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EX PARTE OR LATE FILED



Lynn Shapiro Starr
Executive Director
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July 16, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Re: Notice of Oral Ex Parte Presentation
CC Docket No. 96-98

Dear Mr. Caton:

In accordance with Section 1.206 of the Commission's rules, this letter serves to document the oral ex parte presentation made on July 16, 1996 to Commissioner Chong and Dan Gonzales, Legal Advisor to Commissioner Chong by representatives of Ameritech regarding issues raised in the above-referenced proceeding. In attendance from Ameritech were Gary Lytle, Vice President - Federal Relations, Larry S. Rickling, Vice President - Public Policy, Lynn Starr, Executive Director - Federal Relations, and John Lenahan, Assistant General Counsel.

The primary purpose of the oral presentation was to discuss statutory provisions concerning access to network elements, as well as arguments made in Ameritech's Comments and Reply Comments filed in the above-referenced proceeding. The attached material was used as part of our discussion.

Sincerely,

A handwritten signature in cursive script that reads "Lynn Starr".

Attachment

cc: Commissioner Chong
D. Gonzales

Handwritten initials "CJZ" in a bold, blocky font.

KEY POSITIONS OF AMERITECH DOCKET NO. 96-98

ACCESS CHARGES REMAIN IN PLACE

- Section 251(g) maintains "equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) . . . until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission . . ." (emphasis added)
- Section 251(i) preserves the Commission's Section 201 authority, which includes Part 69 access charges, and Section 601(c) prohibits repeal by implication.
- Therefore, regardless of whether carriers can combine network elements, they must still pay Part 69 access charges until the Commission completes its reform of the current access charge regime.
- Allowing carriers to evade access charges would eliminate the contributions those rates currently provide to help keep local rates low and jeopardize universal service.

INTERIM PROPOSAL FOR MAINTAINING ACCESS CHARGES

- Deduct interstate portion from network element price (e.g. deduct 25% from local loop price)
- Incumbent LEC continues to charge for access under its current tariffs

WHAT NETWORK ELEMENTS MUST BE UNBUNDLED

- Initial list of network elements that should be unbundled include: local loops, local switching capability, local transport, system signaling 7 ("SS7"), 800 database, LIDB database and AIN database. Does not include: Directory Assistance, Operator Services, and 911 Services.

COMBINING NETWORK ELEMENTS

- To qualify for interconnection, requesting carrier must have its own facilities for transmission and routing. 251(c)(2) Therefore, if company is interconnecting with an ILEC, it may not purchase unbundled network elements unless it has either its own loop, switch or transport. If it has one or more of these facilities, it may purchase any other network elements. If it does not have one of these three facilities it may not purchase all three AND interconnect with the ILEC. It may purchase all three if it does not plan to interconnect. Alternatively, it may purchase service from the ILEC as a reseller.
- Any other scenario would allow interexchange carriers to completely circumvent the joint marketing restrictions contained in 271(e)(1), as those restrictions apply only to resellers.

PRICING

- The Act leaves issues relating to the price for interconnection and unbundled network elements to the States and provides that prices should be based on cost plus an opportunity to earn a reasonable profit. These prices must be set at a level that will allow LECs to recover their total cost of construction and operating their networks -- including their actual incremental cost, plus a contribution to joint and common costs and any unrecovered historical costs. If prices are set below their real costs or if "bill and keep" is required, customers of the incumbent LEC will subsidize the entry of providers such as AT&T and MCI. Setting prices at levels lower than real costs will encourage competitors to use the incumbent's network rather than build their own facilities, and would deter true facilities based entry.

RESALE

- Wholesale discounts must be based on retail prices less costs that are avoided by selling the services at wholesale (e.g. advertising, billing and collection); however, any additional costs incurred as a result of providing the service on a wholesale basis must be included in the wholesale price.

AMERITECH'S PROPOSED UNBUNDLED NETWORK ELEMENTS

Local Loops

Local Switching

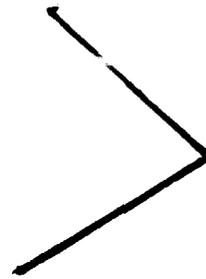
Local Transport

System Signaling 7 ("SS7")

800 Database

LIDB Database

AIN Database



To qualify for section 251 (c)(2) interconnection, requesting carrier must provide one of these three facilities on its own.

Section 251 (c) (2) - Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carriers network -

(A) for the transmission and routing of telephone exchange service and exchange access (emphasis added)

Section 251 (c) (3) - Unbundled Access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point in rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service. (emphasis added)

**AMERITECH'S POSITION ON
CC Docket No. 96-98**

Access Charges Remain

- Section 251 did not repeal the existing Part 69 access charge regime. The Act explicitly retains the prevailing access charge regime established by the Commission.
 - ▶ The IXCs' position, which would effectively nullify the current switched access rules, is flatly contrary to section 251(g). Established principles of statutory construction counsel against reading section 251(c)(3) in a manner that would conflict with the clear dictates of section 251(g).¹
 - ▶ The IXCs' position on switched access is also directly contrary to section 251(i). If section 251(c)(3) were read to permit IXCs to combine unbundled network elements in a manner replicating switched access, the practical effect would not only be to "limit" or "affect" the Commission's section 201 authority over switched access, but to nullify it.² At the same time such a position would have the practical effect of granting jurisdiction over exchange access for IXC traffic to the State commissions, as the State commissions will conduct arbitration and agreement review proceedings under section 252. This, of course, effectively would divest the Commission's authority over the origination and termination of interstate calls.
 - ▶ Finally, nowhere in the 1996 Act did Congress expressly supersede Part 69 access charges. Accordingly, pursuant to section 601(c) of the 1996 Act, the

¹ Section 251(k) of the Senate bill provided that "[n]othing in this section shall affect the commission's interexchange-to-local exchange access charge rules for local exchange carriers or interexchange carriers in effect on the date of enactment of the [Act]." In reconciling the House and Senate bills, the Conference incorporated this provision into Section 251(g) of the Acts which incorporated other telecommunications policies that would survive passage of the Act. Because the 1996 Act eliminates prospectively the AT&T and GTE consent decrees, the more narrow language of section 251(k) of the Senate Bill was incorporated into the broader scope of equal access obligations addressed in section 251(g) to include "any court order, consent decree or regulation, order or policy of the Commission ..." Part 69 access charges are regulations of the Commission and, therefore, within the scope of this broader listing in section 251(g).

² The Commission's authority over switched access derives from Section 201. See 47 C.F.R. § 69.1.

Commission should not presume that the existing access charge regime has been superseded.³

Interim Proposal for Maintaining Access Charges During the Transition

- Until the Commission reforms access charges, whenever a carrier uses an unbundled network element obtained from the incumbent LEC to perform a function subject to switched access charges, it must pay the applicable access charge and the cost-based section 252(d) rate for the network element(s), provided there is no double recovery of relevant interstate costs.
- There are two basic approaches to avoid a double recovery of interstate costs.
 - ▶ The most direct approach, and the one most consistent with the Commission's jurisdictional authority, is to direct State commissions to exclude interstate costs in determining section 252(d) prices for network elements. This option "nets" the section 252 network element charges to remove interstate costs.
 - ▶ Another approach to avoid over-recovery by the incumbent LECs is to remove from Part 69 access charges any interstate costs that were included in section 252(d)(1) network element prices.
 - ▶ In addition to either of the above approaches, the Commission should allow incumbent LECs to seek transitional waivers to bulk bill certain categories of interstate access charges to all IXC's on a competitively neutral basis. Effective with bulk billing, such incumbent LEC's access charges would be reduced accordingly.

Entry Options

- The 1996 Act establishes distinct, but complementary, opportunities for entry into the local market depending on the degree of local facilities of the new entrant.
 - ▶ A facilities-based competitor (*i.e.*, one with its own local loops, local switches, or local transport) may interconnect with the incumbent LEC pursuant to section 251(c)(2).

³ See also Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, *Order*, FCC 96-288 (released July 1, 1996), para. 29 (*recognizing that existing regulations are not to be presumed as super-*

- ▶ In contrast, a new entrant without any of its own local facilities may resell the incumbent LEC's retail telecommunications services pursuant to section 251(c)(4).

**Interconnection with a CLECs Network:
How much and what types of facilities are required**

- The 1996 Act specifies exactly what equipment/facilities are required in order to recombine network elements: they must be equipment and facilities for (i) the transmission and (ii) routing of (iii) telephone exchange service and (iv) exchange access. That is, any carrier that seeks to recombine unbundled network elements and interconnect them with the incumbent LEC's network must have its own local loop transmission, local switching or local transport. The requesting carrier need not have all three, but it must have at least one of these network components sufficient to offer service to customers in the area it seeks to enter.⁴ If it does not, it does not comply with sections 251(c)(2)(A) and 251(b)(5).
 - ▶ Although "network elements" are facilities or equipment, they are the facilities of the incumbent LEC, not of the requesting carrier. Interconnection, therefore, requires that the requesting carrier have some of its own facilities and equipment, in addition to any network elements it has access to pursuant to section 251(c)(3).⁵
 - ▶ The fundamental concept of "interconnection" is the physical linkage of two networks. As the Commission correctly observes, "interconnection" as used in section 251(c)(2) should refer only to the "facilities and equipment physically linking two networks and not to transport and termination services provided by such linking"⁶ This interpretation avoids overlap between sections 251(b)(5) and 251(c)(2), and inconsistency between 252(d)(1) and (d)(2).
 - ▶ The relationship between sections 251(b)(5) and 251(c)(2) further defines and quantifies the types of facilities and equipment a requesting carrier must possess

⁴ A signaling network, such as SS7, would not be sufficient on its own since signaling does not perform transmission.

⁵ See 47 U.S.C. § 251(c)(2) (imposing on incumbent LECs "the duty to provide *for the facilities and equipment of any requesting carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access.*" (emphasis added); see also 47 U.S.C. § 251(a)(1) (requiring each telecommunications carrier to interconnect "with the facilities and equipment" of other telecommunications carriers).

⁶ NPRM para. 54.

to interconnect and terminate traffic. Section 251(c)(2)(A) refers to the requesting carrier's facilities and equipment for "transmission *and* routing." Section 251(b)(5), which applies to the requesting local exchange carrier and the incumbent LEC, requires mutual arrangements for the "transport and termination of telecommunications," which in the case of section 251 (c)(2) interconnection is limited to those who provide both "telephone exchange service *and* exchange access." Finally section 252(d)(2)(A)(i) makes it clear that two networks are involved. This section permits: "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."

Unbundled Network Elements: Supplements, Not Substitutes

- Unbundling provisions in section 251(c)(3) were not intended to substitute for the resale provisions of section 251(c)(4), but rather to permit requesting carriers to supplement their own facilities and equipment with unbundled network elements obtained from the incumbent LEC. The purpose of section 251(c)(3) is to provide new entrants with *some*, but not all of the facilities or equipment needed to enter the local market.
 - ▶ Access to unbundled network elements pursuant to section 251(c)(3) is subject to the requirements of "this section [251]," including section 251(c)(2) which requires the requesting carrier to have its own facilities and equipment.
 - ▶ Parties that argue that all network elements needed to provide a telecommunication service should be *bundled* together by the *incumbent LEC* ignore the plain language that requires "unbundled" network elements combined by the "requesting carrier." As the Commission noted in the NPRM, these terms should be interpreted as permitting requesting carriers to obtain a particular element's functionality "separate from that of other functionalities or network elements."⁷

Relationship of Sections 251(c)(2), (c)(3), and (c)(4).

- Until access charge reform occurs, IXCs may not purchase unbundled network elements for the purpose of avoiding access charges. To conclude otherwise would be inconsistent with sections 251(g), 251(i), and 601(c)(1) and would effect a fundamental jurisdictional shift not contemplated by Congress.

⁷ NPRM para 86, n.116.

- Requesting carriers cannot recombine network elements to provide only exchange access. In order to provide exchange access, the carrier must also interconnect with the incumbent LEC's local network. Interconnection pursuant to section 251(c)(2) is available only if the facilities end equipment of the requesting carrier will be providing both "telephone exchange service and exchange access." (emphasis added). See 47 U.S.C. § 251(c)(2)(A).
- Section 251(c)(3) does not provide new entrants with an alternative way to "resell" incumbent LEC telecommunications services provided at retail.
 - ▶ Because telephone exchange service and exchange access are already offered by incumbent LECs for resale, denying access to unbundled network elements for this purpose would not impair the ability of the requesting carrier to provide local service. See 47 U.S.C. § 251(d)(2).
 - ▶ Allowing IXCs to combine network elements simply to provide services already offered for resale would vitiate the section 271(e)(1) joint marketing restriction. See NPRM at n.113.
 - ▶ All telecommunications services offered by an incumbent LEC as of February 7, 1996 -- the day prior to the enactment of the Telecommunications Act of 1996 -- should not be considered network elements. Telecommunications services first offered for service after that date should not be considered a network element, unless there is evidence demonstrating that the incumbent LEC is using this classification to evade the obligation to provide unbundled network elements.
- A requesting carrier that has its own loop, local switching, or local transport can (i) interconnect with the incumbent LEC pursuant to section 251(c)(2), (ii) purchase unbundled network elements pursuant to section 251(c)(3), and (iii) recombine these unbundled network elements in anyway that it sees fit.
 - ▶ A requesting carrier that has only transport connecting its point-of-presence ("POP") to the incumbent LEC's end office would not be entitled to combine that limited transport with the unbundled switching, local loop transmission, and local transport obtained from the incumbent LEC.

Required Unbundled Network Elements

- Incumbent LECs should be required to provide the following network elements on an unbundled basis to any requesting telecommunications carrier:
 - (1) local loop transmission from the main distributing frame (or its equivalent) to the network interface on the customer's premises;

- (2) local transport;
 - (3) local switching separate from transport, local loops, and other services;
 - (4) System Signaling 7 ("SS7") call setup for routing and transmission of telecommunications traffic via the signal transfer point ("STP");
 - (5) 800 database used for call setup and routing accessed through SS7; and
 - (6) Line Information Database ("LIDB") used for on line billing verification for calling card calls accessed through SS7.
- As required by the 1996 Act, in determining what network elements must be made available under section 251(c)(3), the Commission must consider whether failure to provide access to the network element would impair the ability of the requesting carrier to provide the services that it seeks to offer. See 47 U.S.C. § 251(d)(2)(B).
 - In the special case of network elements that are proprietary in nature, the requesting carrier further must demonstrate that the network element is necessary for the carrier to provide the services that it seeks to offer. See 47 U.S.C. § 251(d)(2)(A).

Future Unbundled Network Elements

- An evolving, non-static set of unbundled network elements reflects the realities of the industry. The Commission should reserve the right to add to or modify this list in accordance with the changing needs of competing carriers.
- To accommodate the evolving nature of the federal minimum set of unbundled network elements, all agreements reached through arbitration should contain a clause that allows the requesting carrier to take advantage of any expansion of the federal minimum set, but does not allow either party to renegotiate the other terms of the agreement already entered into by the incumbent LEC and the requesting carrier.

Prices for Interconnection and Network Elements⁸

- Prices based solely on incremental costs are unreasonable and inconsistent with section 252(d)(1), which expressly provides for the recovery of costs.
- Even with unbundled network elements, shared and common costs are substantial.
 - ▶ Examples of corporate shared and common costs include network planning, corporate management, and product management.

⁸ For a more detailed discussion of the costs incurred by incumbent LECs, see Ameritech Comments at 62-77 and Ameritech Reply Comments at 27-33.

- Moreover, there is not a single percentage for shared and common costs that will accurately apply to all unbundled network elements. Incumbent LECs must have the flexibility to do cost studies.
- The Commission should let state commissions determine the recovery of residual costs.

Reciprocal Compensation

- The Commission cannot mandate bill-and-keep. See 47 U.S.C. § 252(d)(2)(B).
- In addition, given existing traffic imbalances, bill-and-keep would result in bad economic policy

Wholesale Rates⁹

- As both Illinois and Ohio recognize, wholesale rates must include the costs associated with acting as a wholesaler. Costs incurred by an incumbent LEC in making a service available on a wholesale basis are simply not avoided.
- The Illinois pro rata deduction of common costs is inconsistent with section 252(d)(3) and is bad economic policy. Nothing in the 1996 Act permits the increase of the wholesale discount level beyond avoided cost to include a pro rata share of overhead. See also Ameritech Reply Comments at 38-41.

⁹ For a more detailed discussion on the calculation of wholesale rates, see Ameritech Comments at 79-81.