incumbent LECs to comply with bona fide requests for subloop unbundling, noted that Illinois Bell's witness had conceded that "[c]oncerns regarding network harm assume that Illinois Bell would not be responsible for maintenance of the interconnection equipment."[13] Even more compelling, the ICC noted that "Illinois Bell admits that most of its 'technical harm' concerns would not exist with virtual collocation arrangements."[14]

While declining to require subloop unbundling, the Commission concluded that "the lack of overall responsibility for loop performance is very likely to degrade overall service quality." Order at ¶ 391. This apparently refers to the incumbent LECs' claim that their existing systems are not designed for remote testing of unbundled subloop elements. This is merely a red herring. ILECs do not need the capability to perform such testing of unbundled loop distribution. Once the distribution element has been purchased by anew entrant, and is no longer being used to serve an incumbent LEC customer, its performance no longer affects the reliability of the incumbent LEC network.

Instead, the new entrant will exercise "overall responsibility" for the reliability of a loop comprised of the new entrant's feeder and an unbundled

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Illinois, Order, April 7, 1995.

13 Id.

14 Id. Illinois Bell had argued that subloop unbundling would require "impractical new forms of physical collocation which would constitute a physical intrusion on Illinois Bell property."

distribution element. That loop will serve a new entrant's customer, giving the new entrant every incentive to ensure its reliability. Realistically speaking, in most cases, the new entrant can and will develop its own remote test capability for the loop, including the unbundled distribution element obtained from the incumbent LEC. While the new entrant may occasionally require the incumbent LEC's cooperation in addressing maintenance issues, this is no more significant for loop distribution than for any other unbundled network element. The new entrant clearly retains responsibility for the management, control, and performance of its network, as is required by the Commission's technical feasibility standard. Order at ¶ 203.

Because the incumbent LECs' claims that network reliability risks associated with the unbundling of loop distribution are unfounded, the Commission should designate loop distribution as a separate, unbundled network element. No other ILEC claim regarding technical infeasability has been accepted by the Commission. Indeed, the Commission has rejected all other incumbent LEC claims that subloop unbundling is not technically feasible. The Commission has concluded, for example, that space limitations at the FDI, or the absence of databases for identifying, provisioning, and billing for subloop elements, do not represent "technical" considerations under its interpretation of "technically feasible." Order at ¶ 390.

The record in this proceeding clearly demonstrates that requiring ILECs to make available unbundled loop distribution will encourage the development of

facilities-based competition. As the Commission has recognized, it is expensive and risky for new entrants to build entire loops to multiple customer locations based on speculation. Order at ¶ 378. However, by replacing the feeder portion of the network, new entrants can eventually evolve into facilities-based carriers. MCI, for example, has deployed fiber rings that provide the function of loop feeder, leaving it in need of loop distribution only. If loop distribution is not available, however, MCI must either duplicate the entire loop or purchase a complete unbundled loop even when it could provide the feeder more efficiently than the incumbent LEC using facilities already in place. This system clearly reduces the incentive of new entrants to build out their networks and thus postpones the benefits of facilities-based local competition for consumers.

VII. DARK FIBER MUST BE TREATED AS AN UNBUNDLED ELEMENT.

In its Order, the Commission deferred its determination of whether dark fiber should be an unbundled element.[15] A network element must be unbundled if it is technically feasible, if there are no proprietary concerns that preclude such unbundling, and if failure to provide access to the element would impair new

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[15] See Order at ¶ 450. ("We also decline at this time to address the unbundling of incumbent LECs' dark fiber. Parties that address this issue do not provide us with information on whether dark fiber qualifies as a network element under sections 251(c)(3) and 251(d)(2). Therefore, we lack a sufficient record on which to decide this issue. We will continue to review and revise our rules in this area as necessary".)

entrants' ability to offer new service. Application of these standards to the record before the Commission mandates the unbundling of dark fiber.[16]

A. Unbundling Dark Fiber is Technically Feasible.

The Commission should require ILECs to make dark fiber available as an unbundled interoffice transmission element. Dark fiber is simply an existing interoffice transmission facility that has no electronics associated with it and is not currently used by the ILEC. It is not presently available for use as an interoffice transmission facility, unless it is combined with the necessary electronics.

The Commission has already concluded that where transmission facilities are capable of transmitting Optical Carrier levels, i.e. where fiber is "lit," it is a network element that it is technically feasible for the ILECs to provide the fiber on an unbundled basis to requesting carriers.[17] Since the ILEC "may not limit the facilities to which such interoffice facilities are connected...or the use of such facilities," Order at ¶ 440, the issue of whether it is feasible for ILEC's to provide unbundled dark fiber hinges solely on whether ILEC provision of electronics is the only means by which dark fiber will become functional as a transmission

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16 The Commission treated dark fiber as a transport facility, but nonetheless did not order it unbundled under § 251(c)(3) and § 251(d)(2).

17 See Order at ¶ 440 ("The incumbent LEC must also provide, to the extent discussed below, all technically feasible transmission capabilities, such as DS1, DS3, and Optical Carrier levels (e.g. OC-3/12/48/96) that the competing provider could use to provide telecommunications services".)

medium. In some instances, MCI would prefer to have access to dark fiber and supply its own electronics. In fact, using the ILEC's existing electronic technology holds MCI captive to the ILEC's network technology and design and, in certain instances, prevents it from deploying new, more efficient technologies that are consistent across geographic locations. It is therefore neither necessary, nor desirable, for the ILEC to supply the necessary electronics in order for a requesting carrier to make use of dark fiber. If a requesting carrier is able to supply the associated electronics, there is no remaining technical reason why the fiber should not be made available.

Indeed, MCI has purchased dark fiber under a tariff on file with the Commission.[18] Therefore, because the Commission has already determined "that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points", (¶ 198) the Commission must find the provision of dark fiber as an unbundle element to be technically feasible.

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[18] See In the Matter of Southwestern Bell Telephone Company; US West Communications; Bell Atlantic Telephone Companies; BellSouth Telephone Companies, Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service, Memorandum Opinion and Order, 8 FCC Rcd 2589 (1993) .

B. Unbundling Dark Fiber Does Not Raise Proprietary Concerns.

The Commission has already noted that "[c]ommenters do not identify any proprietary concerns relating to the provision of interoffice facilities that LECs are required to unbundle." Order at ¶ 446. This means there are no proprietary concerns that apply to lit fiber. Because no proprietary difference exists between lit and dark fiber, any proprietary concerns relating to the provision of dark fiber are also eliminated.

C. Denying New Entrants Access to Dark Fiber Would Impair Competitive Viability.

The Commission has determined that the "term 'impair' means either increased cost or decreased service quality that would result from using network elements other than the one sought." Order at ¶ 447. Dark fiber is necessary for MCI to expand its network reach by installing electronics that mesh with its network architecture. This flexibility is essential for MCI to efficiently deploy new technologies into its network. Without access to dark fiber, MCI must either incur the significant and immediate expense of laying its own fiber, or purchase lit fiber transport services from the ILEC. This latter approach is unappealing because MCI would be held captive to the ILEC's network technology and design, and its ability to deploy new, more efficient technologies that are consistent across geographic locations would be greatly inhibited.

VIII. THE COMMISSION SHOULD FURTHER UNBUNDLE THE AIN.

In its Order, the Commission unbundled access to AIN databases and Service Management Systems (SMSs), but declined to require the unbundling of additional AIN capabilities. Further unbundling of additional AIN capabilities is both technically feasible, however, and necessary for competing local exchange carriers to provide new services and to manage and utilize their customer data. MCI thus urges the Commission to reconsider its unbundling decision, and order the further unbundling of AIN capabilities including, specifically, triggers for delivery to the third party SCP, and interconnection to the third party AIN SCP databases using the established SS7 network. The Commission should also clarify that it contemplated that the unbundled access that ILECs must provide to databases for operator call completion services (e.g., LIDB) and directory assistance must include both entry of the requesting carrier's customer information into the database, and the ability to read such a database.

It is technically feasible to unbundle both requested capabilities. Both can currently be provided without the need for additional mediation functions. Existing SS7 interconnection arrangements already utilize a number of real-time screening/mediation functions to ensure network reliability and integrity. Several screening or mediation functions are currently performed in existing SS7 networks; examples include message originator authentication, access control, message screening, parameter screening, protocol screening and network traffic management. In addition, routing functions, such as global title translations

based on agreed translation type and subsystem number assignments are currently used to ensure that SS7 query messages are directed to the correct third party SCP database.

Just as with current interconnection arrangements, AIN triggers could be delivered to competing LECs using the D-links that are presently deployed in most networks today. Service logic is applied at the third party SCP database, and a response returned via the reverse path to the ILEC switch. The response provides the ILEC switch with call processing instructions.

Interconnection of third party call-related databases is technically feasible via established SS7 signaling. Network arrangements are already in place that facilitate 800 number routing and portability, which uses information contained in the Toll Free Number database. In addition, the validation of third party calling cards relies on access to the SCP for the interface with the Line Information Database (LIDB).

The recent Manhattan LNP trial further demonstrates the technical feasibility of accessing a third party SCP in response to an SS7 AIN trigger. The interconnection for this trial was through SS7 signaling networks owned by MCI, NYNEX, SNET, and ITN, and the LNP routing instructions were received from the MCI SCP. Access to third party SCPs is, therefore, not only theoretically feasible, it has been accomplished in practice using the equipment of major switch vendors.

Because access to these network elements is technically feasible, the

Commission should decline to require unbundling of them only if it determines that the elements are proprietary, and that a competing local carrier would not be impaired by an ILEC's refusal to provide that element. Neither standard can be met in this case.

To meet the "proprietary standard," an ILEC must demonstrate both that the element is proprietary, or contains proprietary information, and that the new entrant could offer the same proposed telecommunications service using other unbundled elements within the ILEC's network. Order at ¶¶ 282-283. Even if these elements were proprietary, which MCI does not concede, there is simply no way to combine other elements within an ILEC's network and provide the proposed telecommunications service in an efficient manner.

Nor can the ILECs meet the impairment standard. That standard requires consideration of whether an ILEC's refusal to allow access to an element would decrease the quality, or increase the financial cost of the service a requesting carrier seeks to offer, compared with providing that same service over the ILEC's network. Order at ¶ 285. Failure to provide access to these elements will impose higher costs on MCI, however, if it is forced to provide similar service using other network elements.

The use of ILEC SCPs will impair MCI's ability to provide nationwide service. To provide such service, MCI could be required to duplicate the service logic at each (potentially different) ILEC Service Creation Environment (SCE). Implementing services through multiple ILEC AIN environments would

significantly increase the time to market for introducing innovative services, which plainly gives an advantage to the ILEC providers. If the use of ILEC AIN triggers to engage MCI's SCPs is authorized, however, the cost of creating, testing, and bringing new services to market would be significantly reduced.

Moreover, the use of a competing telecommunications carrier's or other AIN platforms allows for the more efficient provision of local services. Rather than transporting the call through the network for data intensive call processing, routing instructions could be provided directly to the ILEC switch, reducing overall cost and increasing network efficiency for introducing new services.

The use of third-party AIN platforms would also improve the efficiency of data management. Storing the required customer data in the ILEC's SCP will needlessly increase the cost of the service. If, for example, MCI needs to maintain a separate copy of the application data as well as other customer data in its own systems, the data and data management functions must be duplicated.

Additionally, current ILEC platforms present substantial database limitations. Local services may require large amounts of highly secure data that is not effectively managed through the ILEC AIN platforms. Moreover, many services require customer-based, real-time updates which are not effectively offered through ILEC provisioning interfaces on the AIN platform.

MCI also requests that the Commission clarify that in ¶ 538 it contemplated that the unbundled access that ILECs must provide to databases for operator call completion services (e.g., LIDB) and directory assistance must

include both entry of the requesting carrier's customer information into the database, and the ability to read such a database. MCI raises this issue because, based on experience negotiating with ILECs since the release of the Order, at least one ILEC has mistakenly interpreted ¶ 538 to apply only to directory assistance. There is no doubt that ILECs should be required to provide unbundled access (including the entry of requesting carriers's customer information and the ability to read such a database) to databases for operator call completion services and directory assistance. Both are technically feasible.[19] Furthermore, restrictions on the type of access to either operator call completion services or directory assistance would pose unnecessary costs on new entrants and could impair the quality of the service that new entrants offer.

IX. THE EXPANSION OF CAPACITY AND UPGRADED CAPABILITIES MUST BE PRICED AT AVERAGE INCREMENTAL COST.

In its Order, the Commission addressed methods of compensating ILECs when the purchase of their facilities are: (1) technically feasible, but of greater quality than the ILEC currently provides, or (2) constrained by the unavailability of excess capacity. The first situation involves unbundled elements; the second,

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19 As the Commission has recognized in In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, 7 FCC Rcd 3528 (1992) at ¶30, it is technically feasible for one LEC to load its data into the LIDB system maintained by another.

access to a utility company's rights-of-way. The Commission mandated that the requesting carrier compensate the ILEC or the utility company for the total incremental cost in these situations.[20]

MCI requests that the Commission clarify or reconsider three issues related to incremental pricing. First, MCI seeks clarification as to whether fill factors should be based on forward-looking, expected usage rather than current usage as ILECs are asserting in state TELRIC proceedings. Second, MCI asks the Commission to reconsider its decision mandating requesting carriers compensate the ILEC for the total incremental cost of purchasing a technically feasible unbundled element of greater quality than the ILEC currently provides and propose the alternative that rates should be recovered based on the average incremental cost of the additional quality. Finally, MCI asks the Commission to reconsider its decision to require carriers requesting space on rights of way that necessitates modification to bear the total incremental cost of

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[20] See, Order at ¶ 382. ("The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning".), see also, Order at ¶ 382, a requesting carrier that wishes a technically feasible but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.); Order at ¶ 382 (concluding that requesting carriers must pay incumbent LEC's the cost of interconnection or unbundling); Order at ¶ 384. "the costs associated with these mechanisms [unbundling IDLC delivered loops] will be recovered from requesting carriers." See Order at ¶ 1211 ("With respect to the allocation of modification costs, we conclude that, to the extent the cost of a modification is incurred for the specific benefit of any particular party, the benefiting party will be obligated to assume the cost of the modification, or to bear its proportionate share of cost with all other attaching entities participating in the modification.")

capacity expansion. To that end, MCI believes that the Commission must consistently apply an average incremental method of recovering both the cost of superior quality and capacity expansion modifications. In the alternative, the Commission should establish a rebate mechanism that compensates new entrants for revenues earned from facilities for which they have fully compensated the ILEC.

A. Fill Factors Must Be Based on Expected Forward-Looking Usage.

The Commission interprets 252(d)(1) to require the application of forward-looking, long run incremental cost methods. It appears, therefore, that the Commission intended that pricing be based on incremental costs calculated by using total expected forward looking demand of a facility for a specified period of time.[21]

In state TELRIC proceedings, however, ILECs are asserting that the Order requires that current fill factors, which are often 50 percent and below,

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[21] "Incremental costs are the additional costs (usually expressed as a cost per unit) that a firm will incur as a result of expanding the output of a good or service by producing an additional quantity of the good or service". Order at ¶ 675. "charges for dedicated facilities be flat-rated, including, but not limited to, charges for unbundled loops, dedicated transport, interconnection, and collocation. These charges should be assessed for fixed periods, such as a month. Order at ¶ 744. Per-unit costs should be derived from total costs using reasonably accurate "fill factors" (estimates of the proportion of a facility that will be "filled" with network usage); that is the per-unit costs associated with a particular element must be derived by dividing the total cost associated with the element by a reasonable projection of the actual total usage of the element." Order at ¶ 682.

represent "actual total usage of the element."[22] MCI requests the Commission to clarify that the usage component of average incremental cost is based on a reasonable estimate of the forward-looking, total long-run usage of the element. In its Order, the Commission states that "per-unit costs shall be derived from total costs using reasonably accurate 'fill factors'." Order at ¶ 682. If these fill factors were based on current fill factors, unbundled element rates would be inflated above forward-looking long run incremental costs due to the presence of spare capacity above efficient levels. Current fill factors would be neither forward-looking, nor efficient, nor long run. Moreover, the Commission refers to a projection of actual total usage. This statement can only be interpreted to mean that fill factors should be based on an estimate of the maximum total demand that can be placed on a facility without endangering service quality and without requiring additional investment.

B. The Cost of Additional Unbundling Quality Must be Recovered on an Average Incremental Basis.

In its Order, the Commission states that the requesting carrier will be required to compensate the ILEC or the utility company for the total incremental cost when a new entrant requests an ILEC to provide an unbundled element of superior quality than the ILEC currently makes available. If new entrants are

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22 See Direct Testimony of Dale A. Lundy, Southwestern Bell Telephone Company, Texas Public Utility Commission, Docket No. 16189, 16196, 16285, 16290, September 6, 1996, at 6-7; Direct Testimony of Daonne Caldwell, BellSouth Telecommunications, Inc., North Carolina Utilities Commission, Docket No. P-141, Sub 29, September 17, 1996, at 9.

responsible for the total incremental cost of their requests, however, it would allow the ILEC to double-recover the cost of the additional unbundling. Instead, the Commission should order that new entrants pay the average incremental cost of providing the unbundled element at the higher quality divided by the total incremental cost of the higher quality, multiplied by the number of months the new entrant uses the unbundled element at the higher quality level. The Commission's Order supports this result; it determined that the carrier is entitled to exclusive use of an unbundled element for the period of time it is purchased. See Order at ¶ 268.[23]

Elsewhere, the Commission has determined that rebates of future revenues are an appropriate mechanism for compensating new entrants. Microwave Relocation Order, WT Docket No. 95-17 (August 14, 1996). In that way, ILECs do not over-recover their costs when an initial entrant bears the total incremental start-up costs associated with their purchase of unbundled elements, and the modified facilities are later made available to other entrants that purchase those unbundled elements from the ILEC. This finding is analogous to the position the Commission has articulated with respect to the

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[23] This conclusion is bolstered by the Commission's discussion of meet point costs imposed on the new entrant in its use of unbundled ILEC elements. The Commission has determined that because these meet point facilities are part of the new entrant's network, the new entrant is responsible for the total incremental cost. In an access arrangement pursuant to Section 251(c)(3), by contrast, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. Thus in a § 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement. See Order at ¶ 553.

inclusion of a share of joint and common costs in the determination of TELRIC. See Order at ¶ 672. If it is appropriate to compensate ILECs for a portion of the forward looking costs associated with facilities a network element shares with other elements, it is also appropriate to compensate new entrants for facility modifications they have made which are later sold to other entrants by the incumbent utility.[24]

To remedy these concerns, MCI requests that the Commission require states to either develop rebate mechanisms, or, in the alternative, to price the recovery of these additional costs on an average incremental basis.

C. The Cost of Additional Rights of Way Must be Recovered on an Average Incremental Basis.

The above rationale must also be applied to the future revenues a utility may earn as a result of modification of costs associated with a new entrant's request for access to its rights-of-way that creates excess rights-of-way capacity. The Commission rejected this application without justification. Although the Commission stated that the 1996 Act "...does not give that party any interest in the pole or conduit other than access," Order at ¶ 1216, that is flatly inconsistent with other statements in the Order. For example, it concluded that "...we will allow the modifying party or parties to recover a proportionate share of the

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[24] For example, the Commission has indicated, that it requires "state commissions take steps to ensure that incumbent LECs do not recover nonrecurring costs twice and that nonrecurring charges are imposed equitably among entrants". Order at ¶ 750-751.

modification costs from parties that later are able to obtain access as a result of the modification."[25] In further contradiction of its assertion that the 1996 Act did not confer an interest other than access, the Commission stated that parties joining in a modification will be "...responsible for resulting costs to maintain the facility on an ongoing basis." Order at ¶ 1216. The Commission's contention that it would be a "disincentive to add new competitors" by not permitting utilities to earn future revenues from this excess capacity, even though the utility has already fully recovered these costs, is wholly without merit. In essence, it is tantamount to asserting that competition is promoted by disincenting actual entrants in order to incent potential entrants. In any case, it is impractical to expect the initial modifiers of rights of way capacity to collect a share of these costs from subsequent users. Only the utility will be in a position to determine the share of facilities made use of by subsequent parties.

One solution is to require the utility to establish an escrow account for the revenues earned from this excess capacity. The utility would be required to pay into this account at the same rates it charged others for the use of this additional capacity. These revenues would be distributed to the initiators of the modification in proportion to their initial expenses to the utility for those modifications. An alternative solution is to require new entrants requesting

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[25] Presumably, the initial entrants will be able to recover future revenues from the ILEC if the ILEC also eventually makes use of that excess capacity.

additional capacity to compensate the utility for the average incremental cost of the addition, rather than the total incremental cost. New entrants would therefore be responsible for paying the annual depreciated value of their share of the additional facilities.

Finally, given the potential the utility companies have for double recovering additional rights of way cost, the Commission should require them to meet the same burdens of proof concerning claims of space exhaustion for rights of way as it has adopted for collocation. In the case of collocation, the Commission required ILECs to supply detailed floor plans, and explicitly incorporate the future capacity requirements of new entrants in their own plan for future capacity additions. See Order at ¶ 602. The same requirements should be applied in this instance to utility companies.

X. RATES FOR COLLOCATION AND TRANSPORT SHOULD BE BASED ON TELRIC.

In its Order, the Commission based its proxy ceilings for collocation elements on tariffed interstate collocation rates developed in its Expanded Interconnection proceeding.[26] By doing so, however, the Commission has effectively adopted rates that are based on incumbent LEC historical cost factors, rather than on forward-looking costs. This error makes the

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[26] In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, CC Docket No. 91-141, 9 FCC Rcd 5154 (1994) ("Virtual Collocation Order").

Commission's proxy ceilings for collocation and transport flatly inconsistent with of the 1996 Act, and in direct conflict with §51.505(d)(1) of its own rules, which prohibit the use of embedded costs when calculating the forward-looking economic cost of any element.[27]

The Commission's decision to establish proxy rates for collocation based on existing interstate tariffed rates ignores the components of the Commission's "new services test."[28] In its Order, the Commission mistakenly concludes that the "new services test" is equivalent to a forward-looking cost methodology.[29] This is incorrect. The "new services test," uses forward-looking investment, but also employs historical or embedded cost factors in its calculation of overhead.[30]

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27 Section 252(d)(1) requires that ILEC base interconnection and network element charges on the cost of providing the interconnection or network element (whichever is applicable), without reference to a rate-of-return or other rate-based proceeding. See Order ¶ 672, 682, 690-691. Embedded costs are those past costs that the incumbent LEC incurred recorded in the ILEC's books of accounts.

28 Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge supplements for Open Network Architecture, CC Docket Nos. 89-79 and 87-313, Report and Order, Order on Reconsideration, and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524, 4531 (1991); modified on recon., 7 FCC Rcd 5235 (1992); Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, Order, 9 FCC Rcd 440, 454-456 (1993).

29 In ¶ 826 of the Order, the Commission states that "Expanded interconnection services are subject to the new services test, which...uses a forward-looking methodology."

30 In Local Exchange Carriers' Rates Terms and Conditions for Expanded Interconnection for Special Access, First Report and Order, CC Docket No. 91-141, 8 FCC Rcd 8369 (1993) (Overhead Prescription Order) and In the Matter of Expanded Interconnection with Local Telephone

The Commission also adopted default prices for transport which mirror existing tariffed interstate transport rates. The Commission offers no evidence that these rates reflect, or even approximate, forward-looking cost. It assumes that because these rates have been subject to price caps, they presumably reflect cost. The Commission's flawed assumptions result in inaccurate conclusions. It cannot be assumed that price caps will require, or motivate, monopoly LECs to reduce rates to cost. Moreover, MCI and others have contended that existing price cap indices are excessive, and therefore, do not accurately reflect true cost.[31] Then too, many carriers are not even subject to price cap regulation. To that end, to guard against improper pricing for interstate transport, MCI contends that the Commission should endorse the use of the Hatfield Model to establish default pricing for transport because it determines the forward-looking cost of network elements.

XI. THE COMMISSION SHOULD REQUIRE ILECS TO OFFER A LEASEBACK OPTION FOR VIRTUAL COLLOCATION.

In its Virtual Collocation Order, the Commission refrained from requiring

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Company Facilities, Memorandum Opinion and Order, CC Docket No. 91-141, 9 FCC Rcd 5154 (1994) (Virtual Collocation Order), the Commission expressly permitted incumbent LECs to apply historical overhead loadings to the ILEC's forward-looking investment that were equivalent to those applied by the ILEC to "comparable services."

31 See. e.g., Letter from Bradley Stillman for the CARE Coalition to William F. Caton, Acting Secretary, FCC, CC Docket No. 94-1, April 16, 1996.

incumbent LECs to offer a "leaseback" option. It believed that "[a] $1 sale and repurchase right would effectively make the interconnector the owner of the equipment in all but formal title, and would perhaps run afoul of the D.C. Circuit's analysis in Bell Atlantic v. FCC."[32] As the Commission correctly found, however, the 1996 Act gives it the power to order physical collocation, rendering moot that concern.[33]

Because the authority to require physical collocation is no longer at issue, the Commission can and should require incumbent LECs to offer interconnectors virtual collocation through a "leaseback" option. Further, all incumbent LECs that are required to offer virtual collocation should be required to offer new entrants the "leaseback" option. Under the "leaseback" option, the incumbent LEC agrees to purchase virtual collocation equipment from the interconnector for a nominal amount (e.g., $1), with the condition that it be re-sold to the interconnector for the same amount (i.e., $1) when the equipment is no longer required. Such a policy enables interconnectors to purchase the type of

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32 Virtual Collocation Order, 9 FCC Rcd 5189, at ¶127. Bell Atlantic Telephone Companies v FCC, 24 F. 3d 1441 (D.C. Cir. 1994)("Bell Atlantic v. FCC"). In Bell Atlantic v FCC, the U.S. Court of Appeals for the D.C. Circuit found that the Commission lacked authority under the Communications Act to impose physical collocation on the LECs.

33 See Order at ¶ 616 ("The question of statutory authority to impose (physical or virtual) collocation obligations on the incumbent LECs largely evaporates in the context of the 1996 Act."); see id. at ¶ 617 ("any remaining taking-related issue necessarily is limited to the question of just compensation.").

equipment that they need, at the lowest available rates. Consequently, the "leaseback" option significantly reduces barriers to market entry, and consistent with the goals of the 1996 Act, promotes the development of competition in local telecommunications markets.

XII. THE COMMISSION SHOULD MANDATE A DATE CERTAIN FOR THE ESTABLISHMENT OF NATIONAL STANDARDS FOR ELECTRONIC INTERFACES.

In its Order, the Commission determined that ILECs must provide non-discriminatory access to operational support systems no later than January 1, 1997. Order at ¶ 525. The Commission refrained, however, from setting a date certain for the development of uniform national standards for the interfaces, arguing that "progress made by standards-setting organizations to date evidences a strong national movement toward such a uniform standard", Order at ¶ 527. The establishment of such a standard is critical.

MCI disputes the existence of any "strong national movement" toward a uniform standard. The sources the Commission references as evidence of this trend do not support the notion that national standards for electronic interfaces will develop in a reasonable time period absent Commission establishment of a date certain. Existence of standards setting bodies such as the Ordering and Billing Forum (OBF) and the Electronic Communications Implementation Committee (ECIC) will not guarantee establishment of these much needed

standards.[34] Indeed, Sprint's Ex Parte presentation reveals that the ECIC has not even initiated work on most of the issues required for setting national standards for electronic interfaces.[35] At a minimum, then, there is no guarantee that the progress made to date will culminate in a uniform national standard in a reasonable time frame.

Thus, MCI requests that the Commission, as it has done in the past,[36] establish a date certain by which national uniform standards for electronic interfaces are established.[37] This is the only way to ensure that establishment of such standards is not unduly delayed. Otherwise, new entrants would be faced with the imposition of anticompetitive costs on new entrants, thus delaying their

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34 See Letter from Jay C. Keithley, Vice President, Law & External Affairs, , Sprint, to William G. Caton, Acting Secretary, FCC, June 25, 1996 Ex Parte ("Sprint Ex Parte"); AT&T Comments at 38; BellSouth Reply Comments at 27.

35 "The ECIC states that as of June 1996; work on a guideline for the Ordering/Provisioning application is just beginning. Other applications, for which priorities have not been established include: Performance Monitoring, Alarm Monitoring, Network Management, Traffic Management, Testing (and Reporting Results), Ordering CLEC Services (include Resale), Ordering SONET, Product Availability/Capability, Electronic Bonding for Government and large Customers, and Intercompany Billing". Sprint Ex Parte.

36 See In the Matter of Provision of Access for 800 Service, Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking, CC Docket No. 86-10, 6 FCC Rcd 5421 (1991).

37 MCI urges the Commission to retain the date of January 1, 1997, as the date by which interim electronic interfacing must be established. Even if the Commission does set a date certain by which a national standard must be established, new entrants should be allowed to interface immediately so that entrance into new markets is not delayed.

ability to efficiently order and provide service, and thereby undermining the intent of Congress and the Commission.

XIII. NEW ENTRANTS IN ARBITRATION OVER INCUMBENT LEC UNBUNDLED OR LEASED NETWORKS SHOULD NOT BE REQUIRED TO PROVIDE COST SUPPORT.

Section 251(c)(1) of the Act imposes on Incumbent LECs the "duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described" in section 251(b) and (c), and further provides that "[t]he requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements." In section 51.301(c) of the Commission's rules, the Commission listed eight actions that "violate the duty to negotiate in good faith." Because the last requirement, contained in §51.301(c)(8)(ii) of its regulations, appears to contain a typographical error, MCI requests that the Commission clarify, or delete, that section.

Section 51.301(c)(8)(ii) indicates that refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration violates its duty to negotiate in good faith. The Order makes clear, however, that it is the ILEC's duty to provide such cost data. See Order at ¶ 155.[38] The Commission went on to explain that "[t]he

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[38] The Commission concluded that "an incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the

refusal of a new entrant to provide data about its own costs does not appear to be unreasonable, because negotiations are not about unbundling or leasing the new entrant's networks." Id. (emphasis added).

It is clear, therefore, that Section 51.301(c)(8)(ii) of the Commission's regulations contains a typographic error. It should be corrected, or that regulation should be eliminated.

XIV. THE DEFINITION OF INTERCONNECTION AGREEMENTS PURSUANT TO SECTION 252 SHOULD BE CLARIFIED.

In the Order, the Commission concluded that: (1) a requesting carrier must have the ability to choose among individual provisions in any publicly filed interconnection agreement and (2) that agreements negotiated prior to enactment of the 1996 Act must be available for use by subsequent, requesting carriers pursuant to section 252. Order at ¶ 1316.

MCI supports the Commission's finding. However, MCI seeks clarification on the definition of "agreements" in order to ensure that all agreements -- even those that may address one subject -- for "services or elements establishing rates, terms, and conditions for local interconnection, local resale, and unbundled elements" are subject to filing. Section 252 provides that a "local exchange carrier shall make available any interconnection, service, or network

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negotiation process, because . . . such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent LEC are reasonable." Order at ¶ 155 (emphasis added).