's chosen transport vendor) at the LEC access tandem, or at any point mutually agreed to by CLC and LEC.

C. Common channel signaling shall be utilized in conjunction with meet-point billing arrangements to the extent available.

D. CLC and LEC shall maintain provisions in their respective State access tariffs or concur in another LEC's or CLC's existing state access tariff sufficient to reflect this meet-point billing arrangement and meet-point billing percentages.

E. CLC and LEC shall exchange all call detail records associated with switched access traffic provided via the meet-point billing arrangement in a timely fashion, as necessary to accurately and reliably rate and bill third parties for such traffic.

11. INFORMATION SERVICES

A. Whenever a LEC operates an information services platform (e.g., 976 service) over which information services are delivered to its own end users located within an area also served by one or more CLCs, the LEC shall purchase originating access service and billing and collection service from each CLC in the area. Such access, billing and collection service shall be

Appendix E  
Page 18

identical to the access, billing and collection services the CLC provides to interexchange carriers for the delivery of calls to interexchange carriers' 900 information service platforms. If CLC interconnection is provided other than over one-way trunks capable of passing the caller's ANI, the CLC shall provide the LEC with a complete call record of all calls originating on the CLC's network and directed to the LEC's information service platform.

B. To the extent a CLC offers an information service platform over which information service providers may offer information services, the LEC shall offer, and the CLC shall purchase arrangements analogous to those described in (a) above.

C. If a CLC provides access to an information services platform (e.g., 976 and 900 services), the CLC must conform to the rules in D.91-03-021 as identified for interexchange carriers.

12. NONDISCRIMINATORY ACCESS TO RIGHTS OF WAY

LECs and CLCs may mutually negotiate access to and charges for rights of way, conduits, pole attachments, and building entrance facilities on a nondiscriminatory basis.

(END OF APPENDIX E)



News Release

July 1, 1996

## COMMISSION OPENS DOOR TO TELEPHONE COMPETITION

The Indiana Utility Regulatory Commission today issued an order that allows competition for local exchange telephone service to take place within the territories of Ameritech and GTE North and any other local exchange companies in Indiana that are not exempt from the federal Telecommunications Act of 1996.

Indiana has more than 40 local exchange companies, and all but two of them are considered "rural" companies. Under the provisions of the federal act, these rural companies have the option of seeking exemption from the act. Ameritech and GTE North do not have that option. Should the rural companies not opt for exemption, today's order would allow resale competition within their territories as well.

Today's order outlines a number of procedures to be followed by companies seeking to offer competitive services, including the establishment of rates, EAS policies, telephone directory listings and anti-slamming policies. The Commission retains its jurisdiction over the handling of customers' complaints and reminds the industry that service quality will continued to be strictly monitored as the industry moves to a competitive market rather than a regulated one.

The order, issued in Cause No. 39983, was approved on a 3-1 vote with Commissioner Mary Jo Huffman dissenting. A copy of her dissenting comments is attached.

(more)

In its order, the Commission ordered companies that will be subject to competition to file their wholesale tariffs with the Commission by July 24, 1996. These tariffs should detail the retail rates currently charged to customers. All newly competing telephone companies must obtain Certificates of Territorial Authority from the Commission before offering services to customers.

According to the federal Act, wholesale rates shall be determined by state commissions based on retail rates charged to customers less costs including but not limited to marketing, billing, collection and other costs that the incumbent company will no longer incur. The Commission's order does not establish a fixed formula for determining rates but does prohibit cross-subsidization by other operating units of the newly competing companies. That prohibition is designed to prevent unfair price undercutting by the new competitors. To further prevent unfair pricing, the Commission's order sets a price floor for new competitors. The competitors may not charge their retail customers rates lower than the wholesale costs charged by the incumbent telephone companies to the competitors.

The order requires the incumbent companies to pass on any decreases in their retail rates to their wholesale rates. The incumbent companies may flow through any increases in their retail rates to their wholesale rates.

The order requires any new competing telephone company to offer customers the Extended Area of Service, or EAS, calling plan already in effect under the incumbent telephone company. EAS is a program that allows communities to avoid toll charges for community calling that would otherwise carry long-distance charges.

(more)

EAS is currently a service provided as a packaged service offering and will not be subject to resale on an individual basis to replace toll charges. However, the Commission in this order does allow similar optional calling plans to be offered by the competing new companies and in the future may allow EAS to be offered for resale.

All telephone services, except for those listed below, will be subject to resale and should an incumbent company protest the resale of any service, it must first prove to the Commission why that service should be exempted.

Services not subject to resale

- ▣ Individual components of packaged service offerings
- ▣ Joint tenant service
- ▣ Grandfathered services
- ▣ Promotional offerings
- ▣ Carrier access service
- ▣ Individual customer arrangements offered in Ameritech's "Opportunity Indiana" plan
- ▣ Customer specific offerings offered by other local exchange carriers.

The Commission's order requires the incumbent local exchange companies to list all the telephone numbers regardless of the number of local exchange companies.

The order prohibits the termination or switching of service without proper authorization from customers. Companies engaging in these practices would be ordered to restore service to its original state without charge to customers, to refund all unauthorized billing to its proper agent and to reimburse the company that was properly authorized to provide service.

Dissenting Opinion of Mary Jo Huffman  
Cause No. 39983  
July 1, 1996

Today, I am unable to join my colleagues in approving the proposed order in Cause No. 39983. My responsibility as a Commissioner is to be an impartial finder of facts and to render informed decisions that I believe are in the public interest. As I considered this order in Cause No. 39983, I found myself in the dilemma of not being able to execute that role.

This cause was started two years ago under Indiana Code Section 8-1-2-58 to investigate local competition. Monumental efforts were put into this cause by all the parties including the IURC staff and the members of the Executive Committee headed by Paul Hartman. I sincerely commend all the participants for their efforts.

Despite the dedicated efforts of this group, the conclusion of their investigation came within days of the passage of the Telecommunications Act of 1996. The Executive Committee's Final Report was submitted January 16, 1996. The federal Act was approved February 8, 1996, and evidentiary hearing on the report began February 12. Post-hearing briefs were filed March 8, 1996.

It is my belief that the federal Act takes precedence over the efforts made by the Executive Committee. As a result, the focus of this order should be on the interpretation of the relevant resale provisions of the federal Act as stated in Section 251 (c) (4) and 252 (d) (3).

At the present time, the Commission may or may not have received sufficient evidence from the parties. Page 20 of the Commission's order states that most witnesses at the evidentiary hearing on the Executive Report "cautioned that they were still in the analysis process," regarding the federal Act. Additionally many of the parties indicated that their positions outlined in the Executive Report might change in response to the federal Act.

As a result, I feel the parties had insufficient opportunity to fully analyze the federal Act before filing their post-hearing briefs and submitting to us their positions on competition relative to the Act. Therefore, I believe that I also have insufficient evidence and argument pertinent to the application of the federal Act before me to make an informed decision on bundled resale under the federal Act.

I have long been open about my position that the Commission should quickly begin its efforts toward de-regulation in the telecommunications industry. While this order may be a step in that direction, it is my belief that we are proceeding without a clear understanding of how best to apply the Act upon an evidentiary record which was developed prior to its enactment.

I prefer not to comment on the merits of this order -- it may very well contain the optimum guidelines for our state.

But if it does, it will be a coincidental arrival and not one based on careful analysis of the Act itself. Because this order is based on the Commission's investigation, which preceded the Telecommunications Act, I must respectfully dissent.

  
Commissioner Mary Jo Huffman

STATE OF INDIANA

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

*RF*  
*JK*  
*JFM*

|                             |   |                    |
|-----------------------------|---|--------------------|
| IN THE MATTER OF THE        | ) |                    |
| INVESTIGATION ON THE        | ) | CAUSE NO. 39983    |
| COMMISSION'S OWN MOTION     | ) |                    |
| INTO ANY AND ALL MATTERS    | ) |                    |
| RELATING TO LOCAL TELEPHONE | ) | INTERIM ORDER ON   |
| EXCHANGE COMPETITION        | ) | BUNDLED RESALE AND |
| WITHIN THE STATE OF INDIANA | ) | OTHER ISSUES       |

APPROVED:

BY THE COMMISSION:

G. Richard Klein, Commissioner  
Keith L. Beall, Administrative Law Judge

JUL 01 1996

On June 15, 1994, the Commission initiated on its own motion an investigation into matters relating to local telephone exchange competition within the State of Indiana. This investigation was prompted by the Commission's own knowledge of the growing need for a generic review of local exchange telephone competition issues including those issues raised in a letter from John Koppin of the Indiana Telephone Association, Inc. ("ITA") dated May 2, 1994. In the Order initiating this proceeding the Commission found that "all providers of telecommunications services within the State of Indiana and under the jurisdiction of this Commission . . . should be named Respondents in this Cause." *Order of June 15, 1994*, at 2-3. Today's Interim Order deals with one portion of the many issues surrounding the introduction of competition in the local exchange telephone market. Specifically, this Order deals with the resale of bundled local service(s).

A preliminary and prehearing Conference was held on August 19, 1994, at 9:30 A.M., EST, in Room TC10, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana pursuant to proper notice. The following Respondents appeared by counsel and participated in the prehearing conference: Smithville Telephone Company, the Indiana Exchange Carriers Association (INECA), LDDS of Indiana, Inc. (LDDS), MFS Intelenet of Indiana, Inc. (MFS), MCI Telecommunications Corp. (MCI), Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech"), LCI International Inc. (LCI), American Communications Corporation (d/b/a Indiana Digital Access) (IDA), Hancock Rural Telephone Corporation (Hancock), Gary Cellular Telephone Company, United Telephone Company of Indiana (United), Sprint Communications Company (Sprint), AT&T Communications Corp. (AT&T), Northwestern Indiana Telephone Company, GTE North Incorporated (GTE North), Sprint Cellular Company (Westel/Indianapolis Company, Bloomington

Cellular Telephone Company, Inc., Indiana Cellular Corporation, [all doing business as Cellular One]). The Office of Utility Consumer Counselor (OUCC) also appeared and participated. Petitions to intervene were filed by United Senior Action and Citizens Action Coalition of Indiana, Inc.; Hoosier State Press Association; Indiana Telephone Association (ITA); and the American Association of Retired Persons (AARP). All petitions to intervene, with the exception of the petition filed by the ITA, were granted without objection. ITA's petition was granted over LCI's objection.

### The Executive Committee Process.

#### (1). Prehearing Conference Order: creation of the Executive Committee.

A Prehearing Conference Order was entered in this Cause on November 2, 1994. Therein the Commission established an Executive Committee. *Id.* at 3; *Order of November 2, 1994* at p. 2. That Order found that the Executive Committee should be comprised of one representative of each interested Respondent and Intervenor, and the OUCC. This Order further stated that "[a]ll members of the Executive Committee must be authorized to make decisions relating to the issues in this investigation and must be persons who are qualified to serve as witnesses at any hearings that may be held in this matter." *Order of November 2, 1994* at p. 3.

The Prehearing Conference Order provided that the Executive Committee should appoint separate subcommittees to focus on several specific issues. While the Executive Committee was directed to consider the areas in the Prehearing Conference Order, that Order also provided that the Executive Committee should have the flexibility to consolidate or expand issues as it determined appropriate. *Id.* The order gave the Executive Committee the "ultimate responsibility and authority to identify the specific issues to be discussed and resolved within each general issue category and to add or delete general topic categories." *Id.* at 4.

The Commission recognized the monumental task assigned to the Executive Committee. The Commission directed the Executive Committee to attempt to reach a consensus agreement, but, in the absence of such an agreement, to present the parties' positions and recommendations to the Commission

Among other things, the Prehearing Conference Order also provided that the meetings of the Executive Committee would be held as noticed public hearings in this Cause. The Order directed an Administrative Law Judge (ALJ) to open the record at a noticed

hearing and advise that the purpose of the hearing was to conduct an Executive Committee meeting. The Prehearing Conference Order provided that at the close of the meeting, the ALJ should reopen the record for the purpose of providing a brief summary of these matters discussed at the meeting. *Id.* at 6. The record in this Cause demonstrates this process was followed at each successive series of Executive Committee meetings.

Finally, the Prehearing Conference Order directed the Executive Committee to conduct an investigation and to prepare and present to the Commission a comprehensive report discussing the issues and recommending specific Commission action. *Id.* at 6-7.

(2). Requests for Reconsideration.

Following the issuance of the Prehearing Conference Order, two motions for reconsideration, and responses and related requests were filed by several Respondents and Intervenors from November 22, 1994 through December 28, 1994. Primarily, the motions sought reconsideration of the appointment of Commissioner Klein as the Chairperson for the Executive Committee and the constituency of the Executive Committee. Although the Commission disagreed with contentions of the parties that Commissioner Klein's involvement would constitute improper *ex parte* contact, the February 15, 1995 Order found that the request for reconsideration should be granted in part in an effort to expedite the process. This action resulted in the appointment of Mr. Paul Hartman as the Chairperson of the Executive Committee in place of Commissioner Klein.

In its February 15, 1995 Order, the Commission reiterated that it neither expected nor required the Executive Committee to reach a consensus on all issues. "The several Executive Committee members will each have an opportunity to make their respective positions known to the Commission even if no two parties agree on any issue." *Id.* at 7. Several witnesses also commented on the record during the February 12-16, 1996 hearings that they were aware of their ability and right to file a minority report or recommendation if they had decided to do so.

On June 14, 1995, Mr. Paul Hartman, Chairman of the Executive Committee, filed a Memorandum Report requesting clarification and/or direction from the Commission about the following four procedural and structural issues involved with the Executive Committee process: (1) Objectives of the Executive Committee, (2) Openness of the Process, (3) Timetable, and (4) Executive Committee and Subcommittee Reports. With regard to the Objectives of the Executive Committee Mr. Hartman sought clarification and/or direction on the following two subtopics: (A) "Consensus"; and (B) "Recommendations vs. Defining Positions". By its Order dated June

21, 1995 the Commission responded to Mr. Hartman's requests. The Commission explained (i) that the purpose of the Executive Committee meetings and the resultant hearing(s) is to allow the Commission to hear and consider evidence pertinent to any and all matters related to local exchange competition within Indiana; and (ii) that if a consensus cannot be reached, multiple positions should be presented to the Commission. *Id.* at 2-3. This Order again urged the parties to **attempt** to reach consensus on all issues but clarified that:

For those issues on which a consensus agreement cannot be reached (i.e., for those issues which remain in dispute at the time the Executive Committee files its Report with the Commission), the Executive Committee should not attempt to compel any parties to reach such a consensus agreement. Instead, for those issues on which a consensus agreement cannot be reached, the Executive Committee should prepare and present to the Commission in written, narrative form its analysis and recommendation for specific Commission action (including a detailed examination of the risks and benefits to each of the industry participants and the public). Those parties not agreeing with the majority should, likewise, prepare and present to the Commission, in written, narrative form, their respective analyses and recommendation for specific Commission action (including a detailed examination of the risks and benefits to each of the industry participants and the public)." *Id.* at 3-4 (original emphasis).

The Commission also elected not to engage in "micro management" and directed that the "Executive Committee to operate as it saw fit under terms of the Commission's order in this Cause." *Id.* at 5.

On August 9, 1995, Mr. Hartman filed his Second Report of the Chair of the Executive Committee ("Second Report") wherein he again requested clarification and/or direction from the Commission about procedural and structural issues involved with the Executive Committee process. The Second Report provided the Commission with the "Mission Statement" adopted by the Executive Committee, a summary of the progress of the Executive Committee, and a status report on each of the subcommittees. The Commission responded to the Second Report and the requests made therein in an Interim Order dated August 23, 1995. Therein, the Commission reaffirmed the scope of our investigation, as well as its expectation that the Executive Committee would provide an overall recommendation regarding local competition and whether and/or how it should be implemented. *Order of August 23, 1995* at p. 4.

The August 23, 1995, Order also granted the Executive Committee Chair's request that the Commission set a hearing on the Report. This request was consistent with the Commission's earlier Orders which indicated to the parties that they could "recommend that the Commission consider these matters in a formal hearing process". *Order of November 2, 1994* at p. 6. The Commission granted the request for hearing and scheduled a hearing for February 12, 1996.

**The February 12-16 Hearing.** At the final Executive Committee meeting on January 10, 1996, the record was opened and the presiding Administrative Law Judge addressed certain issues raised in the Fifth Interim Report and responded to questions raised by members/parties who were then present. These questions generally took the form of inquiring how the parties should present their respective positions and how the Commission should proceed. Also, there was a specific question with regard to the format the parties' positions should be in, e.g. prefiled form, written comments, etc. The presiding Administrative Law Judge indicated the Commission would like to hear testimony on both how to proceed and what the parties' respective positions were. The Commission recognized the shortened time frames and allowed the parties discretion in presenting their positions.

The Executive Committee submitted its Final Report to the Commission on January 16, 1996. The Commission issued a docket entry on February 2, 1996 clarifying the scope of the previously scheduled February 12-16, 1996 hearing. The Commission chose to specifically limit the scope of this hearing to issues related to resale of local exchange telephone services, electing to defer the many other complex interrelated issues identified in the Report. The Commission also reminded the parties that each member of the Executive Committee should be present and available to be called as a witness and examined at the February 12-16, 1996 hearing. The Commission stated its intention to call the Chair, Mr. Hartman, to be questioned by the presiding officers. Additionally, the parties were directed to prepare and file with the Commission by noon on Thursday, February 8, 1996, a "Statement of Intent to Call Witness(es)" which should, at a minimum, contain the following information: 1) the name of the intended Executive Committee member witnesses(es) that the party desires to call and examine, and 2) the specific area(s) relative to resale issues which the party intends to examine the listed witness(es).

On Thursday, February 8, 1996, several "Statement of Intent to Call Witness(es)" were filed by: the OUCC, Cellular One, MFS, AT&T, Indiana Cable Association, GTE, CompTel, MCI, and INECA. A limited number of parties, such as Ameritech Indiana, filed on February 8,

1996 a filing which did not comply with the requirements of the February 2, 1996 docket entry but rather claimed confusion as to what was generally meant by "resale issues", who was considered an Executive Committee member and whether the identification of witnesses was a prerequisite to being able to examine the witnesses.

Opening of the Evidentiary Record. A public hearing commenced on February 12, 1996 in Room TC10, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana. The proofs of publication of the notices of such hearings were incorporated into the record of this Cause by reference. The following respondents were represented at the hearing: Sprint, United, Northwestern Indiana Telephone Company, Ameritech, GTE North, Contel of the South, Inc., TCG Indiana, AT&T, MCI, Smithville Telephone Company Incorporated, MFS, LDDS, Cellular One Companies, CompTel, Gary Cellular Telephone Company, One Call Communications, Inc, Opticom, Inc. The following intervenors were represented at the hearing: Indiana Cable Television Association, Indiana Exchange Carrier Association, Citizens Action Coalition of Indiana, Inc., American Association of Retired Persons, United Senior Action, Indiana Retired Teachers Association. The OUCC was also represented at the hearing. The presiding Administrative Law Judge instructed the parties that the Commission had questions for the first 19 of the 22 persons on its witness list; it would examine the witnesses first, and then allow the parties to examine the witnesses.

Three preliminary requests were orally made on record. The first was for clarification of the purpose of the hearing. The second matter raised was a request for an informal attorneys' conference or a formal prehearing conference. Finally, a request for a continuance for the purpose of considering the Telecommunications Act of 1996 ("Federal Act" or "Act"). The Commission denied these requests. We now affirm these rulings as these requests were untimely. The February 12-16, 1996 hearing had, in fact, been scheduled at the request of the Executive Committee in August of 1995. The Commission believes the intervening six months between the Order providing for the hearing and the start of the hearing provided ample opportunity for any party who needed clarification of the purpose of the February 12-16, 1996 hearing.

We are aware that a partial request for clarification of the hearing was sought in the Executive Committee chairman's Fifth Interim Report filed on November 28, 1995. However, these Executive Committee requests were limited to what the Commission's expectations for the hearing were and how the Commission would proceed with the Cause generally. Upon opening the record on

January 10, 1996, the presiding Administrative Law Judge called for any additional requests or issues before responding to the Fifth Interim Report. None were made and the Presiding ALJ indicated that it was difficult to provide the parties with further clarification because the Commission had not yet seen the Report but advised the parties that they should be prepared to present their various positions taken in the Report at the February 12-16, 1996 hearing. Thereafter, representatives from Ameritech and LDDS Worldcom verbally requested additional definition of the presiding Administrative Law Judge's comments regarding the presentation of the respective parties' positions. Specifically, Mr. Klingerman, from Ameritech, asked what the ALJ meant by the phrase: the parties should be prepared to present their positions at the February 12, 1996 hearing and whether this meant positions on "how" to proceed or the positions as already represented in the Report. The ALJ responded that it was both how to proceed and the parties positions in the Report but again recognized that this determination was necessarily limited because the Report had yet to be filed. Next, counsel for LDDS Worldcom sought guidance on the "form" parties should utilize to present their positions. The presiding Administrative Law Judge left this to the discretion of each party. Thereafter, the presiding officers indicated the witnesses to be called at the February 12, 1996 hearing would be limited to Executive Committee members. Finally, on the record on January 10, 1996, the Executive Committee Chairman Paul Hartman made a suggestion that the Commission hold a "pre-conference hearing or something to that effect" after the Commission received the Report. The presiding ALJ responded by taking this under advisement and indicating there might be a docket entry sent out if time allowed. There were no further inquiries at that time as to any other matters related to the hearing or any other areas of confusion. A docket entry was then issued on February 2, 1996. Thereafter, Ameritech waited until the opening of the record on February 12, 1996 to finally make its request for clarification and/or a prehearing conference and continuance claiming the purpose of the hearing was unclear and therefore the Commission could not proceed. GTE North and United Seniors/AARP/CAC joined in this request in part.

The first witness called and examined was Executive Committee chairman Paul Hartman. The Executive Committee Report ("Report") was identified by Mr. Hartman and thereafter admitted into evidence over the objection of Respondents Ameritech and GTE. Over the course of the next five days of hearings other witnesses were examined by the presiding officers and made available to be examined and re-examined by all parties to the proceeding.

Post-hearing Filings. At the close of the scheduled hearings, the Commission heard requests for and thereafter granted the parties an opportunity to file post-hearing briefs and proposed orders no later than March 8, 1996. These requests mainly revolved around the need to address the new Federal Act and its effect on this proceeding. The presiding ALJ found that:

...the Commission would like to see briefs from the parties regarding their interpretations, implications or any comments that the federal Telecommunications Act of 1996 as well as -- well, that the federal Act has on this Commission proceeding and how this Commission should proceed in the future. That brief should be filed within 15 days, which I believe will make it March 7, 1996 -- I'm sorry, March 8, 1996; that's a Friday. In addition, I will ask that the parties file within that same time frame a proposed form of order relative to the procedure the Commission should take henceforth regarding this cause. I do want to allow the parties an opportunity also to address concerns that have been raised since the Report was filed. I think that's reasonable, and I think we've allowed examination on that topic. I will leave it up to the parties as to whether they want to do that in their proposed order or their brief that I've just described relative to the federal Telecommunications Act of 1996. With that, I trust that addresses most folks' concerns at this time.

Pursuant to the above determination, comments, briefs and/or proposed orders were filed with the Commission on March 8, 1996 by the following parties: Smithville Telephone Company, INECA, LDDS, MFS, MCI, Ameritech, LCI, IDA, Hancock, United/Sprint, AT&T, Northwestern Indiana Telephone Company, GTE North, Cellular One, United Senior Action/AARP/CAC, ITA, and the OUCC.

A review of the above on-the-record discussion reveals that the presiding ALJ specifically provided the parties the opportunity to present their respective interpretations, implications or any comments regarding the effect the Federal Act had on this Commission proceeding and how this Commission should proceed in the future. The Commission also permitted the parties to address concerns or issues arising since the submission of the Executive Report to the Commission on January 16, 1996. By allowing the parties the ability to present live testimony during the hearing and thereafter the ability to update, respond and comment on the Federal Act in the post-hearing filings, the Commission has afforded the parties ample opportunity to be heard on the issues. Several parties indicated the Act had no effect other than to support the Commission's efforts in this Cause. Most of the post-hearing filings discussed the Federal Act generally but did not

identify any measurable impact on their various positions other than to indicate resale of local service is required under Sections 251 (b) and (c) of the Act. There was a general agreement in these filings that the Executive Committee Report does provide this Commission with valuable information upon which the Commission can proceed in the area of local exchange competition. (See Ameritech Proposed Order, at 22, MCI Brief, at 8, & AT&T prop'd order, at 6). As stated by MCI in its Post-hearing Brief: "Specifically, the Federal Act has resolved many of the policy decisions that were raised in this docket. It has answered them for the Commission, but left implementation details to both the Federal Communications Commission and the states." MCI Brief, at p. 4. Other parties have described their belief as to how this Commission should proceed under the Federal Act utilizing the information and recommendations presented in the Report. All parties recognized in some way the aggressive time frames in the Federal Act and noted the obligations of state commissions in meeting these timeframes. Therefore, we find and conclude that the Federal Act assists us in narrowing the scope of the issues originally raised in this Cause and now requires us to take certain action to open up the local exchange market in a very timely manner.

Based upon the applicable law, and being duly advised in the premises, the Commission now finds as follows:

1. **Notice and Jurisdiction.** This Cause was initiated on the Commission's own motion pursuant to IC 8-1-2-58, and related statutes. According to IC 8-1-2-58 "[w]henver the commission shall believe that an investigation of any matters relating to any public utility should for any reason be made, it may, on its motion, summarily investigate the same, with or without notice." This Commission conducted a preliminary investigation and thereafter issued its Order creating this docket on June 15, 1994. The Commission then established and noticed a prehearing conference for August 19, 1994. *Order of June 15, 1994* at p. 3. Following the Prehearing Conference and the filed and verbal comments, the Commission adopted the Executive Committee process rather than a more adjudicatory hearing procedure. This was done at the parties' urging noting that in very complex areas, as here, the executive committee is the best way to deal with the many issues involved. However, the Commission emphasized the importance of the subject of this Cause by specifically requiring that each executive committee meeting "will be held at noticed, public hearings." *Prehearing Conference Order of November 2, 1994* at p. 6.

The August 9, 1995, Second Interim Report the Chair of the Executive Committee requested the Commission establish a hearing on the Report. This request was granted by the Commission setting a

hearing for February 12, 1996 (*Interim Order of August 23, 1995* at p 6&7) and noticed the same as required by law. Accordingly, due, legal and timely notices of the public hearings herein were given and published by the Commission as required by law. However, on March 8, 1996 Ameritech filed a Brief raising for the first time the issue that the Commission's did not give adequate notice of its intentions in this cause and inferred that our reference to "and other related statutes" did not include IC 8-1-2.6.

We determined in our June 15, 1994 Order initiating this Cause that, "the vast majority of the providers of telecommunications services within the State of Indiana are public utilities within the meaning of IC 8-1-2 *et seq.*" *Order of June 15, 1994* at 2. The parties have not challenged our finding that the potential for local exchange competition and its effects on the telecommunications providers and their customers falls within the purview of any matters relating to any public utility. While this Commission has declined to exercise its jurisdiction over many types of telecommunications services and providers under authority granted in IC 8-1-2.6, the parties have not challenged our determination that we have retained jurisdiction sufficient to conduct an investigation of matters pertinent to local exchange competition pursuant to this Commission's statutory authority. Public service commissions have the power themselves to initiate inquiry or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for the transportation, communication and other essential public services. *Bowles v. Indianapolis Rys.*, D.C.1947, 64 F.Supp. 865, affirmed 154 F.2d 218.

Additionally, this Commission has been provided broad authority to regulate telephone utilities. See *Daviess-Martin Co. etc. v. Pub. Serv. Comm.* (1961), 132 Ind. App. 610, 174 N.E.2d 63. IC 8-1-2-4, 8-1-2-54, 8-1-2-58, 8-1-2-59, 8-1-2-88, and 8-1-2.6 are some statutes providing such authority. This broad authority was exercised by the Commission to initiate and conduct proceedings such as the case at hand. IC 8-1-2-58 provides the Commission authority to conduct, on its own motion, an investigation of any matters relating to any public utility without need of notice or a hearing but does not delineate any procedures to be utilized by the Commission. The Commission specifically made a determination under IC 8-1-2-58 that there was sufficient basis to initiate a formal docket giving rise to this Cause. In initiating this Cause the Commission specifically identified Sec. 58 **and related statutes** as the basis for our jurisdiction. (*emphasis added*). Several related statutes have already been cited in earlier docket entries and

Orders in this Cause, including: IC 8-1-2-59, IC 8-1-2-69, and IC 8-1-2.6. The latter of these identified statutes, namely IC 8-1-2.6 clearly and unmistakably relates to the very substance of this Cause: a competitive environment in the provision of telephone services. IC 8-1-2.6-1 reads:

Section 8-1-2.6-1 Legislative Declaration.

Section 1. The Indiana general assembly hereby declares that:

- (1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;
- (2) Competition has become commonplace in the provision of certain telephone services in Indiana and the United States;
- (3) Traditional commission regulatory policies and existing statutes are not designed to deal with the competitive environment;
- (4) An environment in which Indiana consumers will have available the widest array of state-of-the-art telephone services at the most economic and reasonable cost possible will necessitate full and fair competition in the delivery of certain telephone services throughout the state; and
- (5) Flexibility in the regulation of providers of telephone services is essential to the well being of the state, its economy, and its citizens and that **the public interest requires that the commission be authorized to formulate and adopt rules and policies as will permit the commission, in the exercise of its expertise, to regulate and control the provision of telephone services to the public in an increasingly competitive environment, giving due regard to the interest of consumers and the public and to the continued availability of universal telephone service. (emphasis added).**

The Commission is bound to carry out the directives of applicable statutes whether or not they are cited in this case. Regardless, IC 8-1-2.6 is one of the "related" statutory sections

referenced by this Commission in this Cause. IC 8-1-2.6 gives this Commission very broad authority and very clear directives. This broad authority was utilized by the Commission and unchallenged in its earlier Order of June 5, 1996 in this matter wherein the Commission established certain guidelines for filings made pursuant to the Federal Act. We find that the provisions of this Order and the underlying proceeding certainly promote regulation consistent with the competitive environment. Therefore, the Commission finds that we have jurisdiction over the providers of telecommunications services within the State of Indiana and the broad subject matter of this proceeding under several statutory sections including IC 8-1-2-58, IC 8-1-2-59, IC 8-1-2-69, and IC 8-1-2.6. Additionally, as discussed more fully elsewhere we further find that this proceeding is a proceeding under IC 8-1-2.6 and also the Federal Telecommunications Act of 1996.

2. Ameritech Motion/Complaint. Ameritech filed, along with its proposed form of order, a "Brief in Support of its Proposed Order" on March 8, 1996 setting forth for the first time several bases upon which it alleges the Commission must take no further action and conclude this docket. The Commission is somewhat perplexed at this filing so late in these proceedings especially considering the tremendous support Ameritech gave to the initiation of this Cause in general, the executive committee process and what could be accomplished by it and this Commission thereafter. Nonetheless, this Brief now directly disputes the Commission's ability to take any action in this Cause and alleges the Commission failed to take appropriate due process steps. We, therefore must now address the assertions contained in the Ameritech Brief before making our findings.

(a). Ameritech Indiana Brief. First, and foremost in Ameritech's brief is the claim that the Commission's investigation in this Cause was an "informal" investigation. Ameritech never defines what an "informal proceeding" is nor where this moniker comes from. Ameritech claims this "informal" process does not allow the Commission to take any action unless and until a more formal process is instituted. Ameritech asserts the following specific bases for their position:

- 1). The "informal" Section 58 investigation cannot be the basis for adjudicating "issues related to resale of local exchange telephone services."
- 2). The Commission has not complied with the statutory procedures for a formal hearing and adjudication.
- 3). The Commission did not act impartially by allegedly sponsoring certain exhibits, by asking leading questions and by calling the majority of the witnesses at the February 12-16, 1996 hearing.
- 4). Before the Commission embarks upon making any statements of general